

Landlord Tenant Law Changes in WA—2019

Military Deployment: HB 1138

Current Law:

Month to Month Tenancy: RCW 59.18.200(1)(b): “Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.”

Unexpired Lease: RCW 59.18.220(2): “Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt.”

New Law:

RCW 59.18.030(31): "Active duty" means service authorized by the president of the United States, the secretary of defense, or the governor for a period of more than thirty consecutive days.

RCW 59.18.030(32): "Orders" means written official military orders, or any written notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military status.

RCW 59.18.030(33): "Permanent change of station" means: (a) Transfer to a unit located at another port or duty station; (b) change in a unit's home port or permanent duty station; (c) call to active duty for a period not less than ninety days; (d) separation; or (e) retirement.

RCW 59.18.030(34): "Service member" means an active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state.

Month to Month Tenancy: RCW 59.18.200(1)(b): Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than twenty days' written notice if the tenant receives permanent change of station or deployment orders that do not allow a twenty-day written notice.

Unexpired Lease: RCW 59.18.220(2): Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives permanent change of station or deployment orders.

Before terminating the tenancy, the tenant, or that tenant's spouse or dependent, shall provide written notice of twenty days or more to the landlord, which notice shall include a copy of the official military orders or a signed letter from the service member's commanding officer confirming any of the following criteria are met:

(a) The service member is required, pursuant to a permanent change of station orders, to move thirty-five miles or more from the location of the rental premises;

(b) The service member is prematurely or involuntarily discharged or released from active duty;

(c) The service member is released from active duty after having leased the rental premises while on active duty status and the rental premises is thirty-five miles or more from the service member's home of record prior to entering active duty;

(d) After entering into a rental agreement, the commanding officer directs the service member to move into government provided housing;

(e) The service member receives temporary duty orders, temporary change of station orders, or active duty orders to an area thirty-five miles or more from the location of the rental premises, provided such orders are for a period not less than ninety days; or

(f) The service member has leased the property, but prior to taking possession of the rental premises, receives change of station orders to an area that is thirty-five miles or more from the location of the rental premises.

Things to note:

Regardless of how or why items are left (e.g., leaving items, abandoning items, eviction), under 50 USC 3958, a landlord must first obtain a court order before enforcing a lien or otherwise disposing of the items. The definition of "lien" under that section is purposefully broad ("For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason."). (emphasis mine) Thus, the provision would certainly apply in the context of eviction (if property were left behind). However, the SCRA contains a broad construction mandate, and regardless of whether a respective state law actually classifies a right to property as a lien, in the context of disposing of a servicemember's property, I believe courts would likely classify any right of disposal as a constructive lien (of course, not in the situation of actual trash).

Can use a military waiver under 50 USC 3918 to get around this, and the military waiver can be for the entire act or just for this section of the act.

Rent Increase Notices: HB 1440:

Current Law:

Seattle: SMC 7.24.030(A)

Any increase in housing costs (which include any charges other than utilities that the tenant pays on a monthly basis) notice in Seattle can be for 30 days prior to the last day of the month during any month to month tenancy, or at least 30 days prior to the last day of the lease, so long as the increase is less than 10% of any monthly amount that the tenant was paying during any of the prior 12 months. If the increase (or any increase if multiple offers for different lease terms are given in the same notice) is 10% or higher, then the notice must be 60 days prior to the last day of a month during a month to month tenancy or at least 60 days prior to the last day of the lease.

All rent increase notices must contain language similar to: “Tenants can get additional information about their rights and obligations at www.seattle.gov/sdci.”

Tacoma: TMC 1.95.060

A landlord is required to provide a minimum of 60 days’ prior written notice whenever the periodic or monthly housing costs to be charged a tenant will increase by any amount over the periodic or monthly rental rate charged the same tenant for the same housing unit, unless the fixed lease agreement includes agreed-upon rent increases during the term of the tenancy or agreement.

New Law for all of WA: RCW 59.18.140(3)(a) and (b):

- (a) Except as provided in (b) of this subsection, a landlord shall provide a minimum of sixty days' prior written notice of an increase in the amount of rent to each affected tenant, and any increase in the amount of rent may not become effective prior to the completion of the term of the rental agreement.
- (b) If the rental agreement governs a subsidized tenancy where the amount of rent is based on the income of the tenant or circumstances specific to the subsidized household, a landlord shall provide a minimum of thirty days' prior written notice of an increase in the amount of rent to each affected tenant. An increase in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.--- **This is directed at Tax Credit Rental Cap Increases.**

Termination Notices for Substantial Rehabilitation or Change in Use of an Apartment: HB 1462

Current Law:

Seattle: SMC 22.210:

Landlord must apply to DCI for a tenant relocation license and follow that procedure.

Definitions: SMC 22.210.030

"Change of use" means the conversion of any dwelling unit from a residential use to a nonresidential use that results in the displacement of existing tenants or conversion from residential use to another residential use that requires the displacement of existing tenants, such as a conversion to a retirement home where payment for long-term care is a requirement of tenancy, or conversion to an emergency shelter or transient hotel. For purposes of this Chapter 22.210, "change of use" shall not mean a conversion of a rental dwelling unit to a condominium.

"Substantial rehabilitation" means extensive structural repair or extensive remodeling that requires displacement of a tenant and either requires a building, electrical, plumbing, or mechanical permit, or is valued at \$6,000 or more for any tenant's dwelling unit.

"Displacement" means, in the case of demolition, substantial rehabilitation, or change of use, that existing tenants must vacate the dwelling unit because of the demolition, substantial rehabilitation, or change of use; in the case of removal of use restrictions from an assisted housing development, it means that the nonrestricted rent of a dwelling unit after the removal of use restrictions will exceed by 20 percent or more, exclusive of increases due to operating expenses, the restricted rent of the dwelling unit before the removal of use restrictions. For purposes of this Chapter 22.210, "displacement" shall not include the permanent relocation of a tenant from one dwelling unit to another dwelling unit in the same building with the tenant's consent or the temporary relocation of a tenant for less than 72 hours.

Tacoma: TMC 1.95.070(B) and TMC 1.95.080 (tenant relocation payments and process):

Requirement for notice to tenant when tenant displaced. When a tenant is to be displaced, a landlord may only terminate the tenancy by providing a tenant with written notice of at least 120 days preceding the end of the month or period of tenancy. For any notice provided under this subsection, the landlord shall also serve at the same time the Tenant Relocation Information Packet and further comply with the Tenant Relocation Assistance requirements in TMC 1.95.080.B.

Definitions: TMC 1.95.020:

“Change of use” means the conversion of any dwelling unit from a residential use to a nonresidential use; conversion from one type residential use to another type residential use, such as a conversion to a retirement home, emergency shelter, transient hotel, or short-term rental as defined in Tacoma Municipal Code (“TMC”) 13.06.700; the removal of use restrictions, including those in an assisted housing development; provided that an owner displacing a tenant so that the owner or immediate family member can occupy the rental dwelling unit shall not constitute a change of use. Any “change of use” are provided herein requires displacement of a tenant.

“Substantial rehabilitation” means extensive structural repair or extensive remodeling and requires a building, electrical, plumbing, or mechanical permit for the tenant’s dwelling unit at issue. Any “substantial rehabilitation” as provided herein requires displacement of a tenant.

“Displacement” or “displaced” means the demolition, substantial rehabilitation, or change of use requiring existing tenants to vacate the dwelling unit but shall not include the relocation of a tenant from one dwelling unit to another dwelling unit with the tenant’s consent.

WA:

There are no general laws in WA that cover tenant relocation for change in use or substantial rehabilitation.

RCW 59.18.085 only covers situations where the unit has been, or the landlord has been notified that a governmental agency intends to red tag (condemn) the unit.

New Law:

RCW 59.18.200(2)(c):

(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 one hundred twenty days before termination of the tenancy. This subsection (2)(c)(i) does not apply to jurisdictions that have created a relocation assistance program under RCW 59.18.440 and otherwise provide one hundred twenty days' notice. **Does not apply to Tacoma, but it does apply to Seattle.**

(ii) For purposes of this subsection (2)(c):

(A) "Assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(B) "Change of use" means:

(I) Conversion of any premises from a residential use to a nonresidential use that results in the displacement of an existing tenant;

(II) conversion from one type of residential use to another type of residential use that results in the displacement of an existing tenant, such as conversion to a retirement home, emergency shelter, or transient hotel; or

(III) conversion following removal of use restrictions from an assisted housing development that results in the displacement of an existing tenant: PROVIDED, that displacement of an existing tenant in order that the owner or a member of the owner's immediate family may occupy the premises does not constitute a change of use.

(C) "Demolish" means the destruction of premises or the relocation of premises to another site that results in the displacement of an existing tenant.

(D) "Substantially rehabilitate" means extensive structural repair or extensive remodeling of premises that requires a permit such as a building, electrical, plumbing, or mechanical permit, and that results in the displacement of an existing tenant.

(3) A person in violation of subsection (2)(c)(i) of this section may be held liable in a civil action up to three times the monthly rent of the real property at issue. The prevailing party may also recover court costs and reasonable attorneys' fees.

Senate Bill 5600:

1. Pay Rent or Vacate Notice:
 - a. The new notice goes from 3 days to 14 days;
 - b. "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 and payment of security deposit if the tenant is allowed and has chosen to pay the deposit in payments. These terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. **RCW 59.18.030(25)**
 - c. There is a statutory form for this, and it must be strictly complied with. Landlords can put it on letterhead and can add section 8 or VAWA language but that is all the language that can be added or changed. If other language is added or changed, the notice is arguably void.
 - d. This section does not apply to commercial tenancies.
 - e. The WA AG is required to have versions of this form in other languages on its website, but there is no requirement under the law that landlords use anything but the English language version of the form.
2. Late fees or other non-rent fees:
 - a. These are still required to be on a 10-Day Notice to Comply or Vacate
 - b. Late fees are awardable in a judgment if provided for in the lease, and if the total late fees are \$75.00 or less.
3. Payment in cash is allowed unless the lease specifically prohibits it.
4. Application of Funds: **New Section**
 - a. A new section is added to chapter 59.18 RCW to read as follows:

Under this chapter:

 - (1) A landlord must first apply any payment made by a tenant toward rent before applying any payment toward late payments, damages, legal costs, or other fees, including attorneys' fees.
 - (2) Except as provided in RCW 59.18.410, the tenant's right to possession of the premises may not be conditioned on a tenant's payment or satisfaction of any monetary amount other than rent. However, this does not foreclose a landlord from pursuing other lawful remedies to collect late payments, legal costs, or other fees, including attorneys' fees. **Arguably this means that you cannot start an eviction on a 10 day for late fees or for an unpaid deposit—you would have to go to collections for it.**
5. Default Judgments: **RCW 59.18.290**
 - a. A default judgment is when the tenant has not responded to the service of the summons and complaint, so there is no show cause hearing before the entry of the judgment.
 - b. If the judgment is a default judgment, the landlord is not entitled to any attorney fees:
 - i. If the tenant has not appeared in the case;

- ii. If the principal amount of the “rent” part of the judgement is less than the greater of:
 - iii. \$1,200.00 or
 - iv. 2 month’s rent
 - c. This section does not apply if the tenant did respond and there was a hearing.
- 6. Reinstatement of Tenancy—**RCW 59.18.410**
 - a. Under the current law, it only applied if the eviction was for non-payment of rent and the tenant was on an un-expired lease—the tenant had 7 calendar days to pay the full amount of the judgment to the court and re-instate their tenancy;
 - b. The automatic reinstatement right still exists, but is no longer limited un-expired lease
 - c. **Automatic Reinstatement under RCW 59.18.410**
 - i. Tenant has 5 court days to pay the full amount of the judgment, including any rent, late fees (up to \$75.00), court costs and attorney fees and the tenancy is automatically reinstated
 - 1. Not limited to unexpired lease;
 - 2. Tenant must also pay an additional \$50.00 for each time a tenancy was re-instated under this subsection (so not a 90-day payment plan) in the past 12 months.
 - ii. If paid, the landlord must file a satisfaction of judgment.
 - d. **Conditional Reinstatement with a court order—RCW 59.18.410:**
 - i. Under the new law, every tenant in every eviction based on non-payment of rent (except in the case where the tenant has received 3 or more pay rent or vacate notices in the past 12 months) has the right to ask the court to re-instate their tenancy.
 - ii. Note that this right does not extend to behavioral notices
 - iii. The Court is supposed to look at the following grounds in making the decision:
 - 1. The intentionality of the tenant’s default;
 - 2. Whether the non-payment was caused by exigent circumstances beyond the tenant’s control, and the likelihood of them repeating;
 - 3. The tenant’s ability to pay the judgment;
 - 4. The tenant’s payment history;
 - 5. Whether or not the tenant is otherwise in compliance with the terms of the tenancy;
 - 6. Hardship on the tenant if they are evicted;
 - 7. Whether or not the tenant is otherwise in compliance with the terms of the tenancy; and
 - 8. Tenant’s conduct related to other notices served in the last 6 months.
 - iv. The burden of proof for all of the above elements is on the tenant to show grounds for re-instatement of tenancy.
 - v. Tenant can ask for this at the show cause hearing, or trial or anytime up to the physical eviction.

- e. Any order by the court for reinstatement of tenancy is limited by:
 - i. The stay for repayment cannot be for more than 90 days;
 - ii. The order does not have to order repayment of the judgment balance;
 - iii. If the court orders a payment plan, then:
 - 1. The court can add attorney fees into the payment plan if they were not allowed at the time of the entry of the judgment **RCW 59.18.290(4)**
 - 2. If the payment plan is more than 30 days, then the total payments for each 30-day period of the repayment plan cannot be less than a month's rent;
 - 3. The total amount of the judgment **and all additional rent that is due—rent coming due during the payment plan**—must be paid in full in 90 days.
 - 4. Tenant must pay 1 month's rent within 5 days of the order for the repayment plan and paid to the landlord or to the court;
 - a. If the tenant pays the 1 month rent in the 5 court days:
 - i. The court can stay enforcement of the writ without notice to the landlord upon presentment of:
 - 1. A motion to stay
 - 2. A declaration of proof of payment of the 1 month's rent
 - b. Any order staying the writ must be served on the landlord by personal delivery, first class mail, fax, or email (only if agreed to by the parties)
 - 5. If the repayment order is entered after the 15th of the month, then the next month's rent can be rolled into the payment plan, but all other future rent is due per the lease during the payment plan;
 - a. If the repayment order is entered before the 15th of the month, the tenant must pay the future rent on time during the payment plan
- f. If there is a default in the payment plan by the tenant (other than the 1 month rent in 5 days)
 - i. Landlord must serve a 3-day notice of default on the tenant
 - 1. Has to be served like an eviction notice so posted and mailed, but no extra day is added for mail
 - 2. If the tenant has not paid under the notice of default, the sheriff can enforce the writ of restitution
 - 3. The payment amount listed in the notice of default is the balance of the payment plan and rent due during the payment plan.
- g. Payment under the conditional plan with emergency rental relief
 - i. This is allowed and the court is supposed to stay the enforcement of the writ for an undisclosed time to allow this if:
 - 1. The tenant provides an offer of proof of the payment by the agency

- h. Any conditional payment plan order must have a finding by the court as to whether the tenant is low-income, limited resourced, or experiencing hardship.
 - i. To determine this, the court can look at income, income relative to median income, household composition, extenuating circumstances, and may rely on written or oral testimony
 - ii. If the court finds any of them, then the court can order:
 - 1. That the landlord can get money from the landlord mitigation fund (RCW 43.31.605);
 - a. The landlord is not required to apply to the fund for payment and may still seek payment from the tenant instead
 - 2. If the fund does not pay within 30 days, the landlord can ask for the writ to be enforced, and in that case, the tenant can again ask for a conditional payment plan.
 - 3. If the fund does pay, and it pays in full, then the landlord must file a satisfaction of judgment.
 - i. A tenant can get an ex-parte stay of a writ if:
 - i. Tenant or tenant's attorney submits a declaration of the efforts made to give notice to the landlord, or;
 - ii. If no efforts were made to give notice, why notice could not be provided, and what immediate or irreparable harm would occur if an immediate stay is not granted.
7. Service of the Writ of Restitution **RCW 59.18.410**
- a. Can be served by the sheriff upon the tenant before the expiration of 5 court days from the date of the order for the writ but cannot have the physical eviction until after the 5 court days are up.
 - b. If a payment plan is ordered, the writ stays valid during the payment plan.
8. Bond—**RCW 59.18.390**
- a. All language requiring a tenant bond is stricken from the law.
9. Alternative Service **RCW 59.18.055**
- a. No longer need a to file the case and get a court order before sending by alternative service.
 - b. Before the entry of a judgment or order for writ, have to file the declaration of attempts with the court
 - c. Exercise of due diligence to try and serve if the declaration shows 3 attempts over 2 days at different times of the day.

FOURTEEN-DAY NOTICE TO PAY RENT OR VACATE THE PREMISES

You are receiving the attached notice because the landlord alleges you are not in compliance with the terms of the lease agreement by failing to pay rent and/or utilities and/or recurring or periodic charges that are past due.

(1) Monthly rent due for (list month(s)): **\$ (dollar amount)**

AND/OR

(2) Utilities due for (list month(s)): **\$ (dollar amount)**

AND/OR

(3) Other recurring or periodic charges identified in the lease for (list month(s)): **\$ (dollar amount)**

TOTAL AMOUNT DUE: **\$ (dollar amount)**

Note - payment must be by cash, cashier's check, money order, or certified funds pursuant to the terms of the rental agreement.

You must pay the total amount due to your landlord within fourteen (14) days after service of this notice or you must vacate the premises. Any payment you make to the landlord must first be applied to the total amount due as shown on this notice. Any failure to comply with this notice within fourteen (14) days after service of this notice may result in a judicial proceeding that leads to your eviction from the premises.

The Washington state Office of the Attorney General has this notice in multiple languages on its web site. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, call 2-1-1 to learn about these services.

State law provides you the right to receive interpreter services at court.

OWNER/LANDLORD:_____DATE:_____

WHERE TOTAL AMOUNT DUE IS TO BE PAID:

(owner/landlord name)_____

(address)_____

NOTICE OF DEFAULT FOR RENT AND/OR PAYMENT PLAN ORDERED BY
COURT

NAME(S)
ADDRESS
CITY, STATE, ZIP

THIS IS NOTICE THAT YOU ARE IN DEFAULT OF YOUR RENT AND/OR
PAYMENT PLAN ORDERED BY THE COURT. YOUR LANDLORD HAS
RECEIVED THE FOLLOWING PAYMENTS:

DATE: AMOUNT: \$ _____
DATE: AMOUNT: \$ _____
DATE: AMOUNT: \$ _____

THE LANDLORD MAY SCHEDULE YOUR PHYSICAL EVICTION WITHIN
THREE CALENDAR DAYS OF SERVICE OF THIS NOTICE. TO STOP A
PHYSICAL EVICTION, YOU ARE REQUIRED TO PAY THE BALANCE OF YOUR
RENT AND/OR PAYMENT PLAN IN THE AMOUNT OF \$_____.

PAYMENT MAY BE MADE TO THE COURT OR TO THE LANDLORD. IF YOU
FAIL TO PAY THE BALANCE WITHIN THREE CALENDAR DAYS, THE
LANDLORD MAY PROCEED WITH A PHYSICAL EVICTION FOR POSSESSION
OF THE UNIT THAT YOU ARE RENTING.

DATE: _____

SIGNATURE: _____

LANDLORD/AGENT NAME: _____

ADDRESS: _____

PHONE: _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

SMOKEY POINT APARTMENTS II,
LLC
Plaintiff,
vs.
DANIEL L. DUNCAN
Defendant(s).
23249.0018

NO.
EVICTON SUMMONS
(Residential)

THIS IS AN IMPORTANT LEGAL DOCUMENT TO EVICT YOU.
YOUR **WRITTEN** RESPONSE MUST BE RECEIVED BY:

5:00 P.M., on June 3, 2019

**TO: DANIEL L. DUNCAN
CASCADIA AT THE LODGE APARTMENTS
17503 25TH AVENUE N.E. #S-102
MARYSVILLE, Washington 98271**

GET HELP: If you do not respond by the deadline above, you will lose your right to defend yourself in court and could be evicted. If you cannot afford a lawyer, you may call 2-1-1. They can refer you to free or low-cost legal help. They can help you find help to pay for a lawyer.

HOW TO RESPOND: Phone calls to your Landlord or your Landlord's lawyer are not a response. You may respond with a "notice of appearance." This is a letter that includes the following:

- (1) A statement that you are appearing in the court case
- (2) Names of the landlord(s) and the tenant(s) (as listed above)
- (3) Your name, your address where legal documents may be sent, your signature, phone number (if any), and case number (if the case is filed)

This case is / is not filed with the court. If this case is filed, you need to also file your response with the court by delivering a copy to the clerk of the court at:

(Clerk's Office/Address/Room number/Business hours of court clerk)

WHERE TO RESPOND: You must mail, fax, or hand deliver your response letter to your Landlord's lawyer, or if no lawyer is named in the complaint, to your Landlord. If you mail the response letter, you must do it 3 days before the deadline above. Request receipt of a proof of mailing from the post office. If you hand deliver or fax it, you must do it by the deadline above. The address is:

Puckett & Redford PLLC
901 5th Avenue, Suite 800
Seattle, WA 98164
Facsimile Number: 206-233-8166

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.

PUCKETT & REDFORD PLLC

DATED: May 20, 2019

By: _____
Randy Redford/WSBA No. 21529
Ryan J. Weatherstone/WSBA No. 41338
Lauren Novack/WSBA No. 16826
Attorneys for Plaintiff