

# A Comparison of Residential Tenancies in Idaho and Washington State

By: Eric M. Steven

The following will identify and compare various common issues relative to Unlawful Detainer jurisdiction, and residential tenancies in Idaho and Washington. Specific attention will be directed to significant statutes and case law regulating residential landlord/tenant relations in each state.

Both Idaho and Washington have Unlawful Detainer statutes regulating termination of possessory leasehold interests. The Idaho Unlawful Detainer statutes are found at I.C. §6-301 et seq. The Washington Unlawful Detainer statutes are found at RCW 59.12 et seq. Both Idaho and Washington detainer statutes identify different means to terminate tenancies.

## JURISDICTION AND COURTS

In Idaho, the District Court of the county where the leasehold premises is situated is exclusively empowered to hear Unlawful Detainer actions pursuant to I.C. §6-305. The Complaint must be verified prior to filing in Idaho I.C. §6-318.

In Washington, Unlawful Detainer actions are subject to the exclusive jurisdiction of the Superior Court pursuant to RCW 59.12.050. The Washington Unlawful Detainer statutes do not apply to life estates pursuant to RCW 59.12.030. Non possessory landlord/tenant matters may be heard by either the District or Superior Courts, pursuant to RCW 59.18.050.

## EXPRESS TERM TENANCIES

In Idaho and Washington, the first basis for terminating a tenancy is by expiration of the agreed term of tenancy. Express or specified term tenancies are recognized in both states as terminated without Notice upon expiration.

In Idaho, I.C. §6-303(1), Unlawful Detainer Defined, creates liability for Unlawful detainer jurisdiction when a person continues in possession in person, or by subtenant, of the property, or any part thereof, after expiration of the term for which it is let, without the permission of the landlord. The state statute does not provide for the giving of any notice terminating tenancy before an action for possession may be maintained. *Johnson v Schmidt*, 76 Idaho 470, 473 285 P.2d 476, 478 (1955). Lessor must elect to treat holding over Lessee as a trespasser or hold him to a new tenancy. *Lewiston Pre-Mix Concrete, Inc. V Rohde*, 110 Idaho 640, 645, 718 P.2d 551, 556 (Ct. App. 1985).

Washington law is similar to Idaho law in that no notice is necessary to commence an unlawful detainer action against a tenant who holds over or continues in possession, after expiration of the stated lease term. *See RCW 59.12.030(1)*. Washington recognizes express term tenancies in RCW 59.18.210, as valid residential tenancies for a period under one (1) year

without acknowledgment, witnesses or seals. Leases over one (1) year must be in writing, and acknowledged. Washington recognizes the doctrine of Substantial Performance, to remove the otherwise void lease from the operation of the statute of frauds. *Stevenson v. Parker*, 25 Wn. App. 639, 644, 608 P.2d 1263, 1266 (1980).

Washington law provides members of the military service, including their dependents may prematurely terminate tenancies for a specified term if the tenant receives reassignment of deployment orders, within seven (7) days after receipt of said orders. *See RCW 59.18.220*.

## PERIODIC TENANCY

Periodic tenancies, typically known as “month-to-month” tenancies, are also addressed in each states’ Unlawful Detainer statutes.

Idaho I.C. §6-303(1) provides for unlawful detainer jurisdiction, when a person continues in possession after expiration of the term for which it is let to him, without the permission of the landlord; but in case of a tenancy at will, it must first be terminated by notice as prescribed in the Civil Code.

Idaho refers to a month-to-month periodic tenant as a “tenant at will”. Idaho civil code, *Termination of tenancy at will*, found at §55-208, provides the landlord may terminate an estate at will by giving the tenant notice in writing, to remove from the premises within a period of not less than one (1) month, to be specified in the notice; or by the tenant providing the landlord written notice the tenant will be vacating.

It is noteworthy that Idaho and Washington have very different definitions of “Tenancy at Will”. In Washington, a tenancy at will is created when a tenant occupies real property of another with consent of the owner but without a denominated rental amount or designated period of tenancy. *Najawitz v City of Seattle*, 21 Wn. 2d 656, 152 P.2d 722 (1944); and *Turner v White*, 20 Wn. App. 290, 579 P.2d 410 (1978). In addition, in Washington, “tenancies at will” are not subject to unlawful detainer jurisdiction. *Turner*, Id.

Washington recognizes month-to-month, periodic tenancies. RCW 59.18.200 provides, a tenant who is a member of the armed forces, including a dependent, may terminate a rental agreement with less than twenty (20) days’ notice if the tenant receives reassignment or deployment orders that do not allow a twenty (20) day notice.

RCW 59.12.030(2), provides for Unlawful Detainer jurisdiction to terminate a month-to-month tenancy after the landlord issues a notice to terminate tenancy, more than twenty (20) days prior to the end of the month, requiring the tenant to quit the premises at the expiration of such month.

## NON-PAYMENT OF RENT

Both Washington and Idaho provide for terminating tenancies with Unlawful Detainer for non-payment of rent. Both states use a Three (3) Day Notice to Pay Rent or Vacate, but the process differs thereafter.

In Idaho, I.C. §6-303(2), provides for unlawful detainer jurisdiction when a tenant is in default in rent after receiving a Three (3) Day Notice to Pay Rent or Vacate. Such notice may be served any time within one (1) year after the rent becomes due.

Idaho's statute makes a distinction in process available depending on the size of the premises being five (5) acres or less. Smaller tracts are subject to an expedited hearing process, while larger tracts are not. *See I.C. §6-310*. Idaho provides agricultural tenancies with additional hold-over rights pursuant to I.C. §6-303(2). Idaho requires a Three (3) Day Notice to Pay Rent or Vacate, to state that the prevailing party in litigation shall recover attorney fees and costs. *See I.C. §6-324*.

Idaho provides the landlord with two options on how to proceed with Unlawful Detainer actions for non-payment of rent. 1) The landlord may proceed in an expedited action for possession of the leasehold premises and request attorney fees and costs, pursuant to I.C. §6-310. If the landlord invokes this expedited remedy, the landlord may not request judgment for lost rents, but in return, is entitled to have the court set a trial within twelve (12) days from filing the complaint. 2) If an Idaho landlord desires to pursue a judgment for unpaid rent and/or extraordinary wear and tear damages, with an action for possession, then the landlord/plaintiff proceeds as in other cases with a typical summons, with a twenty (20) day return date pursuant to I.C. §6-311E. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury. *See I.C. §6-313*.

By contrast, in Washington, the Plaintiff issues the summons and is responsible for determining the return date. In accordance with RCW 59.12.070, the Unlawful Detainer Summons return date must be not less than seven (7), and no more than thirty (30) days from the date of service of the summons on the tenant.

## EVICTION FOR BREACH OF TENANT DUTIES

I.C. §6-303(3), provides for unlawful detainer jurisdiction for tenants that continue in possession after failure to perform conditions or covenants of the lease, other than non-payment of rent, after three (3) days' notice requiring performance or vacating possession of the property. Provided, if the covenant or condition of the lease violated cannot be performed, then no demand for performance needs to be made and the notice is to vacate possession within three (3) days. I.C. §6-303(4), provides for similar unlawful detainer jurisdiction upon a tenant or subtenant,

assigning or subletting, or committing waste upon the demised premises, upon service of notice to quit, rather than comply or vacate.

Unlawful Detainer cases for “cause” in Idaho are not provided any type of expedited summary proceeding and are subject to normal civil summons, case tracking, and schedule order. Idaho regulates Unlawful Detainer proceedings and Judgments for Restitution of the leasehold premises at I.C. §6-316.

In Washington, RCW 59.12.030(4), applies to unlawful detainer actions if the tenant fails to perform tenant duties after ten (10) days’ notice to comply or vacate. RCW 59.18.190 requires a landlord to act within sixty (60) days of issuing a notice to comply or vacate upon a tenant. The Washington Residential Landlord/Tenant Act, RCW 59.18.180, requires that the tenant’s default be substantial for the landlord to proceed to terminate a residential tenancy in unlawful detainer. In Washington, there is no restriction against a landlord utilizing a Show Cause proceeding in a “cause” eviction case. However, Washington Courts have held that the tenant’s ability to raise a material issue of fact as a sufficient basis to delay the award of a Writ of Restitution and to set the matter for a jury trial. Housing Authority of City of Pasco & Franklin County v Pleasant, 126 Wash. App. 382, 109 P.3d 422 (2005).

Washington has a residential landlord/tenant act with codified tenant duties. RCW 59.18.130, specifically requires tenants to pay rent as agreed, keep the premises which they occupy clean and sanitary, properly dispose of garbage, rubbish, and debris, and properly use and operate all electrical, gas, heating, plumbing, and all other fixtures and appliances. The act prohibits tenants from intentionally and negligently destroying, defacing, damaging, impairing, or removing any part of the structure, engaging in waste or nuisance activity, or engaging in drug or gang activity. RCW 59.18.140 allows landlords and tenants to agree to other reasonable rules and restrictions.

## WASTE

Idaho regulates eviction for waste in I.C. §6-303(4), which provides:

“A tenant or subtenant, assigning or subletting, or committing waste upon, the demised premises contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three (3) days’ notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter”.

The Idaho statute does not authorize any expedited hearing process for causes of action relating to assignment, sublet, or committing waste at the leasehold premises.

In Washington, the tenant has statutory duties to maintain proper condition of the leasehold premises. RCW 59.18.130(1) through (5) create tenant duties to properly clean and maintain the leasehold premises, as well as not permit common waste. RCW 59.18.180 allows a landlord to provide thirty (30) days written notice to the tenant to cure a breach of tenant duties

that can be remedied by repair, replacement of a damaged item, or cleaning. If the tenant fails to cure after notice, the landlord may remedy at the tenant's expense.

Washington allows for termination of tenancy for waste in RCW 59.12.030(5), which provides:

“When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service upon him or her of three (3) days' notice to quit”.

As previously mentioned, in Washington, the waste statute is frequently used to terminate tenancies due to the nuisance and unlawful business activity prohibitions. Washington is similar to Idaho in that both states' notices require the tenant to vacate without opportunity for cure. Notice must be served in accordance with RCW 59.12.040.

## DRUGS AND NUISANCE ACTIVITY

In Idaho, unlawful drug activity is a basis for Unlawful Detainer. I.C §6-303(5) provides:

“If any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the premises of the leased property during the term for which the premises are let to the tenant. For purposes of this chapter, the terms "delivery," "production," and "controlled substance" shall be defined as set forth in section 37-2701, Idaho Code”.

In Idaho, Unlawful Detainer cases involving delivery production or use of controlled substance are subject to expedited trial for possession of the premises within twelve (12) days from filing of the complaint. I.C. §6-311A provides for Unlawful Detainer action based upon controlled substance, to be heard by a Judge, not a jury.

In Washington, RCW 59.18.130 provides:

“Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(5) Not permit a nuisance or...;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sub-lessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant.

"Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW."

RCW 59.18.180(3) provides:

"If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), RCW 59.12.030(5), or RCW 59.20.140 (5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action".

The Washington Unlawful Detainer Statute does not expressly reference drug activity. However, the common practice is to characterize the drug activity as nuisance activity, which is covered by the Washington Unlawful Detainer Act.

RCW 59.12.030(5) provides:

"A tenant of real property for a term less than life is guilty of Unlawful Detainer either:

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040) upon him or her of three days' notice to quit";

## TRIALS / HEARINGS

Idaho allows the expedited trial for Unlawful Detainer process only in matters relating to nonpayment of rent or unlawful delivery, production, or use of a controlled substance. *See I.C. §6-311A*. In these matters, the court will adjudicate the issue of restitution of the premises to the landlord, and attorney fees and costs, but will not entertain damage awards for lost rents and charges. The action is tried by the court without a jury pursuant to I.C. §6-311A. Idaho requires the Plaintiff to provide a form summons to the clerk of the court, who sets a date for hearing and issues the summons. The summons and complaint must be served upon the tenant/defendant not less than five (5) days prior to trial.

As previously stated, if an Idaho landlord seeks to recover damages as well as possession, then there is no right to an expedited trial date, and the case is subject to a standard twenty (20) day summons return date pursuant to I.C. §6-311E. I.C. §6-316 governs the Idaho Unlawful Detainer trial process, providing for restitution and damages awards. If there is a disputed issue of fact, the matter must be tried by a jury, unless waived, pursuant to I.C. §6-313.

RCW 59.18.380 provides for the Washington court to conduct a Show Cause hearing in the context of residential evictions. The statute applies to all actions in Unlawful Detainer and requires the court to examine the parties and witnesses orally to ascertain the merits of the complaint and answer. If it appears that the Plaintiff has the right to be restored to possession, the court shall enter an order directing the issuance of a Writ of Restitution. The court is to weigh

whether there is substantial issue of material of fact. In *Leda v Whisnand*, 150 Wn. App. 69, 207 P.3d 468 (2009), the court found that the court has an affirmative duty to ascertain the merits of defenses raised for the first time during the Show Cause hearing, examine the parties, and witnesses. A tenant, who raises a viable legal defense, is entitled to testify in support of those defenses, subject to the rules of evidence. If the tenant raises a substantial material issue of fact, the matter is subject to a jury trial, unless waived, pursuant to RCW 59.12.130.

Idaho does not provide the summary expedited process for matters considered rather routine in Washington, such as, evictions of hold-over tenants after expiration of the stated lease term (I.C. §6-303(1)), evictions for cause (I.C. §6-303(3)), evictions for assigning or waste (I.C. §6-303(4)).

### TENANCY AT SUFFERANCE

Idaho defines tenancy at sufferance at I.C. §45-1506(11), as a person remaining in possession of a foreclosed home following the tenth (10<sup>th</sup>) day after trustee's sale. The statute excepts individuals in possession under interest prior to the subject deed of trust. Termination of a tenancy at sufferance is not directly mentioned in the Idaho Unlawful Detainer statute.

Washington defines tenancy at sufferance at RCW 59.04.050, which provides:

“Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he or she shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he or she occupied the premises, and shall forthwith on demand surrender his or her said possession to the owner or person who had the right of possession before said entry, and all his or her right to possession of said premises shall terminate immediately upon said demand”.

However, RCW 59.04.050 is inapplicable to matters relating to residential tenancies pursuant to RCW 59.04.900. The Washington Unlawful Detainer statute provides for a termination of a tenancy at sufferance at RCW 59.12.030(6), which provides:

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW”;

### CONTINUANCE OF ACTIONS

Idaho addresses continuances of actions, specifically by statute, *I.C. §6-311*. This statute is strict in limiting continuances for no longer than two (2) days, unless the defendant provides

sufficient surety to the adverse party. Many landlords will use the sufficient surety language to support a request that the tenant should post a bond to obtain a continuance.

By contrast, Washington does not have a specific statute addressing continuance of action in unlawful detainer matters, but cases such as *Duvall Highlands, LLC v Elwell*, 104 Wash. App. 763 19 P.3d 1051 (2001), have been cited for the proposition that the unlawful detainer statutes are to give the landlord a speedy efficient action to evict a tenant for breach or certain activities on the premises.

## SERVING NOTICES

Both Idaho and Washington have statutes regulating how notices to tenants are to be served to invoke unlawful detainer jurisdiction. IN Idaho, I.C. §6-304 requires notices to be served by delivering a copy to the tenant personally, or if he be absent from his residence and his usual place of business, by leaving a copy with some person of suitable age and discretion, at either place, and sending a copy through the mail. If such place of residence cannot be ascertained, or a person of suitable age cannot be found, by affixing a copy of the notice in a conspicuous place on the property and sending through the mail. In *Fry v Weyen*, 58 Idaho 181, 70 P.3d 359 (1937), court found that where a tenant admitted, and the record showed that he had personally received notice from landlord to quit, the Supreme Court would not pass on tenant's contention that the notice was not served in accordance with the statute.

RCW 59.12.040 regulates the manner of service of notices upon tenants in the state of Washington. The statute is very similar to Idaho's, except there is no reference to attempting to locate the tenant at usual place of business. The Washington courts have uniformly held that strict compliance is required for time and manner of service requirements for notice in Unlawful Detainer actions. *Christensen v Ellsworth*, 162 W2d 365, 173 P.3d 228 (2007). In Washington, the fact that the tenant has received the notice is outweighed by the need to meet the statutory requirements for the manner of serving the notice.

## TENANT CLAIMS AND DEFENSES

Both Washington and Idaho recognize various tenant defenses. Each jurisdiction has a different way in providing tenants' with remedies when aggrieved.

Idaho has cases addressing issues such as self-help evictions and waiver. Self-help evictions are prohibited by Id *Riverside Development, Co. v Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982). The Idaho courts appear to be reluctant to find waiver by the landlord in absence of the intent to irrevocably waive the lease.

By contrast, Washington has found waiver in many situations prohibiting a landlord to go forward after acceptance of rent or numerous other basis. See *Wilson v Daniels*, 31 Wash. 2d 633, 198 P.2d 496 (1948). Washington however, has clarified how the landlords' acceptance of rent in an amount insufficient to satisfy the notice to pay or vacate served upon the tenant, is insufficient to stop the landlord from proceeding in the action. *Housing Resources Group v Price*, 92 Wn App. 394, 958 P.2d 327, review denied, 137 Wn. 2d 1010, 978 P.2d 1099 (1998).



Idaho law provides a statutory remedy system for tenant actions against landlords for damages in I.C. §6-320, Actions for damages and specific performance by tenant. The statute provides tenants a claim mechanism against landlord's for various damages and specific performance relating to waterproofing, weather protection, plumbing, heating, cooling facilities, failing to maintain the premises, and failing to return a security deposit as provided by law. The statute is similar to unlawful detainer but allows the tenant a right of action against a landlord who breaches a duty after three (3) days' notice to comply. I.C. §6-323 regulates the manner of serving tenant's notice to the landlord demanding action within three (3) days.

Both Washington and Idaho recognize implied covenants of habitability and quiet enjoyment. Idaho allows the tenant an affirmative right against a landlord for breach of statutory warranty of habitability. *Worden v Ordway*, 105 Idaho 719, 672 P.2d 1049 (1983).

The state of Washington recognizes an implied warranty of habitability from cases like *Foisy v Wyman*, 83 W2d 22, 515 P.2d 160 (1973), and the recent opinion of *Landis & Landis Const., LLC v. Nation*, 171 Wn. App. 157, 286 P.3d 979 (2012). Addition, Washington also imposes a statutory warranty of habitability on landlords pursuant to RCW 59.18.060. In Washington, a landlord has time parameters for curing defaults in landlord duties after receiving written notice from the tenant. Pursuant to RCW 59.18.070, in the event the landlord fails to perform duties after written notice from the tenant, the tenant is empowered with various remedies, including terminating the tenancy prior to the stated expiration date. In some cases, the tenant may repair and deduct for damages pursuant to RCW 59.18.100, or argue that a diminished amount of rent is due pursuant to *Foisy*, Id. In Washington, a tenant may assert breach of warranty of habitability as a defense issue in the landlord's action of Unlawful Detainer against the tenant.

## SECURITY DEPOSITS

In Idaho, security deposits are governed by I.C. §6-321, which allows for landlord retention of deposit money for damages beyond normal wear and tear. The statute requires a deposit refund to be made within twenty-one (21) days, or within thirty (30) days if provided for by agreement of the parties. I.C. §6-320(4) provides a right of action for deposit refund when the landlord fails to timely remit deposit disposition statement and/or refund due. The new owner of the conveyed leasehold property is liable to refund deposits to the subject tenant.

In Washington, RCW 59.18.260 requires deposits to be held at a financial institution disclosed in the lease. If a deposit is held for property damage, there must be a written property condition checklist and the rental agreement must state all terms and conditions to maintain the deposit. No part of a deposit may include a non-refundable fee. *See RCW 59.18.285*. Within fourteen (14) days of learning of abandonment or obtaining possession of the leasehold premises, the landlord must send a statement to tenant(s) last known address advising of basis for retention or refund, or face liability for up to twice the amount of the original deposit plus attorney fees and costs.

**Eric M. Steven** is the principal at Eric M. Steven Law Offices in Spokane, WA.