How Have Washington's New 2019 Eviction Laws Changed the Eviction Process for Landlords?

We've written this article to help landlords and fellow landlord-tenant attorneys understand how Washington state's new laws (effective July 28, 2019) will impact the eviction process we're all used to. Specifically, this article addresses the major changes included in ESHB 1440, HB 1462, and SB 5600.

We have organized this article with a heading for each notable change, and after explaining each change, we have tried to predict its possible impact on the way landlords and their attorneys conduct evictions.

Here are the changes we will address below:

1. **Landlords must now provide tenants with 60-day notice for rent increases.**
2. **The 3-day notice to pay or vacate notice has become a 14-day notice to pay or vacate notice.**
3. **Landlords must now provide tenants with 120-day notice to evict for substantial renovations.**
4. **Landlords must now attempt personal service at least three times over not**

less than two days at different times of day.

5. **Landlords can now only get a judgment for attorney's fees in rare circumstances.**
6. **Landlords cannot evict for failure to pay fees or other monetary deficiencies other than rent.**
7. **Tenants liable for unlawful detainer have longer to redeem their tenancy, and only need to pay part of the judgment against them to do so.**
8. **The court can stay (i.e. delay the implementation of) a writ of restitution for up to 90 days at the court's discretion if the writ was issued for nonpayment.**
9. **New summons form**

If you see any important changes that we've omitted from this list, please write me an email at cbrink@brinkatlaw.com.

Change: Landlords must now provide tenants with 60-day notice for rent increases.

The heading is pretty self-explanatory for this one. Under the old law, landlords could raise rent with just 30 days of notice, provided that the lease term was up.

Now, landlords must supply tenants with 60 days of notice unless the tenancy is subsidized based on tenant income.

Impact of this change

Obviously, this is good for tenants, as it provides them with twice as long to either find a new place to live, or figure out how to make the increased rental payments.

For landlords, it is possible that this change will impact income to some extent. With just 30 days of notice, many tenants were likely to hold over for a least a month at the higher rent amount, if only to buy themselves more time to find a new place to move.

Now tenants will have more time to find a new place before their rent increases. However, if the landlord is adjusting the rent to reflect the market rate and can rent the unit to another tenant for the new price, then this change likely won't affect the landlord's income much, if at all.

Change: 3-day notice to pay or vacate now 14-day notice to pay or vacate

RCW 59.12.030(3) used to allow landlords to proceed with an eviction after providing a nonpaying tenant with just three days of notice. There was no required format or language to this notice, just a few minimal requirements, which meant that 3-day pay or vacate notices could look very different from landlord to landlord and still be legally valid.

Moreover, the 3-day pay or vacate notice was based on, "a default in the payment of rent," but the definition of "rent" was unclear. This led cautious landlords to only request payment of rent (and not late fees or utilities) in their 3-day pay or vacate notices, and then request late fees with a 10-day comply or vacate.

All this has changed now. 14-day notice is required for all tenancies falling under the Residential Landlord-Tenant Act, which is almost all residential tenants in Washington State (see RCW 59.18.040 for applicability of RLTA). The new 14-day notice to pay or vacate has a required format, so just updating old forms is not enough to ensure compliance. Lastly, the legislature cleared up the "rent" ambiguity by adding a definition (see RCW 59.18.030(25)). Landlords may ask for rent and utilities (and any other monthly recurring charges) in their 14-day pay or vacate notice, but they cannot ask for nonrecurring costs, such as late fees, damages, or attorney's fees.

Impacts of this change

Let's start with the good. It's nice to have some clarification on the definition of "rent" so that landlords know what they are allowed to ask for in the pay or vacate notice. It's also nice to have a statutorily-prescribed form for the notice. We have seen some older 3-

day pay or vacate notices that clients pulled off the internet that arguably didn't provide tenants with adequate notice. The new required form means landlords never have to wonder whether their notice is effective.

However, taking the notice from 3 to 14 days is a big blow to efficiency because it makes the surest basis for eviction take much longer. Nonpayment has always been the surest way of evicting a tenant because there's very little gray area with non-payment. Waste, nuisance, gang activity, rule violations, and other bases for eviction all involved gray area that requires the court to exercise discretion: How much loud music late at night constitutes a nuisance? Do 3-4 friends with criminal records constitute a gang? The court has to weight these kinds of borderline questions in other kinds of eviction cases, but for nonpayment cases, the question is simple: did the tenant pay? If not, then they're out.

As a result, landlords would often pursue an eviction based on nonpayment when the tenant was engaging in other disruptive behavior that would have been harder and less efficient to argue in court. I can think of many instances where landlords I know put up with tenants who were consistently late on rent, but not causing other problems. However, when the consistently late tenant started to cause other problems (property damage, threatening other tenants, etc.) then the landlord would use nonpayment as an expedient and decisive way to get the tenant out. Now that nonpayment evictions take longer, they will no longer be the efficient escape hatch they once were, and landlords dealing with late-paying problem tenants will have to use a 3-day notice to vacate (for waste, nuisance, criminal activity, etc.) or 10-day notice to comply or vacate (for rules violations) to evict those problem tenants as quickly as possible.

Lastly, the additional 11 days will obviously increase the time before the landlord can re-rent the unit to a paying tenant in the event that nonpayment was the only basis for eviction. This will increase the possible judgment amount for which tenants will be liable, and if the tenant or the Landlord Mitigation Program never pay the landlord back, then the landlord will have to internalize the cost of this delay.

How can landlords mitigate the impact of this new law? Probably the simplest way is to require tenants to pay last month's rent upon move-in. However, this may make it hard to market low to middle-income units to tenants who may not have two month's rent and a damage deposit ready to go. Moreover, this option may not be available in certain jurisdictions such as Seattle, which has limited tenant move-in fees to 10% of the first month's rent and allows tenants to pay damage deposits in installments.

Change: Landlords must now provide tenants with 120-day notice to evict for substantial renovations.

Under the old law, landlords could provide month-to-month tenants with just 20 days of notice to move out if the landlord planned to substantially renovate the building.

However, the Washington legislature has added a new section to RCW 59.18.200 to require landlords to provide tenants with 120 days of notice if they plan to substantially renovate. This is likely due to the widely-publicized Tiki Apartment debacle where a property owner attempted to force an entire apartment building of tenants to move out with just 20 days of notice in order to perform substantial renovations.

Impact of this change

Obviously, this law is great for tenants because it allows them more time to find a new place to live.

The main negative impact of this law for landlords is that landlords may end up having longer vacancies prior to a renovation. That's because tenants will get more warning prior to the renovation, and may find a new residence well ahead of the scheduled renovation. If the landlord can begin the renovation as soon as the tenant moves out, this shouldn't be a problem. However, if a landlord is emptying out an entire apartment building or otherwise can't move up the renovation date based on when the tenant moves out, then this change could cause landlords to lose some rent in the interim.

Additionally, there is an ambiguity in the law that may subtly impact the effect of this law depending on how courts interpret it. Prior to the new language, landlords would usually only be able to evict tenants for renovations if the tenants were at the end of their lease term using a 20-day notice. However, if a tenant had just signed a lease and was not yet month-to-month, then the landlord could not evict until the lease term had run its course (usually a year after signing).

The new law could conceivably be read to mean that, even if the term hasn't run its course, landlords can still evict tenants to perform substantial renovations with 120 days of notice. Is this the most natural reading of the new language? Perhaps not. But there is a chance that the courts will interpret the law that way. If they did so, this may make it easier in certain situations for landlords to move out an entire building of tenants to perform extensive renovations.

Change: Landlords must now attempt personal service at least three times over not less than two days at different times of day

Under the old version of RCW 58.18.055, landlords just needed to "exercise due diligence" in attempting personal service. "Due diligence" did not have a set definition, so typically a landlord would just try personal service once, and if nobody was home, then the landlord would post and mail the notice.

Under the new law, due diligence requires that a landlord "attempt[] personal service at least three times over not less than two days and at different times of day." Presumably, if a landlord fails to exercise this new level of due diligence when serving a prelawsuit unlawful detainer notice, then service is not effective. *See Truly v. Heuft*, 138 Wn. App. 913 (2007) (holding that strict compliance with "time and manner" requirements in service of summons and complaint is jurisdictional).

Impact of this change

The likely impacts of this change are fairly straightforward—landlords will likely have to

expend more time, or money, or both in serving prelawsuit unlawful detainer notices personally rather than by posting and mailing. As landlords and their attorneys are adapting to this change, tenant attorneys will probably be able to throw some evictions out for inadequate service.

Change: Landlords can now only get a judgment for attorney's fees in rare circumstances

Under the old version of RCW 59.18.290, landlords could get a judgment in the full amount of "reasonable" attorney's fees just about any time they succeeded in an unlawful detainer action.

Under the new version of RCW 59.18.290(3), landlords can only get attorney's fees from the tenant if neither of the following conditions apply:

1. If the judgment for possession is entered after the tenant failed to appear; or
2. If 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.

In other words, the only time a landlord can get attorney's fees is if the landlord wins at the show cause hearing, and the tenant is more than two months delinquent on their rent. So, if a landlord wins a default judgment (usually at least $500+ in attorney's fees, process server, and filing fees) the court isn't allowed to award any attorney's fees to the landlord under the first condition above.

Likewise, if a landlord prosecutes an eviction to completion less than two months after the tenant's default, then the court cannot award any attorney's fees for the show cause hearing ($1200+ of attorney's fees, process server, and filing fees).

Impact of this change

While it sounds bad that landlords can't obtain a judgment for attorney's fees in most cases, this honestly may not make much difference practically speaking. That's because most of the time landlords are not actually able to recover attorney's fees even when the landlord has a judgment because either the tenant doesn't have the money, or the cost of pursuing collection is prohibitive.

However, if you have a way of recovering from the tenant (like a big damage deposit) or from the Landlord Mitigation Program (i.e., your tenant is getting a subsidy) then this this law could be very damaging.

Change: Landlords cannot evict for failure to pay fees or other monetary deficiencies other than rent.

In SB 5600, the legislature added a new section to RCW 59.18 that reads:

> 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.

In other words, unpaid late fees, damages, and other fees cannot be the sole basis for an eviction.

Impact of this change

We think there actually could be some fairly important policy implications to this change.

Essentially, this clause makes it impossible for landlords to evict based solely on unpaid fines assessed under the lease. This has serious implications depending on how your lease is written.

For example, imagine your lease says, “tenants with dogs are subject to a $500 fee.” What happens when a tenant gets a dog and doesn’t pay the $500 fee? Arguably the landlord can’t evict, since having a dog isn’t strictly against the rules and the fee is a “monetary amount other than rent.”

However, if the lease was worded slightly differently such that having a dog is against the rules unless a fee has been paid, then a landlord should be able to evict based on a violation of the lease using a 10-day comply or vacate notice. For example, imagine the lease said, “tenant is not allowed to have a dog on premises unless tenant first pays a $500 non-refundable fee.” In this case, the landlord could arguably evict using a 10-day notice to comply or vacate because the tenant would be violating the terms of the lease by having a dog, not just by failing to pay a fee.

Would the court actually appreciate this nuance and allow a landlord to go forward with a 10-day comply or vacate notice in this context? We don’t know. This is one of the many untested questions that Washington’s new eviction laws present.

You probably noticed that the above clause still leaves open the option of, “pursuing other lawful remedies to collect late payments, legal costs, or other fees, including attorneys’ fees.” What does that mean? Well, basically it means you can sue in small claims or civil court to recoup your fees. The downside is that doing this will be time-consuming or expensive (or both!) and it will likely also harm your relationship with a tenant you’re stuck with.

So, what’s the absolute safest way to avoid the impact of this new law? Probably to take out all the fees in your lease and make them lease violations instead. If you used to have a pet fee, or a parking fee, or noise violation fee, now you should just make each

of those things violations of the lease instead, with no monetary assessment for violating them. For example, write: “no pets whatsoever on the premises,” “no parking outside your space,” and “no loud noise after 10pm.” If a tenant violates these restrictions, that’s a lease violation, not a “monetary deficiency other than rent,” so you

restrictions, that's a lease violation, not a "monetary deficiency other than rent," so you can use a 10-day comply or vacate to evict if the tenant fails to comply.

Change: Tenants liable for unlawful detainer have longer to redeem their tenancy, and only need to pay part of the judgment against them to do so.

For many years, evicted tenants had the right to pay the full judgment to the landlord or court in order to retain possession of the premises. This right was based on several different RCWs, some of which have now been changed, some of which haven't. Overall, it is unclear whether, and to what extent, tenants still have a right of redemption, as I will explain. Warning: this gets a little technical and boring.

Under the old version of RCW 59.18.390, tenants who were evicted for any reason other than drug-related activity at the premises could present a bond to the landlord or court for the full judgment amount (usually consisting of rent, fees, court costs, attorney's fees, and damages) and the tenant could stay (i.e. delay the implementation of) the writ of restitution for as long as the tenant continued furnishing monthly rent on time. Tenants had three days to provide this bond.

RCW 59.12.100 echoed much of the same language included in RCW 59.18.390, but left out the part about the bond not applying to tenants who had engaged in drug-related activity.

RCW 59.18.380 mentions a similar bonding option to those mentioned in RCW 59.18.390 and RCW 59.12.100, but states that this bonding option only applies in evictions based on nonpayment, not all evictions.

Similarly, the old version of RCW 59.18.410 provided that tenants (or their subtenants, mortgagees, or anyone with an interest in the property) who were evicted for nonpayment could furnish the full judgment amount (usually consisting of rent, fees, court costs, attorney's fees, and damages) within five days after final judgment, at which point the judgment would be deemed satisfied and the tenant restored to possession of

the premises. Paying under this statute doesn't just stay the writ; it satisfied the judgment and makes the writ go away completely. This seemed to obviate the bonding option included in RCW 59.18.380, RCW 59.18.390, and RCW 59.12.100.

Now, the legislature has deleted the above-mentioned section of RCW 59.18.390, but not the similar sections in RCW 59.12.100 or RCW 59.12.380. Therefore, tenants still seem to have the old option of furnishing a bond for the full judgment within three days to stay the writ of restitution.

More importantly, the legislature also extensively rewrote RCW 59.18.410. RCW 59.18.410(2) now provides that a tenant evicted for nonpayment can satisfy the whole judgment by paying the following to the landlord within five court days of the judgment: rent, up to $75 of fees under the lease, court costs, and attorney's fees (if awarded). Notice that the tenant does not have to pay other damages or fees under the lease exceeding $75 in order to satisfy the judgment.

Impact of this change

RCW 59.18.410's new $75 cap on fees presents two glaring vulnerability for landlords.

First, late fees alone are often well in excess of $75. Add fees for a bounced check, parking fines, or other fees, and a landlord could be out hundreds of dollars due to this $75 cap.

Second, this change further disincentivizes landlords from using nonpayment as the sole reason for eviction in situations where tenants have physically damaged the premises. Prior to passing the new laws, landlords would commonly pursue an eviction solely on the basis of nonpayment (because it was the fastest and easiest), and then ask the court for an award of money damages for damage to property. However, if a landlord were to use nonpayment as the sole reason for eviction without alleging waste, nuisance, or a lease violation, then the tenant could simply pay back rent, up to $75 of fees under the lease, court costs, and attorney's fees (if awarded) and the landlord will forever lose the right to recover for the property damage.

Is this likely to affect the average landlord's bottom line? Probably not. Most of the time, tenants who are evicted for nonpayment don't have the means to pay their delinquent rent, court costs, or attorney's fees as required under RCW 59.18.410, so it's unlikely that many tenants will even exercise this option.

Moreover, if a month-to-month tenant were to exercise this option, the landlord could ostensibly still evict that tenant based on a 20-day notice to terminate under RCW 59.18.200 in many cases, so that may further limit the realistic application of this extended right of redemption.

So, what is the best way to mitigate the impact of this law? As a matter of best practice, landlords and their attorneys should always list every basis for unlawful detainer that's applicable rather than just for nonpayment, as was common practice before this change in law. This should prevent landlords from losing the right to recover for property damage and other fees that constitute a violation of the lease because the tenant will have been evicted for something other than nonpayment, and therefore won't be able to exercise the right of redemption that RCW 59.18.410(2) now provides.

Finally, RCW 59.12.100 and RCW 59.12.380's three-day bonding options do seem to survive this new legislation (if only due to the legislature forgetting to amend them). However, it's hard to imagine a scenario where a tenant would choose to pursue this option instead of the option presented by RCW 59.18.410. It was rare to see tenants bond the judgment amount before—you probably won't ever see it now.

Change: The court can stay (i.e. delay the implementation of) a writ of restitution for up to 90 days if the writ was issued for nonpayment.

Under the old law, the court did not have discretion to stay the writ of restitution for any reason.

However, under RCW 59.18.410(3), the court now has broad discretion to stay the writ of restitution if the eviction was based on nonpayment of rent. The new provision lists various factors for the court to consider in making its determination about whether to stay the writ. The gist of these factors is that, if this was the tenant's first time, or there were extenuating circumstances that caused the delinquency in rent, the court should consider staying the writ of restitution for up to 90 days.

The only real caveat to the court's power to stay the writ is that the tenant must furnish a full month's rent within five court days of the judgment date: "Within any payment plan ordered by the court, the court shall require the tenant to pay to the landlord or to the court one month's rent within five court days of issuance of the order."

Impact of this change

It's hard to see where this new provision fits in. As described above, RCW 59.18.410(2) allows tenants evicted for nonpayment to redeem their tenancy by paying rent, up to $75 of fees under the lease, court costs, and attorney's fees (if awarded) all within five court days of the judgment. As we also covered above, RCW 59.18.290(3) makes it difficult for landlords to get a judgment for attorney's fees, so most of the time all a tenant will have to pay to redeem their tenancy under RCW 59.18.410(2) is delinquent rent, $75 in fees, and court costs (probably $200 or so).

In contrast, RCW 59.18.410(3) allows a judge the discretion to stay the writ of restitution for up to 90 days, but only if the tenant pays a full month's rent within five court days of the judgment. If the tenant only owes a month of rent anyway, there's only a ~$275 difference between the cost of a stay of the writ under RCW 59.18.410(3) (which is like being on probation) and complete redemption of the tenancy under RCW 59.18.410(2) (which is like being exonerated).

For this reason, it seems like the only time it would be economically smart for a tenant to ask for a stay of the writ or restitution is if they owe multiple months of rent and attorney's fees. But in that situation, the factors the court is supposed to consider in

granting a stay of the writ are less likely to apply (i.e., the tenant's "payment history" would be bad, and the tenant's "ability to timely pay the judgment" would be even more in question). So, this is a bit of a catch-22.

Overall, we don't expect to see courts stay the writ of restitution under RCW 59.18.410(3) very often. When they do, it will probably be in unusual situations.

Change: New summons form

For many years, RCW 59.18.365 has required a specific eviction summons form. Over the years, the legislature had tweaked the old form to reduce the amount of legalese and make it more comprehensible for tenants. However, the old form still had some ambiguities about the eviction process that probably made it harder for tenants to respond appropriately than would be ideal.

Now the legislature has completely reworked the summons form to make it as detailed and straightforward as possible.

Impact of this change

There are two big impacts that we can foresee. First, lots of landlord-tenant attorneys are probably going to make the mistake of using the old summons instead of the new summons, not realizing that the law has changed. If a tenant's attorney calls out this error, then the case will almost certainly get thrown out under *Truly v. Heuft*, 138 Wn.

App. 913 (2007), and the attorney will need to re-serve the summons and complaint, costing the client additional time and possibly money as well.

Second, tenants will probably respond to the summons and complaint at a higher rate than they did before because tenants now have clearer instructions. This will likely mean more show cause hearings (rather than default victories), which is likely to cost landlords more money per eviction, on average.

As both landlords and attorneys ourselves, how do

As both landlords and attorneys ourselves, how do we feel about these changes?

If you have read through this whole article, you can probably tell that Washington's new laws are overall very pro-tenant.

In some ways, this is good. For example, it's hard to take issue with clarifying the definition of "rent" and updating the summons to be clearer for tenants. Even the 120-day notice for substantial rehabilitation and 60-day notice for rent increases seem reasonable to us. These changes may cost landlords a little additional money, but the increase in fairness that they provide tenants seems worth it, on balance.

However, the remaining changes mentioned in this article are arguably unfair to landlords because they relieve tenants of responsibility for their actions. For example, tenants will no longer be responsible for attorney's fees in most cases, even if they are adjudged liable for unlawful detainer; tenants will now get multiple chances to redeem their tenancy and stay the writ of restitution if they do not pay; and tenants will no longer have to pay fees (late fees, pet fees, etc.) they agreed to pay because it is cost inefficient for landlords to pursue those fees in normal civil court.

Overall, we feel that the Washington State legislature (and probably a lot of the public) do not understand all the consideration, time, and money that goes into an eviction on the landlord side. The truth is that the vast majority of property owners would never evict a tenant without good reason. In part, this is because landlords are reasonably compassionate people who care just as much as anyone about being fair.

But even if you're pessimistic and think all landlords are mostly selfish, money-grubbing jerks, you have to acknowledge that landlords have a strong monetary incentive not to evict. After all, it often costs landlords $1,200+ in attorney's fees and court costs to evict. They also lose at least a month of rent in the interim while they market the unit. And if the unit needs rehabbing, cost the landlord anywhere between a few thousand for paint and carpets, to tens of thousands for a kitchen remodel, trim-work, and other improvements. In sum, an eviction will usually cost the landlord somewhere between

$1,200-4,000, and a lot of time. Landlords don't just do it for the exercise.

The only common exception we've seen is when landlords evict tenants in order to renovate their building and charge more rent to higher-end tenants. However, the legislature has (we think, rightfully) taken care of this issue by mandating 120-day notice to tenants in this context.

Therefore, we think Washington's new laws were probably drafted and signed into law based on some fundamental misunderstandings regarding the landlord-tenant dynamic. Though it's not all bad, we see these new laws as overall too restrictive and complicated, forcing landlords to unfairly internalize costs incurred by irresponsible or insolvent tenants.

If you're a landlord and you agree with our assessment, we would encourage you to make your voice heard by contacting your local legislators. Be reasonable, be fair, but stand up for your rights.

Email Attorney Terry Brink

Your Name

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