

EVICTION FOR NONPAYMENT OF RENT IN PUBLIC AND SUBSIDIZED HOUSING

Introduction

A tenant who lives in public housing or a federally subsidized apartment complex enjoys greater protection against eviction than most other tenants. These rights, however, are limited. Tenants who fail to pay their rent can in most cases be evicted.

This publication briefly describes the steps a tenant should take to avoid an eviction for nonpayment of rent when living in public or subsidized housing.

What should I do if I cannot pay my rent on time?

You should immediately inform the Housing Authority or your landlord when you anticipate a problem in paying your rent when due. You should try to make this contact before your rent is due and your landlord has served you with an eviction notice.

In many cases, the Housing Authority or your landlord may be able to adjust your rent if you can show that you lost a job or that your income has gone down since your income was last reviewed. Your landlord might also be willing to make other payment arrangements. If you can make such arrangements, please make sure that they are put in writing and you understand them. You should not agree to make payments that you cannot afford.

Your landlord is not required to accept partial or late payment of your rent. In many cases, however, they will do so. You should always try to pay whatever you can.

If your landlord accepts a payment, please make sure that you get a receipt. If your landlord refuses your payment, you should set aside whatever funds you can to settle the case at a later date.

DO NOT SPEND YOUR RENT MONEY EXCEPT TO MOVE!

If your landlord refuses to accept partial payments, you should do what you can to pay your rent in full as soon as possible. You should immediately contact the Department of Social and Health Services (DSHS) and apply for financial assistance. You should also contact other local agencies for help, such as the Red Cross, family members and friends. Your landlord is one of the few creditors who can harm you if you fail to pay your bills. Because of this, your landlord should generally be paid before anyone else.

What can my landlord do if I fail to pay my rent when due?

Your landlord may evict you for nonpayment of rent, but must bring a lawsuit to do so. Your landlord cannot lawfully remove you from your apartment without a court order. Your landlord does not have the right to lock you out of your apartment or to shut off

your utilities for failing to pay your rent. Washington law also prohibits a landlord from taking or keeping your personal property because you failed to pay your rent.

What kind of notice must my landlord give me before commencing an eviction lawsuit?

In order to evict you for nonpayment of rent, your landlord must first serve you with a written notice to pay rent or move. In most circumstances, your landlord only has to give you three days notice to pay rent or move. This notice must give you an opportunity to pay the rent. The notice may also be required to provide you with other information as well. You should read your lease and make sure that your landlord's notice provides all the information that your lease requires. If not, you may be able to raise this as a defense and get more time to pay your rent.

The notice does not have to be notarized or delivered by the sheriff. It should be given to you personally at your home. If you are not home, it may be left with someone else there, provided a second copy is mailed to you. If no one is home, your landlord must leave a copy at your home and mail a copy to you. Your lease may impose additional service requirements.

If you pay your rent in full within three days of receiving this notice, your landlord may not file a lawsuit to evict you based on nonpayment of rent. Where possible, you should try to pay your rent in front of a witness who can testify in court if your landlord rejects your payment.

Get a receipt for any payment that your landlord accepts and if possible a written agreement not to evict you. In limited cases, a landlord may be able to accept overdue rent and still evict you. However, your landlord should tell you that he or she intends to do this.

You should read the eviction notice carefully. In some cases your landlord might be required to meet with you to discuss the notice. You may also be entitled to a grievance hearing. If so, you should take advantage of this opportunity to try to settle the dispute.

What happens if I do not pay my rent within three days after being served a pay or vacate notice?

Your landlord may start a lawsuit to evict you by serving you with a Summons and Complaint for unlawful detainer. Your landlord can start the lawsuit by serving these papers on you without filing them with the court.

Many times, landlords will delay filing an eviction lawsuit in the hope that you will voluntarily move. You should try to pay your rent. You should not move without first discussing your rights with an attorney. If you move, you will lose your federal housing assistance!

Once you are served with a Summons and Complaint for unlawful detainer, you have to take immediate steps to avoid an eviction. The steps that you must take and the forms you will need to avoid an eviction and to defend the lawsuit are described in our [Eviction and Your Defense](#) publication. At a minimum, you must serve a notice of appearance or answer on the attorney representing your landlord within the time period set forth in

the Summons. You may also have to deposit your rent into the court registry or file a sworn statement or declaration denying that you owe the rent. Finally, you may be required to appear at a hearing.

You must read the Summons and Complaint and any other documents served on you very carefully. Unless you follow the instructions in these documents, you may be evicted without a court hearing.

What defenses can I raise in court in an unlawful detainer action based on nonpayment of rent?

There are very few ways to successfully defend an unlawful detainer action based on nonpayment of rent. The law requires that you pay your rent regardless of your financial or personal circumstances. You can be evicted for nonpayment of rent even if you have no money, have children, or are disabled!

To prevail in court, a tenant must ordinarily show that they do not owe the rent. To do this, you must show that you paid the rent or that the rent that your landlord is demanding is not actually due. Alternatively, you might convince a court that your landlord waived his right to evict you for nonpayment of rent or should be “estopped” from doing so. Here are briefly some of the arguments or defenses you can raise:

- a) **Payment or Tender of Rent.** If you paid or attempted to pay your rent within three days of getting the eviction notice, you should be able to avoid an eviction. You must, however, be able to prove that you paid the rent or “tendered” it in a timely manner. You may need a receipt or witness to raise this defense in court.
- b) **Improper Calculation of Rent.** You should always review your landlord’s rent calculations and make sure they did not overstate your income or understate your deductions in determining your rent.
- c) **Breach of Warranty of Habitability.** In very limited circumstances, you may be able to argue that you do not owe the rent because your landlord has failed to adequately maintain your apartment and breached the “implied warranty of habitability. See, *Foisy v. Wyman*, 83 Wn.2d 22, 515 P.2d 160 (1973). The Residential Landlord-Tenant Act, RCW 59.18, also has a few provisions that might allow a tenant to make repairs and to deduct the cost of the repairs from their rent. We do not recommend that a tenant withhold rent without first discussing the matter with an attorney.
- d) **Procedural Defenses.** In some cases, you might be able to defend an unlawful detainer action by raising procedural defenses to your eviction. For example, your landlord must serve a proper notice on you before commencing the action.
- e) **Waiver or Estoppel.** As a last resort, a tenant might be able to argue that a housing authority or landlord lost the right to insist on timely payment of your rent by letting you pay your rent repeatedly late or making other payment arrangements with you. You may also be able to argue that as a “matter of equity” you should be given a reasonable chance to pay your rent late and avoid a forfeiture of your lease. These equitable defenses will usually only work when you can resume paying your rent in full and pay the delinquent rent in a reasonable period of time. You may also be required to pay your landlord’s court costs and attorney’s fees.

What other options do I have when I have been served with a Summons and Complaint for unlawful detainer?

Many cases can be settled. If you are able to pay your rent reasonably soon, you should always try to settle the case by signing a written settlement agreement with your landlord.

Most landlords will insist that the settlement agreement authorize your eviction if you don't make the agreed upon payments. Your landlord may also ask that you pay some of his or her court costs and attorney's fees. Rather than lose your federal housing subsidy, it may be to your advantage to pay some court costs and attorney's fees.

You should not, however, enter into a settlement agreement that you do not understand or cannot obey. A settlement agreement is a binding contract and will usually be enforced by the court regardless of any hardship it may cause you.

What if I defend the lawsuit and lose?

Once your landlord gets a judgment against you for unlawful detainer based on nonpayment of rent, your options are very limited. There are three things you can try to do:

- a) **Reinstate Your Tenancy.** The Residential Landlord-Tenant Act, RCW 59.18.410, does give you a way to reinstate or save your tenancy after judgment in an unlawful detainer action based on nonpayment of rent. In order to save your tenancy you must satisfy the judgment and pay all court costs into the court within five (5) days of its entry. You can argue that court costs do not include attorney's fees under RCW 59.18.410.
- b) **Move for Revision.** If the judgment was entered by a court commissioner, you can file a motion for revision and ask a superior court judge to set the decision aside. This will only be done in very limited circumstances.
- c) **File an Appeal.** Once the judgment is final, you can file an appeal and ask the court to stay execution of the writ of restitution pending the appeal. As a practical matter, you will find it difficult to appeal unless represented by an attorney. Very few cases can be appealed successfully.

What about filing bankruptcy?

As a last resort, you may be able to file a bankruptcy to delay or prevent your eviction. There are several types of bankruptcies, including a Chapter 7 and 13. Filing any bankruptcy will temporarily delay an eviction.

In order to prevent an eviction from ever occurring, you may have to file a Chapter 13 case and pay the delinquent rent through regular monthly payments. In order to do this, you will have to demonstrate that you can resume paying your rent in full and can make large enough payments towards the back rent to cure your default within a reasonable period of time. The sooner you can cure your default, the more likely that a court will approve your Chapter 13 Plan. While there are disadvantages to filing a bankruptcy, you may find it preferable to losing your federal housing assistance.

If you cannot work out a repayment agreement with your landlord, you should immediately consult with an attorney about filing a Chapter 13 bankruptcy. If possible, you should file your bankruptcy before your landlord gets a judgment against you. At a minimum, you must file your Chapter 13 case within five (5) days of the entry of any judgment or you will not be allowed to assume your lease. Once you file a bankruptcy, your landlord is stayed from taking any further steps to evict you without first obtaining permission from the federal bankruptcy court. To get such permission, your landlord must file a motion for relief from the automatic stay. A federal bankruptcy court should not lift the stay as long as your Chapter 13 Plan can be confirmed and the landlord suffers no financial loss.

Beware: Laws Change

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. The information in this publication is current as of January 2002. Laws change. You should consult a lawyer to insure that the information in this publication is current.

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