Making Sure Your Evictions Are Done Properly

By: Tom McGarry
Attorney at Law

Perhaps the most significant problems I find with landlords seeking to evict their tenant is that the termination notice is defective. If a termination notice (e.g. three day notice to pay or vacate, twenty day notice terminating tenancy, ten day notice to comply or vacate, etc.) is found to be defective, the Court is deprived of jurisdiction and the landlord must start over with a proper notice.

TOM MCGARRY

When a landlord rents property to a tenant, the landlord grants an exclusive possessory interest in the real estate. This is a property interest granted to the tenant that cannot be lawfully terminated without "due process of law." In its most basic essence, "due process" of law is notice of the proceeding and the opportunity to be heard by an impartial tribunal.

Under the Residential Landlord Tenant Act (59.18 RCW), the only exception to the requirement for legal action to evict a tenant is when the tenant has abandoned the property (See RCW 59.18.310 for a discussion on abandonment).

In Washington, the eviction process typically starts with the landlord preparing an appropriate notice (RCW 59.12.030) and serving it property (RCW 59.12.040). The only exceptions to written notice are described below. If the tenant fails to comply with the requirements of the notice, the landlord must take legal action to evict the tenant. This legal action is referred to as "unlawful detainer." Note that a landlord may file an "action in ejectment" instead of an unlawful detainer action. The unlawful detainer process usually is the better way to proceed.

Unlawful detainer is a "summary proceeding" that ordinarily takes no more than two-and-a-half to three-and-a-half weeks to prosecute. Contrast this to the action in ejectment which is subject to a case scheduling order providing for trial in about a year from the time it is filed.

Unlawful detainer is a special proceeding in which possession of premises is the primary focus. In most cases, judgment for unpaid rent, court costs and attorney fees are properly before the Court as well. Other issues such as damages to the property, unpaid utilities, or unpaid damage and security deposits are not properly before the Court so long as possession of premises is at issue.

To utilize the summary unlawful detainer process, the landlord/ plaintiff must strictly comply with the requirements of the statute and with the Court cases that have construed the statutes.

Termination notice under RCW 59.12 are "jurisdictional." That is, the notices give the Court the power or "jurisdiction" to hear the unlawful detainer. If the notice is defective, the Court cannot have jurisdiction and the unlawful detainer action must be dismissed by the Court. If the action is dismissed, the landlord will have to start over again with an appropriate notice and the landlord may have to pay the tenants' attorney fees.

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The law (RCW 59.12.030) defines "unlawful detainer" in several ways. A tenant is unlawfully detaining real property when:

The tenant holds over or continues in possession, in person or by subtenant, of the property after the expiration of the term for which it is let to him. When the property is leased for a specified term the tenancy is terminated without notice at the expiration of the specified term or period.

No notice is required when the term ends and there is no provision for a month-to-month holdover. Also, no notice is required to evict a person who refuses to vacate property after a foreclosure of real estate contract forfeiture. My experience has been that most "holdover" residential tenancies become "month-to-month" tenancies at the end of the specified term either because the rental agreement provides that the tenancy becomes month-to-month or because the landlord accepts rent after the expiration of the term thus creating a month-to-month tenancy.

When the landlord leases property for on a month-to-month basis, the tenant is "unlawfully detaining" the property after he continues in possession of the property after the end of any month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice requiring him to quit the premises at the expiration of the month or period.

This is commonly called the "twenty day notice." This is something of a misnomer because it requires the notice to be served at least 20 days before the end of the rental period. Notices that attempt to terminate a tenancy before the end of the month or rental period are not enforceable. The common error is for a landlord to serve a twenty day notice on the second of the month (for example) purporting to terminate on the twenty second of the month.

A tenant is unlawfully detaining property when he continues in possession of the property after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises. The notice may be served at any time after the rent becomes due.

The so-called "three day notice to pay rent or vacate" is perhaps the most common basis for evicting a tenant. The notice clearly and unambiguously must provide the alternative to pay within three days or vacate within three days. The notice cannot demand anything more than the payment of rent and a late charge if the late charge is provided for in the rental agreement and is an additional rent (not a penalty). Demands for service charges or delinquent utilities may render the notice defective. The rent must be delinquent—if the rent is due on the first, the rent is not delinquent until the second day of the month.

A tenant is unlawfully detaining property when he continues in possession in person or by subtenant after a neglect or failure to perform any condition or covenant of a rental agreement after a notice requiring the tenant to comply with condition or covenant or in the alternative to surrender of the property within ten days after the notice is served.

This notice is commonly referred to as the "ten-day notice to comply or vacate." The notice must provide for the alternative to comply or vacate. The problem with terminating a tenancy on this basis is that the landlord must prove that the tenant is not in compliance with the rental agreement and that the tenant was not in compliance after the ten day period.

A tenant is unlawfully detaining property when he commits or permits waste upon the demised premises, or when he sets up or carries on thereon any unlawful business, or when he builds, permits, or maintains on or about the premises any nuisance, and remains in possession after the service upon him of three days' notice to quit.

"Nuisance" and "waste" refer to conditions that affect the real estate itself. Nuisance is not loud stereos. Drug dealing on the premises is "nuisance" (although a landlord may have a difficult time proving drug dealing without the assistant of a law enforcement agency). Waste is not grime on the walls or poor housekeeping. Waste would include a fire that rendered the premises uninhabitable.

THE SO-CALLED "THREE DAY NOTICE TO PAY RENT OR VACATE" IS PERHAPS THE MOST COMMON BASIS FOR EVICTING A TENANT. THE NOTICE CLEARLY AND UNAMBIGUOUSLY MUST PROVIDE THE ALTERNATIVE TO PAY WITHIN THREE DAYS OR VACATE WITHIN THREE

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 is unlawfully detaining the property.

I call this the "trespasser" basis for an eviction. Not that under this basis for eviction, a tenant may be prosecuted for criminal trespass. The problem is getting law enforcement to investigate and refer charges to the prosecutor.

The notice must in all cases be specific and unambiguous. It must have the tenants' name(s), a correct address including the apartment number. Do not forget to include the postal city/state in the notice. Surplus language and caustic comments may render a notice defective. The key is to limit the language in the notice to only that which is required by statute.

In addition to providing an appropriate notice, the notice must be delivered or "served" to the tenant in accordance with RCW 59.12.040. There are three ways to serve the notice. The best way to serve the notice is to personally hand it to the tenant at the residence. If someone other than the tenant who is of "suitable age and discretion" comes to the door, that person can be served, but the landlord must also send a copy of the notice by mail addressed to the tenant. The other way to serve the notice is to post the notice in a conspicuous place on the premises and also by mailing a copy to the tenant. If the notice must be mailed, it should be mailed by first class mail. The letter should not be certified. "Conspicuous" means on the door face out. A notice stuck in the door, or in an envelope or put in a mailbox has not been posted "conspicuously."

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Also, if the notice must be mailed, the law provides one extra day for the tenant to comply, pay, vacate, or whatever. This can be an issue when the landlord serves a twenty day notice terminating tenancy. If the landlord serves the notice on the 11th day of a month with 31 days and he or she must mail a copy by first class mail, the law allows one extra day. Does this mean that the landlord is trying to terminate the tenancy on the fist day of the next month? That would not be permissible because it is not at the end of a rental period. I advise my clients to serve twenty-day termination notices at least 21 days before the end of a rental period to avoid a possible problem.

Termination notices and proper service of termination notices are essential. If a tenant fails to comply with the terms of a notice, the landlord has no choice but to commence a Superior Court lawsuit. A judge must decide if in fact the tenant is "unlawfully detaining" the premises. This is the "hearing" side of due process. If a judge finds that the notice does not comply with the statute or that it was not served in accordance with the statute, the judge has no choice but to dismiss the case.

A landlord is well-advised to make sure the notice complies with the law and if it is defective in any way, the landlord must redo the notice. For additional information on this and on other topics, visit my website at www.mcgarrylawoffice.com.