

Practical Considerations
in Handling Residential
Landlord-Tenant
Disputes

William B. Emmal, WSBA #58261
Piskel Yahne Kovarik, PLLC
522 W. Riverside, Suite 700
Spokane, Washington 99201

1

Special Proceedings

- Unlawful detainer actions are "special proceedings" Christensen v. Ellsworth, 162 Wn.2d 365, 374 (2007)
- Civil Rules apply, unless inconsistent with rules of special proceedings
- CR 81(a)
- Examples: UDs, DVPAs, garnishments, will contests, lien foreclosures. Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 981 (2009).

2

Special Note Re: Putman v. Wenatchee Valley

- Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 981 (2009)
- Dealing with RCW 7.70.150 – certificate of merit with pleadings
- Holding: "*changes the procedures for filing pleadings in a lawsuit, thereby jeopardizing the court's power to set court procedures ... and therefore violates plaintiff's counsel's right to access courts.*"
- Sound familiar?

3

The Dispute Resolution Certificate

- Pre-filing mediation
- ERPP
- DRC Certificates
- Timeline?
- Gonzales v. Inslie, 535 P.3d 864, 875 (Wn. 2023) – distinguishes Putman

4

A “Summary Proceeding”

- “A *show cause hearing* is a summary proceeding, but it is also fairly substantial. At the hearing, “[t]he court shall examine the parties and witnesses orally to ascertain the merits’ of the case.” Kiemle & Hagood Co. v. Daniels, 26 Wn. App. 2d 199, 212 (2023).
- Result.....?

5

Summary Proceeding? Realistic Timeline for a Residential Eviction

- RCW 59.18.370 – not less than 7 days, nor more than 30 days
- RCW 59.18.055 – not less than 9 days
- In practice – two-week response

6

File and Serve? Or Just Serve?

- If filing and serving, RCW 59.18.370 – allows you set it for show cause and serve with summons
- Different filing fee - \$197
- Just serving, no filing - no cost and can wait to see if tenant responds or not
- Risk: must set it show a show cause hearing anyway

7

If Tenant Does Not Respond

- Default
- Writ
- Sheriff fee - \$120 for Spokane
- Issuance fee - \$20 for Spokane
- Filing fee - \$85 for Spokane

8

If Tenant Responds to Summons

- Appearance? Proceed with caution
- First show cause hearing – RCW 59.18.370
- Be prepared
- Continuance
- Right to Counsel – RCW 59.18.640
 - “Court **must** appoint an attorney for an indigent tenant...”
 - Pavton v. Nelson, 525 P.3d 244 (2023).

9

The Show Cause Hearing

- Tenant may "answer orally or in writing"
- Motions, motions, motions
- More delays
- Civil Rules on motion practice?

10

Tenant Response After Issuance of a Writ

- RCW 59.18.410(2) – tenant can restore tenancy by paying into court registry within 5 days after judgment
 - Landlord must accept pledge of rental assistance
- RCW 59.18.410(3) – tenant may stay writ (subject to factors)
 - Payment history
 - Hardship on tenant

11

Stay of Writ under .410(3)

- Burden is on the tenant
- No more than 90-day stay
- Must pay one month's rent 5 days after order
- Default later on? May execute writ, subject to notice
- Limits: three or more non-payment notices in preceding 12 months BUT...

12

Common Landlord Counsel Pitfalls

- 10-Day notice specificity
 - Multiple concurrent notices
 - Improper calculations on non-payment notices
 - Lease status for purposes of non-renewal
 - Lack of inspection
-

13

Common Defense Counsel Arguments

- Notice specificity
 - Improper notice
 - Concurrent notices
 - Improper calculations
 - Misleading notices
-

14

Tips to Avoid Common Pitfalls

- Be painstakingly specific, e.g., 10-day notices or 3-day notices for waste
 - Review tenant ledger
 - Create a record, e.g., four 10-day notices
 - Track tenant lease status
 - Avoid unnecessary communication with tenant
-

15

Strict v. Substantial Compliance

- “*form and contents*” – substantial compliance
- “*timing and manner*” – strict compliance
- The reality?

16

Affidavits of Service

- Keep proof of service for all pre-filing notices and summons/complaint
- Create a form
- “An affidavit of service is presumed to be valid if it is regular in its form and substance; the person contesting the service must prove by clear and convincing evidence that the service was improper.” State ex rel. Coughlin v. Jenkins, 102 Wn. App. 60, 65 (2000)

17

Habitability as a Defense

- Constitutes affirmative defense to eviction proceeding
- “goes directly to issue of rent due and owing” Foisy v. Wyman, 83 Wn.2d 22 (1973)
- Arises from:
 - Lease
 - Common law
 - Statute (not replaced)

18

A Tenant’s Remedy: Orders of Limited Dissemination

19

An OLD is Not:

- Does not vacate any court orders, i.e., orders of default, writ issuance, etc.
- Does not seal documents from public view
- Does not limit landlord’s ability to ask tenant’s if they have been the subject of an eviction action
- Does not limit landlord’s right to information. *Hundtofte v. Encarnación*, 181 Wn.2d 1, 4 (2014) (plurality opinion) (prohibiting superior court from redacting the names of defendants in meritless unlawful detainer action given the public’s interest in the open administration of the courts).

20

An OLD Is:

- *Seattle’s UGM v. Bauer*, 22 Wn. App.2d 934 (Div. 1 2022):
- Prevents screening services—not landlords—from using action itself as factor in tenant’s score
- The “*issue [of an OLD] is therefore not ‘purely academic,’ contrary to UGM’s contention; the relief Bauer seeks may have serious consequences on her future ability to access housing.*”
- But does not hinge on landlord’s disclosure

21

Effect of an Order of Limited Dissemination

- Tenant screening service providers
 - Cannot disclose existence of eviction action
 - Or use as factor in tenant screening score
- Must be in writing
- Low burden to obtain: (1) no factual or legal basis for eviction; (2) tenancy was reinstated; and (3) other good cause
- Seattle's UGM v. Bauer, 22 Wn. App.2d 934 (Ct. App. Div. 1 2022)
 - "A tenant screening service's ability to include an unlawful detainer action in its report does not depend on whether a landlord shares that information with the screening service, but on whether the court enters an order limiting dissemination of the action."

22

"Other Cause" for OLD

- Housing Authority of Grant County v. Parker, 535 P.3d 516 (2023)
- Broad
- Statute is non-exhaustive – "open-ended basis for relief"
- But see footnotes: "narrow form of relief ... Nothing in the OLD statute limits a landlord's ability to ask prospective tenants about whether they have ever been the subject of an unlawful detainer action. The statute merely operates to limit the use of prior unlawful detainer information in a service provider's tenant screening report."

23

RCW 59.18.255 and OLDs

- No direct reference to OLD
- Income discrimination provision
- Proceed with caution

24

Ethical Considerations in
Both Landlord and Tenant
Representation

25

Candor to the Tribunal RPC
3.3

- Shall not knowingly make false statement of fact or law to tribunal
- Shall not offer evidence that lawyer knows to be false
- Lawyer may refuse to offer evidence that the lawyer "*reasonably believes is false*"
- Example: tenant contesting notice
- Example: landlord asserting basis for notice, e.g., 90-day intent to sell/intent to occupy

26

Questions?

27