

A Comparison of Residential Tenancies and Unlawful Detainer in Idaho and Washington State

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This article 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 residential 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 unlawful 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.¹ The complaint must be verified prior to filing in Idaho.²

In Washington, unlawful detainer actions are subject to the exclusive jurisdiction of the superior court.³ The Washington unlawful detainer statutes do not apply to life estates.⁴ Non-possessory landlord/tenant matters may be heard by either the district or superior courts in Washington.⁵

Express Term Tenancies

In Idaho and Washington, the first statutory 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, unlawful detainer jurisdiction is available 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.⁶ The state statute does not provide for the giving of any notice terminating tenancy before an action for possession may be maintained.⁷ Lessor must elect to treat the holding-over Lessee as a trespasser or hold him to a new tenancy.⁸

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.⁹ Washington recognizes express term tenancies in RCW 59.18.210 as valid residential tenancies for a period under one year without acknowledgment, witnesses or seals. Leases over one year must be in writing, and acknowledged.¹⁰ Washington recognizes the doctrine of substantial performance to remove the otherwise void lease from the operation of the statute of frauds.¹¹

Washington law provides that members of the military

service, including their dependents, may prematurely terminate tenancies for a specified term within seven days of receipt by such tenant of reassignment or deployment orders.¹²

Periodic Tenancy

Periodic tenancies, typically known as “month-to-month” tenancies, are also addressed in each state’s unlawful detainer statutes.

Idaho law 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;¹³ but in case of a tenancy at will, it must first be terminated by notice as prescribed in the Civil Code.¹⁴ In Idaho, a month-to-month periodic tenant is known as a “tenant at will,” and a landlord may terminate tenancy at will by giving the tenant notice in writing to vacate the premises within a period of not less than one month, to be specified in the notice.¹⁵ A tenant may terminate a tenancy at will by providing the landlord written notice that the tenant will be vacating.¹⁶

It is noteworthy that Idaho and Washington have very different definitions of “tenancy at will.” In Washington, a tenancy at will is created when an individual occupies real property of another with consent of the owner but without a denominated rental amount or designated period of tenancy.¹⁷ In addition, in Washington, “tenancies at will” are not subject to unlawful detainer jurisdiction.¹⁸

Washington recognizes month-to-month, periodic tenancies.¹⁹ Unlawful detainer jurisdiction is available in Washington to terminate a month-to-month tenancy after the landlord issues a notice to terminate tenancy more than 20 days prior to the end of the month, requiring the tenant to quit the premises at the expiration of such month.²⁰ In Washington, a tenant who is a member of the armed forces, including a dependent, may terminate a rental agreement with less than 20 days’ notice if the tenant receives reassignment or deployment orders that do not allow a 20-day notice.²¹

Non-Payment of Rent

Both Washington and Idaho provide for terminating tenancies with unlawful detainer proceedings for non-payment of rent, pursuant to a three-day notice to pay rent or vacate, but the processes in each state differ thereafter.

In Idaho, unlawful detainer jurisdiction is available when a tenant is in default in rent after receiving a three-day notice to pay rent or vacate.²² Such notice may be served any time within one year after the rent becomes due.²³ Idaho requires a three-day notice to pay rent or vacate to

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state that the prevailing party in litigation shall recover attorney fees and costs.²⁴

Idaho statutes make a distinction in process based upon the size of the premises. Smaller tracts are subject to an expedited hearing process, while larger tracts are not.²⁵ Idaho provides agricultural tenancies with additional holdover rights.²⁶

Idaho provides the landlord with two options to proceed with an unlawful detainer action for non-payment of rent. Under the first option, the landlord may proceed in an expedited action for possession of the leasehold premises and request attorney fees and costs.²⁷ 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 12 days from filing the complaint.²⁸ 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 may elect to proceed under the second option as in other cases with a typical summons, including a 20-day return date.²⁹ Whenever an issue of fact is presented by the pleadings, it must be tried by a jury.³⁰

By contrast, in an unlawful detainer summons in Washington, the plaintiff issues the summons and is responsible for determining the return date, but the return date must be not less than seven or more than 30 days from the date of service of the summons on the tenant.³¹

Eviction for Breach of Tenant Duties

Idaho law provides for unlawful detainer jurisdiction for tenants that continue in possession after failure to perform conditions or covenants of the lease, other than nonpayment of rent, after three days' notice requiring performance or vacating possession of the property.³² If, however, the covenant or condition of the lease at issue cannot be performed, then no demand for performance needs to be made and a three-day notice to vacate will suffice.³³ Unlawful detainer jurisdiction is also available upon unauthorized assignment or subletting, or upon the commission of waste by a tenant or subtenant, upon service of notice to vacate (i.e., no option to comply needs to be given).³⁴

Unlawful detainer cases for "cause" in Idaho (i.e., for breach of tenant duties other than drug activity) are not provided any type of expedited summary proceeding and are subject to normal civil summons, case tracking, and schedule order.³⁵ Idaho laws regulating unlawful detainer proceedings and judgments for restitution of the leasehold premises are codified at I.C. §6-316.

In Washington, unlawful detainer jurisdiction is available if the tenant fails to perform tenant duties after 10

days' notice to comply or vacate.³⁶ A landlord must act within 60 days of issuing a notice to comply or vacate upon a tenant.³⁷ The Washington Residential Landlord/Tenant Act requires that the tenant's default be substantial for the landlord to proceed to terminate a residential tenancy in an unlawful detainer proceeding.³⁸ In Washington, there is no restriction against a landlord utilizing a show cause proceeding in a "for cause" eviction case (i.e., where a tenant has breached a duty).³⁹ However, Washington courts have held that the tenant's ability to raise a material issue of fact is a sufficient basis to delay the award of a writ of restitution and to set the matter for a jury trial.⁴⁰

Washington's Residential Landlord/Tenant Act includes codified tenant duties.⁴¹ For example, tenants are required to pay rent as agreed, keep the premises 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.⁴² Further, tenants are prohibited 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.⁴³ Landlords and tenants may agree to other reasonable rules and restrictions.⁴⁴

Waste

Idaho law regarding eviction for waste 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.⁴⁵

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.⁴⁶

In Washington, the tenant has statutory duties to maintain the proper condition of the leasehold premises, including the duties to properly clean and maintain the leasehold premises, as well as not permit common waste.⁴⁷ A landlord may provide 30 days' written notice to the tenant to cure a breach of the tenant's duties that can be remedied by repair, replacement of a damaged item, or cleaning by the tenant.⁴⁸ If the tenant fails to cure after notice, the landlord may remedy at the tenant's expense.⁴⁹

Washington allows for termination of tenancy for waste

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in the Residential Landlord/Tenant Act, 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.⁵⁰

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 in Washington 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. Idaho law provides that:

A tenant of real property, for a term less than life, is guilty of an unlawful detainer ...[i]f 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.⁵¹

In Idaho, unlawful detainer cases involving delivery production or use of controlled substance are subject to expedited trial for possession of the premises within 12 days from filing of the complaint.⁵² An unlawful detainer action based upon controlled substance in Idaho may be heard by a judge, not a jury.⁵³

Under the Washington Residential Landlord/Tenant Act (RCW 59.18 *et seq.*):

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... [n]ot permit a nuisance...[and shall n]ot 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.⁵⁴

Further, under Washington law, "[i]f 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."⁵⁵

The Washington unlawful detainer statute does not expressly reference drug activity.⁵⁶ However, the common practice is to characterize the drug activity as nuisance activity, which is covered by the Washington Unlawful Detainer Act.

Trials / Hearings

Idaho allows the expedited trial for unlawful detainer proceedings only in matters relating to nonpayment of rent or unlawful delivery, production, or use of a controlled substance.⁵⁷ 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.⁵⁸ The action is tried by the court without a jury.⁵⁹ 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 days prior to trial.⁶⁰

As previously stated, if an Idaho landlord seeks to recover damages as well as possession of the demised premises, then there is no right to an expedited trial date, and the case is subject to a standard 20-day summons return date.⁶¹ The Idaho unlawful detainer trial process is governed by I.C. §6-316, which provides for restitution and damages awards. If there is a disputed issue of fact, the matter must be tried by a jury, unless waived.⁶²

Under Washington law, a court may conduct a show cause hearing in the context of residential evictions.⁶³ 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.⁶⁴ 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.⁶⁵ The court is to weigh whether there are any substantial issues of material fact.⁶⁶ During a show cause hearing, the court has an affirmative duty to ascertain the merits of defenses raised for the first time during the show cause hearing, and to examine the parties and the witnesses.⁶⁷ A tenant who raises a viable

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legal defense is entitled to testify in support of that defense, subject to the rules of evidence.⁶⁸ If the tenant raises a substantial material issue of fact, the matter is subject to a jury trial, unless waived.⁶⁹

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,⁷⁰ evictions for cause,⁷¹ and evictions for assigning or waste.⁷²

Tenancy at Sufferance

Idaho defines tenancy at sufferance as a person remaining in possession of a foreclosed home following the tenth day after trustee's sale.⁷³ 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 law defines tenancy at sufferance as follows:

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.⁷⁴

However, the foregoing statute is inapplicable to matters relating to residential tenancies.⁷⁵ The Washington unlawful detainer statute provides for a termination of a tenancy at sufferance, stating as follows:

A tenant of real property for a term less than life is guilty of unlawful detainer... [if 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.⁷⁶

Continuance of Actions

Idaho addresses continuances of actions, specifically by statute.⁷⁷ This statute is strict in limiting continuances for no longer than two 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; however, certain cases are 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.⁷⁸

Serving Notices

Both Idaho and Washington have statutes regulating how notices to tenants are to be served to invoke unlawful detainer jurisdiction. In Idaho, notices must be served by delivering a copy to the tenant personally, or if he is 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.⁷⁹ If such place of residence cannot be ascertained, or a person of suitable age cannot be found, then notice may be served by affixing a copy of the notice in a conspicuous place on the property and sending a copy through the mail.⁸⁰ In *Fry v. Weyen*, the 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.⁸¹

The statute regulating the manner of service of notices upon tenants in Washington is very similar to Idaho's statute, except it does not include an express requirement to attempt to locate the tenant at the usual place of business.⁸² The Washington courts have uniformly held that strict compliance is required for time and manner of service requirements for notice in unlawful detainer actions.⁸³ 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.⁸⁴

Tenant Claims and Defenses

Both Washington and Idaho recognize various tenant defenses to unlawful detainer. Each jurisdiction has a different way of providing tenants with remedies when aggrieved.

Idaho has cases addressing issues such as self-help evictions and waiver. Self-help evictions are prohibited in Idaho.⁸⁵ The Idaho courts appear to be reluctant to find waiver by the landlord in absence of the intent to irrevocably waive the lease, which must be weighed on a case-by-case basis.⁸⁶

By contrast, Washington courts have found waiver in

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many situations prohibiting a landlord from going forward after acceptance of rent or numerous other basis.⁸⁷ Washington, however, has clarified how the landlord's 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.⁸⁸

Idaho law provides a statutory remedy for tenant actions against landlords for damages.⁸⁹ The statute provides tenants a claim mechanism against landlords 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 days' notice to comply. The manner of serving tenant's notice to the landlord demanding action within three days is governed by I.C. §6-323.

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 the statutory warranty of habitability.⁹⁰

The state of Washington also recognizes an implied warranty of habitability.⁹¹ Additionally, Washington also imposes a statutory warranty of habitability on landlords.⁹² In Washington, a landlord has time parameters for curing defaults in landlord duties after receiving written notice from the tenant. If the landlord fails to perform duties after written notice from the tenant, the tenant is empowered with various statutory remedies, including terminating the tenancy prior to the stated expiration date.⁹³ In some cases, the tenant may repair and deduct for damages,⁹⁴ or argue that a diminished amount of rent is due.⁹⁵ 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.⁹⁶

Idaho interprets the warranty of habitability to require the landlord to maintain the leasehold premises in a non-hazardous condition.⁹⁷ This warranty exists by statute, not common law.⁹⁸

Security Deposits

Under Idaho law, landlord retention of deposit money for damages beyond normal wear and tear is permitted.⁹⁹ The statute requires a deposit refund to be made within 21 days, or within 30 days if provided for by agreement of the parties. Idaho law also provides a right of action for deposit refund when the landlord fails to timely remit a deposit disposition statement and/or refund due.¹⁰⁰ The new owner of the conveyed leasehold property is liable to refund deposits to the subject tenant.¹⁰¹

In Washington, deposits must be held at a financial institution disclosed in the lease.¹⁰² 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.¹⁰³ Within 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.

Conclusion

Several similarities exist between Idaho and Washington statutes and case law relating to unlawful detainer jurisdiction and residential tenancies. However, multiple differences also exist between the two jurisdictions, which can produce rather diverse outcomes. In order for a landlord or a tenant to obtain a satisfactory result in an unlawful detainer action and/or residential tenancy matter, he or she must meticulously review and become familiar with the governing statutes and requirements therein. Failing to perfect the various statutory requirements in either jurisdiction may lead to costly and disappointing results for that party.

1 I.C. §6-305.

2 I.C. §6-318.

3 RCW 59.12.050.

4 RCW 59.12.030.

5 RCW 59.18.050.

6 I.C. §6-303(1).

7 *Johnson v. Schmidt*, 76 Idaho 470, 473 (1955).

8 *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 110 Idaho 640, 645 (1985).

9 See RCW 59.12.030(1).

10 RCW 19.36.010

11 *Stevenson v. Parker*, 25 Wn. App. 639, 644 (1980).

12 See RCW 59.18.220.

13 I.C. §6-303(1).

14 *Id.*

15 I.C. §55-208.

16 I.C. §55-208(2).

17 *Najawitz v. City of Seattle*, 21 Wn.2d 656 (1944); *Turner v. White*, 20 Wn. App. 290 (1978).

18 *Turner*, 20 Wn. App. at 290.

19 RCW 59.04.020.

20 RCW 59.12.030(2).

21 RCW 59.18.200.

22 I.C. §6-303(2).

23 *Id.*

24 See I.C. §6-324.

25 I.C. §6-310.

26 I.C. §6-303(2).

27 I.C. §6-310.

28 *Id.*

29 I.C. §6-311E.

30 See I.C. §6-313.

31 RCW 59.12.070.

32 I.C. §6-303(3).

33 RCW 59.12.070.

34 I.C. §6-303(4).

35 I.C. §§6-311A; 6-311E.

36 RCW 59.12.030(4).

37 RCW 59.18.190.

38 RCW 59.18.180.

39 RCW 59.18.380.

40 *Housing Authority of City of Pasco & Franklin Co. v. Pleasant*, 126 Wn. App. 382 (2005).

41 See RCW 59.18 *et seq.*

42 RCW 59.18.130(1)-(3).

43 RCW 59.18.130(4)-(6), (9).

44 RCW 59.18.140.

45 I.C. §6-303(4).

46 See *Id.*

47 RCW 59.18.130.

48 RCW 59.18.180.

49 *Id.*

50 RCW 59.12.030(5).

51 I.C. §6-303(5).

52 I.C. §6-311A.

53 *Id.*

54 RCW 59.18.130.

55 RCW 59.18.180(3).

56 See RCW 59.12.030(5).

57 See I.C. §6-311A.

58 I.C. §6-311A.

59 *Id.*

60 I.C. §6-310(5).

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