

**CHMELIK SITKIN & DAVIS** P.S.  
ATTORNEYS AT LAW

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# RESIDENTIAL LANDLORD TENANT LAW

Landlord and Property Management Resource Event

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# Introductions

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Business | Municipal Government | Real Estate | Litigation | Environment |  
Estate Planning | Probate

# Road Map

- Advertising and tenant Screening
- Drafting and Execution of the Lease
- Tenancy
  - Landlord's rights and duties
  - Tenant's rights and duties
- Termination of Tenancy and Unlawful Detainer Process
- Tips for Success
- Q & A

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# Advertising and Tenant Screening

# Advertising and Tenant Screening

Parks & Rec, Season 2, Eps. 17

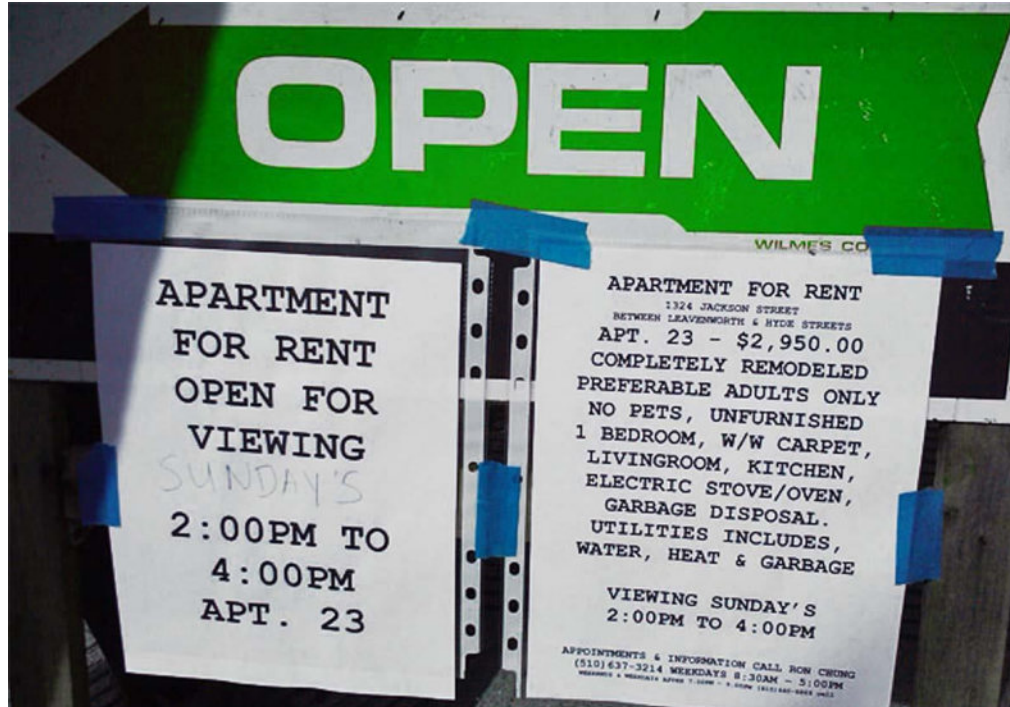


# Advertising and Tenant Screening

- Governing Laws:
  - Fair Housing Act (42 USC § 3601 et. seq.)
  - Washington Law Against Discrimination (WLAD) (Chp. 49.60 RCW)
  - Residential Landlord Tenant Act (Chp. 59.18 RCW)
  - Local (County and City) Regulations
- It is illegal to discriminate on the basis of a protected class and to retaliate against an individual who files or participates in a housing discrimination complaint
- Enforcement: Washington State Human Rights Commission

# Advertising and Tenant Screening

- What's wrong with this sign?



# Advertising and Tenant Selection

- Protected Classes:
  - Race or Color
  - Creed (Religion)
  - National Origin
  - Sex
  - Military Status or Honorably Discharged Veteran
  - Sexual Orientation
  - Familial Status (e.g., married, children, domestic partnership)
  - Sensory, mental, or physical disabilities (including use of trained service animal)
- For More information visit the Human Rights Commission Website [www.hum.wa.gov](http://www.hum.wa.gov)



# Tenant Screening Limitations (See RCW 59.18.257)

- Landlord must notify the prospective tenant in writing or by posting of:
  - The types of information accessed to conduct the screening
  - Criteria that may result in denial of application
  - Name and address of consumer reporting agency, if used, and
  - Tenant's right to obtain a free copy of the consumer report and contest its accuracy
  - Whether the landlord will accept a comprehensive reusable tenant screening report
- Landlord can charge for screening if above information is provided
- Violators may be liable to prospective tenant for \$100, recovery of court costs and attorneys' fees
- Landlord cannot charge for privilege of being placed on a waiting list (RCW 59.18.253(1))

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# Drafting & Execution of the Lease

# Drafting the Lease Document

- Are oral (non-written) leases legal?
  - In most cases yes, but they are not advisable
- The dangers with using form or online leases
- Ambiguities and lease clause interpretation:
  - Washington Courts apply the Context Rule for contract/lease interpretation
  - Key is the “intent of the parties” see Berg v. Hudesman, 115 Wn. 2d 657 (1990)

# Example of website providing inaccurate information

on-landlords-guide-security-deposit-disputes-small-claims-court.html  
 New Tab RCW 36.70C.040: Co Transgo, Inc. v. Ajac de Chapter 35.23 RCW Stephens v. Omni Ins Friends of Southeast Permit Schematics LII Chapter 11.98 RCW



Landlords & Tenants > Collecting and Returning Security Deposits

## Washington Landlord's Guide to Security Deposit Disputes in Small Claims Court

Defend yourself if a tenant sues you for the security deposit.

By Marcia Stewart



Find Products to Help  
With Your  
Landlord/Tenant Needs

NOLO



Nolo's books and online  
forms provide all the  
information you need!

START NOW »

Even the most meticulous landlord may be sued by a tenant over the return of a security deposit. Fortunately, you can take some basic steps to minimize the possibility that you'll spend hours in court haggling over back rent, cleaning costs, and damage to your rental property.

### Know Washington's Rules for Returning Deposits

The most important thing you can do is to follow state law scrupulously when you return security deposits. Make sure you meet the Washington deadline of 14 days for itemizing and returning the tenant's deposit. The itemization should be in writing and state how the deposit has been applied toward back rent and costs of cleaning and damage repair, together with whatever is left of the deposit. For details on state security deposit rules, including any exemptions that may apply and interest requirements, see [Washington Security Deposit Limits and Deadlines](#).

#### RELATED PRODUCTS

MORE +



Every Landlord's  
Guide to Finding  
Great Tenants



Every Landlord's  
Guide to  
Managing  
Property

RCW 59.18.280 provides a 21-day period, not a 14-day period as suggested by this website, for a landlord to provide an accounting of damages and return any remaining deposit.

# Drafting the Lease Document

## What should be included in my lease?

- Caption and Description of Instrument
- Operative terms (rent amount and due dates, length of lease, identify leased space, responsibility for payment of utilities, etc.)
- Boilerplate terms
- Closing / signatures (*testimonium*)



# Drafting the Lease Document

## **Boilerplate terms commonly omitted from leases:**

- Guests Clause
- Smoke Detection Device Notice (RCW 59.18.060(12))
- Health Department Mold Information (RCW 59.18.060(13))
- Attorneys' Fees and Costs Clause
- Non-Waiver Clause
- Assignment Clause
- Severability and Integration Clauses

# Security and Damage Deposits

## Three forms of “security deposits”:

- “Security” or “Security Deposit”
- Security as consideration for performance of the lease
- Advanced Rental Payments (“First and Last Months’ Rent”)

## If landlord collects a security deposit, the entire lease must be in writing and:

- Amount of and reasons to retain Security Deposit must be in writing. (RCW 59.18.260)
- Any monies paid which are nonrefundable (e.g., pet fees) must be clearly specified in writing and should not be labeled as “deposits”
  - best if provided in a separate clause from deposit clause (RCW 59.18.285)



# Security and Damage Deposits

## Requirement of Written Checklist (RCW 59.18.260)

- “No deposit may be collected by a landlord unless...a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings...is provided by the landlord to the tenant at the commencement of the tenancy”
- Checklist must be signed and dated by the landlord and the tenant
- Landlord must provide tenant with a signed copy (tenant has the right to request one free replacement copy)
- Failure to provide a written checklist results in landlord liability for the amount of the deposit, court costs, and reasonable attorneys’ fees

**Landlord - Tenant Inspection Sheet**

The Premises contain the following noted defects, damages and physical conditions at the termination of the tenant occupancy:

|            |                                    |
|------------|------------------------------------|
| Start Date | Lease End Date                     |
|            |                                    |
|            | Phone Number for Landlord or P. M. |
|            |                                    |



# Security and Damage Deposits

## Handling the Funds (RCW 59.18.270)

- If you take a security and/or damage deposit upon commencement of the lease, these funds must be held in a trust account
- Landlord is entitled to retain interest on such trust account unless lease provides otherwise
- Landlord must give a receipt for deposit and provide written notice of the name and address of the institution holding the deposit
- Tenant shall not be charged for normal cleaning upon termination if he or she has paid a nonrefundable cleaning fee (RCW 59.18.130(10))



# Executing the Lease

## **Common mistakes in execution:**

- Failing to screen prospective tenants
- Failing to have all adult (over 18) persons living at the premises sign the lease
- Forgetting the move-in checklist
- Forgetting to write receipts for security deposits, fees, or other charges
- Commingling of deposit funds
- Failing to notarize and record with the County Auditor leases in excess of 1 year

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# Performance: Rights and Duties of the Landlord and Tenants

# Landlord's Duties (RCW 59.18.060)

## A landlord must:

- Maintain a habitable premises, including:
  - Code compliant
  - Maintain plumbing, heating, and other facilities and appliances supplied in good working order
  - Provide a reasonable program for pest control (except single-family residences)
  - Maintain a reasonably weathertight dwelling
- Keep common areas reasonably clean, sanitary, and safe from defects
- Provide reasonably adequate locks and furnish keys to tenant

# Landlord's Duties

## A landlord must:

- Provide written receipts for any payment made by a tenant in cash (RCW 59.18.063) and produce receipts for any payments upon request
- Provide each tenant with an executed copy of the lease (RCW 59.18.065)
- Give 2-day (48-hour) written notice to enter (only at reasonable times)
  - Must state date and time (or time period) for entry
  - Must include phone number for requesting rescheduling
  - In case of an emergency, abandonment, or consent of tenant, landlord can enter immediately
- Unless provided otherwise in the lease, provide at least 30-days' written notice for any rule change (RCW 59.18.140)

## Landlord's Duties – Failure and Response

- If a landlord fails to carry out the duties required, the tenant may provide notice to the landlord of the defective condition and the landlord shall respond
  - Within 24 hours where the defective condition deprives the tenant of hot or cold water, heat, electricity, or is imminently hazardous to life
  - Within 72 hours where the defective condition deprives the tenant the use of a refrigerator, range and oven, or major plumbing fixture supplied by the landlord
  - Within 10 days in all other cases (See RCW 59.18.070)

# Tenant Remedies

- If landlord fails to remedy after receiving notice, tenant may:
  - Terminate the rental agreement and quit the premises upon written notice to landlord without further obligation under the rental agreement
  - Tenant Self-Help (RCW 59.18.100)
  - Bring an action in court to seek injunction or damages, including for diminution in rental value
  - Place rent in escrow account (only in case of substandard conditions dangerous to tenant's health and safety)
- Payment of rent as condition to exercise remedies (RCW 59.18.080)

# Tenant Duties

## **A tenant must:**

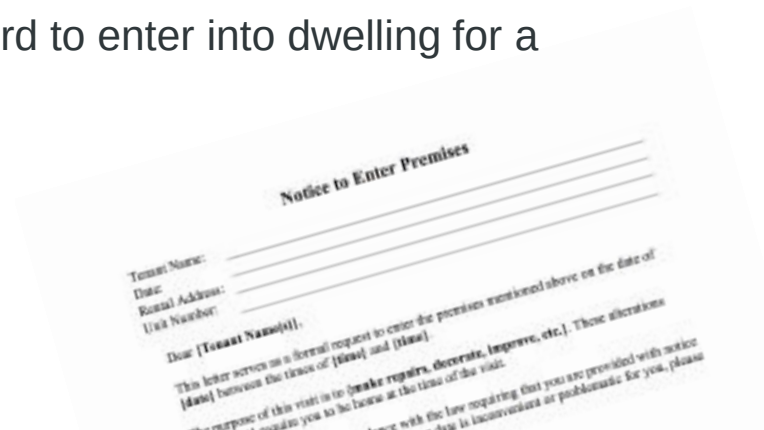
- Pay rent & comply with lease obligations
- Comply with obligation of tenants under the law
- Keep premises clean and sanitary
- Properly use and operate utilities, fixtures, and appliances
- Not negligently or intentionally destroy, deface, damage, impair, or remove any part of the dwelling



# Tenant Duties

## A tenant must:

- Not permit nuisance, drug-related activity, gang-related activity, or other unlawful conduct causing imminent hazards to the physical safety of persons
- Maintain smoke detection devices
- Restore premises to its initial condition, except reasonable wear and tear
- Not unreasonably withhold consent to landlord to enter into dwelling for a proper purpose and with proper notice



# Landlord Remedies

- After 30-day written notice expires, landlord may enter and cause the work to be done and submit the bill to tenant to be payable on the next date when periodic rent is due (only if tenant's failure to comply (i) substantially affects the health and safety of the tenant or others, and (ii) could be remedied by repair)
- Commence unlawful detainer action in Whatcom County Superior Court pursuant to Chapter 59.12 RCW





# Termination

# Termination of Rental Agreements

- Naturally at end of term
- Month-to-month leases are terminable, by either party, upon 20-days' written notice preceding the end of any of the months or periods of tenancy, unless otherwise provided in the rental agreement
- Armed forces members allowed to terminate any rental agreement with less than 20-days' notice upon reassignment or deployment orders that do not allow tenant an opportunity to provide a 20-day notice.
  - Tenant must provide notice of the reassignment or deployment order to landlord within 7 days of receipt
- Abandonment (default in rent and indicates, by words or action, intent to not resume tenancy)

# Termination of Rental Agreement

- Self-help evictions are **unlawful** – court order (writ of restitution) is required (RCW 59.18.290)
- It is unlawful for landlord to intentionally cause termination of tenant's utilities



# Unlawful Detainer (Eviction) Action

## Unlawful detainer includes:

- Holdovers after expiration of term
- Following expiration of termination of a month-to-month or periodic term
- Following 3-day notice to pay rent or vacate (rental agreement may modify notice period)
- Following 10-day notice to remedy an obligation under the rental agreement other than payment of rent (rental agreement may modify notice period)
- Following 3-day notice, when a person without permission of the owner refuses to leave

# Unlawful Detainer (Eviction) Action

## Steps:

- File and serve summons and complaint
- Ex parte hearing for an Order to Show Cause
- Order to Show Cause and Writ of Restitution (RCW 59.18.370-.410)
  - Process takes at least 17 days, generally takes 3-4 weeks to complete if uncontested
  - Court can order a judgment at show cause hearing
  - Costs (generally around \$800 with filing, process server, sheriff's fees, etc.)
  - Attorneys' fees (generally \$2,000-\$2,500 if uncontested)

# Service of the Writ and Collecting on Judgments

- Sheriff's service of the writ on tenants
- Storage of person property – required if tenant requests in writing within three days after the service of the writ
- Can charge tenant for storage
  - Sale after expiration of 30-day notice of sale
- Collecting and enforcement of judgments





# Negotiation, Mediation & Arbitration

- Negotiation or settlement
- RCW 59.18.315 allows mediation for resolution of disputes
- RCW 59.18.320-.350 allows arbitration for resolution of disputes (exceptions)



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# Question and Answers

## Q & A

Q: What are the rules for service and assistance animals and no-pet policies?

A: Landlords are required under state and federal law to make reasonable accommodations for tenants with disabilities. Reasonable accommodations may include allowing a service or assistance animal despite a “no-pets policy.”

- Landlords can require a note or letter from a doctor, health care professional, or social worker that indicates that a particular service animal is needed to mitigate or reduce the effects of the disability; however, the landlord may not request specific information about the tenant’s disability.
- The landlord may not charge a pet deposit or fee for the service or assistance animal; however, the landlord may charge for damage caused by the animal.
- The landlord may not request that the animal has special training or be a ‘licensed service animal’; however, the landlord may request the tenant provide veterinary and vaccination records for the animal.

## Q & A

Q: What happens if your tenant dies during the lease term?

A: RCW 59.18.595 controls the landlords duties upon death of a tenant. It provides in part, that upon the death of a tenant who is the sole occupant of the dwelling that:

- The landlord promptly mail notice to any known personal representative or emergency contact identified by the tenant (see requirements for notice in statute). In operation, within 15 days after a tenants death it is highly unlikely that a probate has been started with an identified personal representative, so it is recommended to include an emergency contact in your lease if this is a concern.
- If there is no response to the initial notice, landlord make enter and store the property at the estate's expense and after providing second notice as required in the statute, the landlord may dispose of and/or sell the property in a commercially reasonable manner(except for personal papers and photographs). The landlord may use any proceeds to pay any storage fees.

## Q & A

Q: Can you request a prospective tenant provide information about a conviction which is older than seven years on his or her application?

A: Yes, you can request information about criminal conviction older than seven years. If you rely on a consumer reporting agency to provide this information, that agency may not provide you records farther back than seven years.

- An arrest alone is not grounds for denial of housing.
- If you do criminal background checks or otherwise request information about criminal convictions, you must provide written notice of the criteria you use to conduct the screening, you must do the same check on all of your prospective tenants, and accept or reject consistently on the same criteria.
- Local law could modify federal or state laws with respect to conviction records (see Seattle Municipal Code 14.08.050).

## Q & A

Q: How long does a tenant have to bring an action against a landlord disputing charges made to the move-out damage inventory/charges?

A: RCW 59.18.270 provides the timeline for the landlord to provide an inventory of damages and return of the security deposit; however it does not provide a timeline for the tenant to contest the accuracy of the landlord's inventory or charges. There are no cases in Washington addressing this issue. It could be argued that the tenant's acceptance of the remaining amount of his or her deposit and the inventory, without objection to the landlord within a reasonable amount of time, waives the tenants right to later claim the charges were excessive. Absent that argument, the tenant's claim would likely only be subject to the six-year statute of limitations.

## Q & A

Q: Are text messages or emails sufficient for providing notice under the RLTA – Chapter 59.18 RCW and/or the unlawful detainer statute - Chapter 59.12 RCW?

A: Strictly speaking, no. Both statutes require notice for different actions which differ slightly in requirements, but in most cases is written notice, personally delivered or posted on the property and mailed to the tenant. Some provisions within RLTA specifically allow electronic communications (see RCW 59.18.595(1)(a)). However, absent that, the safest option for the landlord is to provide the hard copy notices. Landlord may decide to include as part of their rental agreement authorization for acceptance of notice via electronic communications. The courts have not addressed in any Washington cases the validity under RLTA of electronic notices authorized in a lease; however, this could be defensible for notices such as notice to enter the property under RCW 59.18.150. If you are providing notice for failure to pay rent, follow rules, or otherwise related to an eviction, you should follow the statute notice requirements and provide written notice because a court will not accept substantial compliance for notice requirements in most cases.

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