
ENGROSSED SUBSTITUTE HOUSE BILL 1223

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Carrell, Zellinsky, Talcott, Hickel, Thompson and Conway)

Read first time 03/04/97.

1 AN ACT Relating to landlord-tenant relations; amending RCW
2 59.18.030, 59.18.130, and 59.18.180; and adding new sections to chapter
3 59.18 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 59.18.030 and 1973 1st ex.s. c 207 s 3 are each
6 amended to read as follows:

7 As used in this chapter:

8 (1) "Dwelling unit" is a structure or that part of a structure
9 which is used as a home, residence, or sleeping place by one person or
10 by two or more persons maintaining a common household, including but
11 not limited to single family residences and units of multiplexes,
12 apartment buildings, and mobile homes.

13 (2) "Landlord" means the owner, lessor, or sublessor of the
14 dwelling unit or the property of which it is a part, and in addition
15 means any person designated as representative of the landlord.

16 (3) "Person" means an individual, group of individuals,
17 corporation, government, or governmental agency, business trust,
18 estate, trust, partnership, or association, two or more persons having
19 a joint or common interest, or any other legal or commercial entity.

1 (4) "Owner" means one or more persons, jointly or severally, in
2 whom is vested:

3 (a) All or any part of the legal title to property; or

4 (b) All or part of the beneficial ownership, and a right to present
5 use and enjoyment of the property.

6 (5) "Premises" means a dwelling unit, appurtenances thereto,
7 grounds, and facilities held out for the use of tenants generally and
8 any other area or facility which is held out for use by the tenant.

9 (6) "Rental agreement" means all agreements which establish or
10 modify the terms, conditions, rules, regulations, or any other
11 provisions concerning the use and occupancy of a dwelling unit.

12 (7) A "single family residence" is a structure maintained and used
13 as a single dwelling unit. Notwithstanding that a dwelling unit shares
14 one or more walls with another dwelling unit, it shall be deemed a
15 single family residence if it has direct access to a street and shares
16 neither heating facilities nor hot water equipment, nor any other
17 essential facility or service, with any other dwelling unit.

18 (8) A "tenant" is any person who is entitled to occupy a dwelling
19 unit primarily for living or dwelling purposes under a rental
20 agreement.

21 (9) "Reasonable attorney's fees", where authorized in this chapter,
22 means an amount to be determined including the following factors: The
23 time and labor required, the novelty and difficulty of the questions
24 involved, the skill requisite to perform the legal service properly,
25 the fee customarily charged in the locality for similar legal services,
26 the amount involved and the results obtained, and the experience,
27 reputation and ability of the lawyer or lawyers performing the
28 services.

29 (10) "Gang-related activity" means activity that occurs within any
30 ongoing organization, association, or group of three or more persons,
31 whether formal or informal, that has as one of its primary activities
32 the commission of a criminal act or acts, that has a common name, and
33 whose members individually or collectively engage in or have engaged in
34 a pattern of criminal gang activity.

35 (11) "Pattern of criminal gang activity" means the commission,
36 attempted commission, or solicitation of two or more felony or
37 misdemeanor offenses under the following conditions: (a) At least one
38 of the offenses occurred after the effective date of this act; (b) the
39 last of the offenses occurred within one year after a prior offense;

1 and (c) the offenses are committed on separate occasions, or by two or
2 more persons.

3 **Sec. 2.** RCW 59.18.130 and 1992 c 38 s 2 are each amended to read
4 as follows:

5 Each tenant shall pay the rental amount at such times and in such
6 amounts as provided for in the rental agreement or as otherwise
7 provided by law and comply with all obligations imposed upon tenants by
8 applicable provisions of all municipal, county, and state codes,
9 statutes, ordinances, and regulations, and in addition shall:

10 (1) Keep that part of the premises which he or she occupies and
11 uses as clean and sanitary as the conditions of the premises permit;

12 (2) Properly dispose from his or her dwelling unit all rubbish,
13 garbage, and other organic or flammable waste, in a clean and sanitary
14 manner at reasonable and regular intervals, and assume all costs of
15 extermination and fumigation for infestation caused by the tenant;

16 (3) Properly use and operate all electrical, gas, heating, plumbing
17 and other fixtures and appliances supplied by the landlord;

18 (4) Not intentionally or negligently destroy, deface, damage,
19 impair, or remove any part of the structure or dwelling, with the
20 appurtenances thereto, including the facilities, equipment, furniture,
21 furnishings, and appliances, or permit any member of his or her family,
22 invitee, licensee, or any person acting under his or her control to do
23 so. Violations may be prosecuted under chapter 9A.48 RCW if the
24 destruction is intentional and malicious;

25 (5) Not permit a nuisance or common waste;

26 (6) Not engage in drug-related activity at the rental premises, or
27 allow a subtenant, sublessee, resident, or anyone else to engage in
28 drug-related activity at the rental premises with the knowledge or
29 consent of the tenant. "Drug-related activity" means that activity
30 which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

31 (7) Maintain the smoke detection device in accordance with the
32 manufacturer's recommendations, including the replacement of batteries
33 where required for the proper operation of the smoke detection device,
34 as required in RCW 48.48.140(3);

35 (8) Not engage in any activity at the rental premises that is:

36 (a) Imminently hazardous to the physical safety of other persons on
37 the premises; and

1 (b)(i) Entails physical assaults upon another person which result
2 in an arrest; or

3 (ii) Entails the unlawful use of a firearm or other deadly weapon
4 as defined in RCW 9A.04.110 which results in an arrest, including
5 threatening another tenant or the landlord with a firearm or other
6 deadly weapon under RCW 59.18.352. Nothing in this subsection (8)
7 shall authorize the termination of tenancy and eviction of the victim
8 of a physical assault or the victim of the use or threatened use of a
9 firearm or other deadly weapon; ((and))

10 (9) Not engage in any gang-related activity at the premises, as
11 defined in RCW 59.18.030(10), or allow another to engage in such
12 activity at the premises, that renders people in at least two or more
13 dwelling units or residences insecure in life or the use of property or
14 that injures or endangers the safety or health of people in at least
15 two or more dwelling units or residences. In determining whether a
16 tenant is engaged in gang-related activity, a court should consider the
17 totality of the circumstances, including factors such as whether there
18 have been numerous complaints to the landlord, damage to property,
19 harassment of other tenants or neighbors, police or incident reports,
20 reports of disturbances, and arrests. An absence of any or all of
21 these factors does not necessarily mean the tenant is not engaging in
22 gang-related activity; and

23 (10) Upon termination and vacation, restore the premises to their
24 initial condition except for reasonable wear and tear or conditions
25 caused by failure of the landlord to comply with his or her obligations
26 under this chapter: PROVIDED, That the tenant shall not be charged for
27 normal cleaning if he or she has paid a nonrefundable cleaning fee.

28 **Sec. 3.** RCW 59.18.180 and 1992 c 38 s 3 are each amended to read
29 as follows:

30 (1) If the tenant fails to comply with any portion of RCW 59.18.130
31 or 59.18.140, and such noncompliance can substantially affect the
32 health and safety of the tenant or other tenants, or substantially
33 increase the hazards of fire or accident that can be remedied by
34 repair, replacement of a damaged item, or cleaning, the tenant shall
35 comply within thirty days after written notice by the landlord
36 specifying the noncompliance, or, in the case of emergency as promptly
37 as conditions require. If the tenant fails to remedy the noncompliance
38 within that period the landlord may enter the dwelling unit and cause

1 the work to be done and submit an itemized bill of the actual and
2 reasonable cost of repair, to be payable on the next date when periodic
3 rent is due, or on terms mutually agreed to by the landlord and tenant,
4 or immediately if the rental agreement has terminated. Any substantial
5 noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall
6 constitute a ground for commencing an action in unlawful detainer in
7 accordance with the provisions of chapter 59.12 RCW, and a landlord may
8 commence such action at any time after written notice pursuant to such
9 chapter. The tenant shall have a defense to an unlawful detainer
10 action filed solely on this ground if it is determined at the hearing
11 authorized under the provisions of chapter 59.12 RCW that the tenant is
12 in substantial compliance with the provisions of this section, or if
13 the tenant remedies the noncomplying condition within the thirty day
14 period provided for above or any shorter period determined at the
15 hearing to have been required because of an emergency: PROVIDED, That
16 if the defective condition is remedied after the commencement of an
17 unlawful detainer action, the tenant may be liable to the landlord for
18 statutory costs and reasonable attorney's fees.

19 (2) If drug-related activity is alleged to be a basis for
20 termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or
21 59.20.140(5), the compliance provisions of this section do not apply
22 and the landlord may proceed directly to an unlawful detainer action.

23 (3) If activity on the premises that creates an imminent hazard to
24 the physical safety of other persons on the premises as defined in RCW
25 59.18.130(8) is alleged to be the basis for termination of the tenancy,
26 and the tenant is arrested as a result of this activity, then the
27 compliance provisions of this section do not apply and the landlord may
28 proceed directly to an unlawful detainer action against the tenant who
29 was arrested for this activity.

30 (4) If gang-related activity, as prohibited under RCW 59.18.130(9),
31 is alleged to be the basis for termination of the tenancy, then the
32 compliance provisions of this section do not apply and the landlord may
33 proceed directly to an unlawful detainer action.

34 (5) A landlord may not be held liable in any cause of action for
35 bringing an unlawful detainer action against a tenant for drug-related
36 activity ((or)), for creating an imminent hazard to the physical safety
37 of others, or for engaging in gang-related activity that renders people
38 in at least two or more dwelling units or residences insecure in life
39 or the use of property or that injures or endangers the safety or

1 health of people in at least two or more dwelling units or residences
2 under this section, if the unlawful detainer action was brought in good
3 faith. Nothing in this section shall affect a landlord's liability
4 under RCW 59.18.380 to pay all damages sustained by the tenant should
5 the writ of restitution be wrongfully sued out.

6 NEW SECTION. Sec. 4. A new section is added to chapter 59.18 RCW
7 to read as follows:

8 The legislature finds and declares that the ability to feel safe
9 and secure in one's own home and in one's own community is of the
10 primary importance. The legislature recognizes that certain gang-
11 related activity can affect the safety of a considerable number of
12 people in the rental premises and dwelling units. Therefore, such
13 activity, although it may be occurring within an individual's home or
14 the surrounding areas of an individual's home, becomes the community's
15 concern.

16 The legislature intends that the remedy provided in section 5 of
17 this act be used solely to protect the health and safety of the
18 community. The remedy is not a means for private citizens to bring
19 malicious or unfounded actions against fellow tenants or residential
20 neighbors for personal reasons. In determining whether the tenant's
21 activity is the type prohibited under RCW 59.18.130(9), the court
22 should consider the totality of the circumstances, including factors
23 such as whether there have been numerous complaints to the landlord,
24 damage to property, police or incident reports, reports of disturbance,
25 and arrests. An absence of any or all of these factors does not
26 necessarily mean gang activity is not occurring. In determining
27 whether the tenant is engaging in gang-related activity, the court
28 should consider the purpose and intent of section 5 of this act. The
29 legislature intends to give people in the community a tool that will
30 help them restore the health and vibrance of their community.

31 NEW SECTION. Sec. 5. A new section is added to chapter 59.18 RCW
32 to read as follows:

33 (1)(a) Any person whose life, safety, health, or use of property is
34 being injured or endangered by a tenant's gang-related activity may
35 serve the landlord with a ten day notice and demand that the landlord
36 commence an unlawful detainer action against the tenant. The notice
37 and demand must set forth, in reasonable detail, facts and

1 circumstances which lead the person to believe gang-related activity is
2 occurring. The notice and demand shall be served by delivering a copy
3 personally to the landlord or the landlord's agent. If the person is
4 unable to personally serve the landlord after exercising due diligence,
5 the person may deposit the notice and demand in the mail, postage
6 prepaid, to the landlord's or the landlord's agent's last known
7 address.

8 (b) A copy of the notice and demand must also be served upon the
9 tenant engaging in the gang-related activity by delivering a copy
10 personally to the tenant. However, if the person is prevented from
11 personally serving the tenant due to threats or violence, or if
12 personal service is not reasonable under the circumstances, the person
13 may deposit the notice and demand in the mail, postage prepaid, to the
14 tenant's address, or leave a copy of the notice and demand in a
15 conspicuous location at the tenant's residence.

16 (2)(a) Within ten days from the time the notice and demand is
17 served, the landlord has a duty to take reasonable steps to investigate
18 the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord
19 must notify the person who brought the notice and demand that an
20 investigation is occurring. The landlord has ten days from the time he
21 or she notifies the person in which to conduct a reasonable
22 investigation.

23 (b) If, after reasonable investigation, the landlord finds that the
24 tenant is not in compliance with RCW 59.18.130(9), the landlord may
25 proceed directly to an unlawful detainer action or take reasonable
26 steps to ensure the tenant discontinues the prohibited activity and
27 complies with RCW 59.18.130(9). The landlord shall notify the person
28 who served the notice and demand of whatever action the landlord takes.

29 (c) If, after reasonable investigation, the landlord finds that the
30 tenant is in compliance with RCW 59.18.130(9), the landlord shall
31 notify the person who served the notice and demand of the landlord's
32 findings.

33 (3) The person who served the notice and demand may petition the
34 appropriate court to have the tenancy terminated and the tenant removed
35 from the premises if: (a) Within ten days of service of the notice and
36 demand, the tenant fails to discontinue the gang-related activity and
37 the landlord fails to conduct a reasonable investigation; or (b) if the
38 landlord notifies the person that he or she conducted a reasonable
39 investigation and found that the tenant was not engaged in gang-related

1 activity as prohibited under RCW 59.18.130(9); or (c) if the landlord
2 took reasonable steps to have the tenant comply with RCW 59.18.130(9),
3 but the tenant has failed to comply within a reasonable time.

4 (4) If the court finds that the tenant was not in compliance with
5 RCW 59.18.130(9), the court shall enter an order terminating the
6 tenancy and requiring the tenant to vacate the premises.

7 (5) The prevailing party shall recover reasonable attorney's fees
8 and costs. However, the court must order the landlord to pay costs and
9 reasonable attorney's fees to the person petitioning for termination of
10 the tenancy if the court finds that the landlord failed to comply with
11 the duty to investigate, regardless of which party prevails.

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