

# CHAPTER 14

## Sexual Violence and Landlord-Tenant Law

### I. Introduction

Sexual violence intersects with landlord-tenant law in several ways. First, a tenant-victim may seek early termination of a lease to escape abuse. This may be because the abuser lives in the residence or because the abuser knows the tenant-victim lives there. The tenant-victim may also be the victim of sexual assault or harassment by their landlord or one of their landlord's employees. In any of these circumstances, the tenant-victim no longer feels safe in the residence. Second, a landlord may want to terminate a victim's lease, notwithstanding the victim's desire to stay. Finally, landlords may seek to avoid renting to individuals known to be victims of sexual assault. Washington's residential landlord tenant act addresses each of these issues. Judicial officers in Washington State may be confronted with these issues directly within the context of unlawful detainer proceedings, or discrimination lawsuits, and they may also arise in relation to protection order cases.

### II. Landlord's Failure to Enter into or Renew a Lease

#### A. Unlawful to Discriminate Based on Status as Sexual Assault Victim

##### 1. Federal Law

The Violence Against Women Act (VAWA) protects sexual assault, domestic violence, and stalking victims (victims) who receive publicly assisted housing benefits.<sup>1</sup> It states that the Housing Authority and a victim's landlord may not deny voucher assistance because a person is a victim of violence, and that a victim's housing may not be terminated because of threats or violence committed against them.<sup>2</sup> A victim may only be evicted or terminated on the basis of violence against them if there is an actual threat to other tenants or employees at the property if the victim remains in their unit.<sup>3</sup>

The Fair Housing Act (FHA) provides broader protection, applying to all types of housing at all steps of the process. The FHA prohibits discrimination on the basis of race, color, religion, sex, familial status, disability, or national origin in the housing or rental market.<sup>4</sup> While a victim of sexual assault, domestic violence, or stalking is not a protected class under the FHA, denial of housing based on a person's status as a victim may be tied to a claim for sex discrimination based on either intentional discrimination or disparate impact.

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<sup>1</sup> 42 U.S.C. 136 § 14043e-11 <https://www.law.cornell.edu/uscode/text/42/14043e-11>

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 42 U.S.C. 42 § 3604 <https://www.law.cornell.edu/uscode/text/42/3604>

## 2. Washington Law

Washington law prohibits a landlord from refusing to enter into a rental agreement based on the applicant's or a household member's status as a victim of sexual assault, domestic violence, or stalking.<sup>5</sup> Tenant screening service providers may not disclose an applicant's or household member's status as a victim of sexual assault, domestic violence, or stalking, or knowingly disclose that a tenant, applicant, or household member has previously terminated a rental agreement for that reason.<sup>6</sup> Landlords are also prohibited from failing to renew a tenant's lease based upon the applicant's or a household member's status as a victim of sexual assault, domestic violence, or stalking.<sup>7</sup>

### B. Cause of Action for Discrimination

Housing applicants or tenants whose rental agreements have been terminated due to sexual assault, domestic violence, or stalking have a cause of action under RCW 59.18.580 if they are denied tenancy based on their status as a victim. There are no published cases in Washington addressing this statute, and while this may suggest that most of these cases are resolved outside of court, it leaves open questions about how tenants can establish causation and damages for an action under this statute.

### C. Privacy Concerns and Redaction of Court Records for Victims of Sexual Assault

Although the law prohibits tenant screening services from disclosing an applicant's status as a victim of sexual assault, domestic violence, or stalking, landlords may still have access to public court records regarding an applicant's status as a defendant in an unlawful detainer action or as a person who received a civil protection order. The law provides an affirmative defense to victims of sexual assault who refuse to relinquish their tenancy in response to an eviction notice based on being a victim of sexual assault, domestic violence, or stalking. However, asserting these rights requires the tenant to participate in a judicial proceeding, which creates a public record of the dispute. Many landlords screen for tenants who have been parties to unlawful detainer actions, regardless of whether they successfully defended on the merits of the claim.

In *Indigo Real Estate Servs. v. Rousey*,<sup>8</sup> the court considered the implications of public court records for victims seeking future housing. In that case, although the parties agreed to the dismissal of an unlawful detainer action against a domestic violence victim because it was in violation of RCW 59.18.580(1), a public record of the action remained. The victim moved under GR 15 to replace her full name with her initials, claiming that her privacy interest in preserving her future rental opportunities outweighed the public

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<sup>5</sup> RCW 59.18.580 <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.580>

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 151 Wn. App. 941, 215 P.3d 977 (2009)

interest in accessing her name through public records. The superior court denied her motion; however, the Court of Appeals reversed and remanded, holding that it could not determine whether the trial court applied the appropriate standard.<sup>9</sup> The court held that GR 15 authorizes courts to redact information in SCOMIS and that GR 15 and the factors established in *Seattle Times Co. v. Ishikawa*<sup>10</sup> provide the legal standard for evaluating a party's motion to redact his or her information.<sup>11</sup>

## II. Early Lease Termination

### A. Early Termination of Lease by Landlord

Landlords are prohibited from terminating a tenant's tenancy based on the tenant's or a household member's status as a victim of sexual assault, domestic violence, or stalking.<sup>12</sup>

### B. Early Termination of Lease by Tenant

#### 1. Procedures for Termination of a Rental Agreement - Generally

If a tenant has been a victim of sexual assault, domestic violence, unlawful harassment, or stalking, that tenant may have grounds to terminate the rental agreement.<sup>13</sup>

##### a. Notice Required

To trigger the protections of RCW 59.18.575, the tenant must provide a qualifying notice of termination to the landlord. Notice to the landlord has two components:

i. The tenant must notify the landlord in writing that he or she or a household member was a victim of an act that constitutes sexual assault, domestic violence, unlawful harassment or stalking.

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<sup>9</sup> Id.

<sup>10</sup> 97 Wn. 2d 30, 640 P.2d 716 (1982); see also Chapter 9, Section XXII (pp. 9-26, 9-27) of this guide for further discussion of the *Ishikawa* factors

<sup>11</sup> Id., but see *Hundtofte v. Encarnacion*, 181 Wn. 2d 1, 330 P.3d 168 (2014) (denying tenants' motion to redact court records and substitute initials for their full names after parties settled unlawful detainer action). Notably, despite the differing outcomes, the Court's decision in *Hundtofte* does not necessarily contradict its holding in *Indigo*. In *Hundtofte*, the Court held that the tenants did not meet their burden of establishing that the availability of public records presented a sufficiently imminent threat to an interest or right. In *Indigo*, the court held that the tenant met her burden of establishing that the threat of housing discrimination based on her status as a victim of domestic violence or sexual assault outweighed the public right to open records. Thus, the tenant's status as a victim of domestic violence or sexual assault may elevate the tenant's interest in privacy in public records.

<sup>12</sup> RCW 59.18.580 <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.580>

<sup>13</sup> RCW 59.18.575 <http://app.leg.wa.gov/rcw/default.aspx?cite=59.18.575>

ii. The tenant or household member must also provide to the landlord either a copy of a valid order for protection or produce a report the tenant made to a qualified third party acting in his or her official capacity.

The tenant must provide this notice to the landlord within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party.

#### b. Third Party Report

A record of a report to a third party must consist of a written report signed and dated by the qualified third party.<sup>14</sup> A “qualified third party” means any of the following people acting in their official capacity: (a) law enforcement officers; (b) health professionals subject to the provisions of RCW 18.120; (c) employees of a court of the state; (d) licensed mental health professionals or other licensed counselors; (e) employees of crime victim/witness programs as defined in RCW 7.69.020 who are trained advocates for the program; and (f) members of the clergy as defined in RCW 26.44.020.<sup>15</sup>

The report must include a statement that the tenant or household member notified him or her that he or she was a victim of acts that constitute a crime of sexual assault, domestic violence, unlawful harassment, or stalking. The report must also include the time and date of the reported act or acts, the location where the acts were committed, a brief description of the act or acts, and a statement that the tenant or household member informed the qualified third party of the name of the alleged perpetrator of the acts. The qualified third party must keep a copy of the record of the report that contains the name of the alleged perpetrator of the acts.

#### c. Payment of Rent, Deposit Refund

Upon receipt of proper notice, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement.<sup>16</sup> The tenant is discharged from payment of rent for any period following the last day of the month of the quitting date. Other persons obligated on the lease who are not subject to acts of sexual assault, domestic violence, unlawful harassment, or stalking remain bound by their obligations on the lease.

A tenant who terminates under RCW 59.18.575 is entitled to the return of the full deposit.<sup>17</sup> This is true even if the lease contains provisions for forfeiture of deposit upon early termination. However, the landlord retains the right to deduct portions of the deposit based on damages beyond reasonable wear.<sup>18</sup>

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<sup>14</sup> RCW 59.18.575(1)(b)

<sup>15</sup> RCW 59.18.570(5) <http://app.leg.wa.gov/rcw/default.aspx?cite=59.18.570>.

<sup>16</sup> RCW 59.18.575(1)(b)

<sup>17</sup> RCW 59.18.575(2)

<sup>18</sup> RCW 59.18.280(3) <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.280>.

## 2. Termination Based on Assaultive Acts Committed by the Landlord

### a. Notice Required

When a tenant is subject to sexual assault, stalking, or unlawful harassment by a landlord the procedures for termination vary slightly. The tenant may quit the premises without providing notice to the landlord so long as notice is provided within seven days of quitting the premises.<sup>19</sup> Notice must include either a copy of a valid order for protection or written record of a report signed by a qualified third party. The tenant may deliver these documents by mail, fax, or personal delivery by a third party. If a tenant provides a record of a report to a qualified third party, the report must be in substantially the form specified in RCW 59.18.575(1)(b), however it does not need to include the name of the alleged perpetrator. On written request by the landlord, the third party shall provide the name of the alleged perpetrator of the act to the landlord only if the alleged perpetrator was a person meeting the definition of landlord under RCW 59.18.570. The agency must provide the name of the perpetrator to the landlord within seven days of the landlord's request.

### b. Discharged from Payment of Rent, Deposit Refund

When a tenant terminates his or her rental agreement based on acts committed by the landlord, the tenant is discharged from payment of rent for any period following the date the tenant vacates the unit or the date the landlord receives proper notice, whichever is later. The tenant is entitled to a pro rata refund of any prepaid rent and return of the deposit. The landlord must provide a full and specific statement for retaining any of the deposit in accordance with 59.18.280.

### c. Automatic Termination of Rental Agreement after Changing or Adding Locks

If a tenant or household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may change or add locks to the dwelling unit at the tenant's expense.<sup>20</sup> If the tenant exercises this right, she or she must deliver written notice of the lock change to the landlord and a copy of a valid order for protection or a written record of a report signed by a qualified third party. This notice must be provided to the landlord within seven days of changing or adding locks.

After the tenant provides notice to the landlord that he or she has changed the locks, the tenant's rental agreement will terminate on the ninetieth day after the landlord receives notice.<sup>21</sup> There are two exceptions to this rule. First, the tenant may notify the landlord within sixty days of providing notice that the tenant does not wish to terminate his or her rental agreement.<sup>22</sup> If the alleged perpetrator of the acts has been identified by a

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<sup>19</sup> RCW 59.18.575(3) <http://app.leg.wa.gov/RCW/default.aspx?cite=59.18.575>

<sup>20</sup> RCW 59.18.575(4)

<sup>21</sup> Id.

<sup>22</sup> Id.

qualified third party and is no longer an employee or agent of the landlord and does not reside on the property, the tenant must provide the landlord a copy of the keys to the new locks at the same time he or she provides notice of intent to continue the tenancy.<sup>23</sup> However, if the tenant has a valid protection order against the owner of the premises or against an employee or agent of the landlord or owner, the tenant is not required to provide a key to the new locks until the order expires or the tenant vacates.<sup>24</sup> A second exception to the ninety-day termination occurs when the tenant exercises his or her rights to terminate the rental agreement under RCW 59.18.575(3) within sixty days of providing notice to the landlord of the lock change.<sup>25</sup>

Upon receipt of notice that the tenant has changed or added locks to his or her dwelling unit under RCW 59.18.575(4), the landlord is generally barred from entering the unit. However, the landlord may enter in case of an emergency or upon written notice in compliance with RCW 59.18.150. Upon vacating the dwelling unit, the tenant must deliver the key and all copies of the key to the landlord by mail or personal delivery by a third party.

### **III. Changing or Adding Locks Based on Acts of Cotenants**

A tenant may request that a lock be replaced or configured for a new key at the tenant's expense if that tenant has obtained a valid court order granting him or her possession of a dwelling unit to the exclusion of one or more cotenants. If the landlord receives the tenant's request and a copy of the court order, the landlord must comply with the request. The landlord may not provide copies of the new keys to the restrained tenant. A landlord who replaces a lock or configures for a new key in accordance with RCW 59.18.585 shall not be held liable for any damages directly resulting from the lock change. Changing or adding locks does not release a cotenant from obligations under the rental agreement.<sup>26</sup>

### **IV. Unlawful Detainer Actions**

RCW 59.12.030(4) establishes the general rules governing unlawful detainer actions. Under this section, a tenant of real property is guilty of unlawful detainer when he or she continues in possession after failure to keep or perform a condition or covenant of the lease after notice in writing requiring performance or surrender of the property. A tenant who refuses to perform must vacate the residence within ten days of service. RCW 59.12.030(5) also includes in the definition of unlawful detainer a tenant who remains on the property after setting up or carrying on unlawful business, or creates any nuisance on the premises, and remains on the premises for more than three days' after notice to quit the premises.<sup>27</sup>

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<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> RCW 59.18.585 <http://app.leg.wa.gov/RCW/default.aspx?cite=59.18.585>

<sup>27</sup> RCW 59.12.030 <http://app.leg.wa.gov/RCW/default.aspx?cite=59.12.030>

RCW 59.18.580 provides an affirmative defense for unlawful detainer actions for tenants who can show that the landlord's action to remove the tenant is based on the tenant's status as a victim of sexual assault, domestic violence, stalking, or harassment.<sup>28</sup>

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<sup>28</sup> RCW 59.18.580 <http://app.leg.wa.gov/RCW/default.aspx?cite=59.18.580>