

Serving Pre-Litigation Eviction Notices in Washington

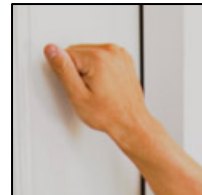
Serving notices. It is vital to a successful eviction that any required pre-litigation notices be properly served. Time and manner of service is strictly construed against the landlord.

There are three legally valid methods of service. Actual receipt of the notice is NOT enough, and the landlord need not prove it. Instead, the important point is to follow the statutorily mandated methods.

1. **Personal service.** Hand a copy of the notice to each tenant.
2. **Substitute service.**
 - 1) **Serve on set of notices in hand.** Hand one set of notices (one for each tenant) to either a tenant or someone of suitable age and discretion. There is no bright line age limit. Rather the idea is someone old enough to understand the importance of the document.

AND

- 2) **Mail.** Mail a copy separately to each tenant. Certified mail is not required.
3. **Posting and mailing.** If no one is available to serve in hand the landlord may post and mail notices.
 - 1) **Knock.** This type of service is only valid if there is no one to serve in hand. Therefore knock on the door beforehand.



AND

- 2) **Post.** The notice must be conspicuously posted on the premises. Post on the front door at eye level, preferable with the text out. Do NOT place through the mail slot, in the tenant's mailbox, under the welcome mat, etc.

AND

- 3) **Mail.** Again, Mail a copy separately to each tenant. Certified mail is not required.

You do not need a separate notice for each tenant. Rather, put all names on one notice and serve copies.

Computation of time. Ideally the date on the notice and the date of all events constituting service will match. The day of service does not count. For periods of seven days or less (such as notices to pay rent or vacate) weekends and holidays do not count. Add one additional day if service involves mailing.

For a “twenty-day” notice to terminate a tenancy the date of termination of the tenancy is NOT calculated by adding twenty days to the date of service. Instead, the date of termination is the last day of a rental period (typically a month) and must be served at least twenty-days in advance.

Review your lease. If the terms of the lease grant more time than the statutory minimum the lease controls. If the landlord serves a notice granting only the statutory minimum but contrary to the longer period to comply granted by the lease the case will be dismissed.

Form and content. Substantial compliance, rather than strict compliance, is required for form and content of notices. Nevertheless, a landlord should take care to avoid common defects in notices.

Rent means rent. A three-day notice to pay rent or vacate is a demand to pay the rent or vacate. Do NOT include non-rent items. Late fee can probably be defined as rent. But, even if defined arbitrarily as “rent” in the lease, do NOT include such things as unpaid utilities, deposits, etc. Instead, these items belong on a notice to comply with the lease or vacate.

Also, if a landlord accepts current rent the landlord waives the right to evict for prior rent. Check carefully the memo section of any checks or other financial instruments tendered by the tenant. If the payment is earmarked for the current month the landlord may NOT evict for prior non-paid rent if the current payment is accepted.

Generally if the landlord accepts rent the notice is waived. There are exceptions if the payment is attributed to rent owed previous to the notice or other obligations, such as unpaid deposits. The landlord should provide a receipt to the tenant and inform the tenant what the payment is being attributed to if not the rent demanded in the notice.

Notice to comply or vacate. A notice to comply or vacate should cite the paragraph, section, etc. in the lease that the landlord alleges the tenant is being violating. A dollar figure should be given when any payment is demanded, whether to the landlord or third party. For any recurring financial obligations, such as utilities, demand a sum certain AND that all such charges be kept current.

Serving multiple notices. Tenants and tenant attorneys sometimes argue that multiple notices are ipso facto void. This argument only makes sense if the notices are logically inconsistent.

For example, one should never combine a nuisance notice, which has no opportunity to cure, with other notices, which all have an opportunity to cure. This is because by serving the nuisance notice the landlord is taking the position that the tenancy ends in three days without an opportunity to cure or other exception. The landlord should not also take an inconsistent position that the tenancy will end if the rent is not paid, etc.

On the other hand, notices that are logically consistent may be served at the same time and are routinely enforced by the courts.

However, once one notice expires do NOT serve additional notices. The landlord is simply extending the deadline. For example, once a tenant is served with a notice to pay rent or vacate do NOT serve additional notices to pay or vacate (unless payment or partial payment was accepted).

As always if uncertain consult with an attorney before acting.