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## Defenses in an Unlawful Detainer Action

Before a landlord can evict a tenant, he or she must serve the tenant with a **Summons and Complaint**. Proper service is made if the landlord hires someone who then personally gives these documents to the tenant or to a resident of suitable age and discretion. If **personal service** cannot be made, despite due diligence, then the landlord may serve by regular or certified mail and post a complaint in a conspicuous place at the tenant's residence. Without personal service, however, landlord may not be awarded money damages. Types of notices include:

1. Failure to Pay Rent: A **three-day notice to pay or vacate** the rental property;
2. Waste Committed: A **three-day notice for waste**, unlawful business, or nuisance;
3. A three-day notice for occupying property **without color of title**;
4. Violated a term a rental contract: A **ten-day notice to comply** with terms of lease or vacate;
5. Landlord is ceasing to rent to tenant: A **twenty-day notice to terminate** renting to a tenant; and
6. Violated a term of lease contract: A **thirty-day notice for non-compliance** with lease agreement.

The tenant must respond by serving either a '**Notice of Appearance**' or an '**Answer**', ideally both, on the person who signed the summons and complaint. Tenant has at least **seven days to respond** to a personal service and nine days for a service by post and mail. If the tenant does nothing, then the court will enter a default judgment, which usually gives the landlord everything they want. The landlord can then seek to **garnish wages**, bank account funds or collect other property to satisfy the judgment award.

The summons may ask the tenant to pay money to the court. In this case the tenant must additionally either pay such money or deliver a **statement to the court certifying a defense** why the tenant feels he or she does not owe money.

Between seven and thirty days after the landlord serves the tenant a **show cause hearing** is held. This is the tenant's chance to tell the court why he or she should not be evicted. The judge may decide for the tenant, against the tenant, or decide there is a **substantial issue of material fact** which requires a trial. Disputes between landlords and tenants are **strictly construed in favor of the tenants**.

Defenses may include:

1. Circumstances set-off the payment due: (a) Apartment is **not habitable**; (b) receipts for repairs; (c) work performed; (d) No move-in inspection checklist.
2. Alleged waste did not cause **substantial interference** (did not lead to an arrest, only a single incident, not within knowledge of tenant, tenant not given an opportunity to comply).
3. Notice to Comply: (a) **Unclear Lease language** (i.e. what are "Pests"); and (b) Tenant corrected violation.
4. Twenty-day notice: (a) Notice not at end of rental period; (b) **retaliation**; (c) **Discrimination**; (d) unexpired lease.

A **speedy trial** will be set within thirty days if the tenant is still in possession of the rental property. If the tenant has left and the trial is for damages only then the trial will be set beyond thirty days. After a judgment is entered in favor of the landlord, the court clerk will execute a **writ of restitution** instructing the County Sheriff to remove the tenant and their possessions from the property they are renting. The Sheriff will post the writ at the tenant's residence. The eviction will take place between three-days after this posting and ten-days from the date the writ is issued.

The eviction process can move quickly. If a tenant does not respond then the Sheriff could be knocking on the tenant's door to remove them as quickly as two to three weeks after they received a summons and complaint. A tenant has longer if they answer the complaint and argue successfully for a trial at the show cause hearing. A trial, however, may increase the attorney's fees a tenant will be responsible for if he or she loses.

*Author Note:* I wrote this article as a way to become familiar with the law before volunteering to assist defendants facing eviction at the Eviction Clinic at the Whatcom County Courthouse.