

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

STANDING ORDER – with Exhs. A & B

Eviction Resolution Pilot Program (ERPP)¹

Effective July 19, 2021².

1. **Findings.** It is recognized that:

- A. Responding to the COVID-19 public health and economic emergency, on March 18, 2020, Governor Inslee issued Proclamation No. 20-19 imposing a moratorium on most residential evictions in Washington State. This Proclamation was renewed and the eviction moratorium was extended on multiple occasions. The most recent extension (Proclamation 20-19.6) expires June 30, 2021 pursuant to ch.115, Laws of 2021, sec. 4(1).
- B. On April 22, 2021, Governor Inslee signed Engrossed Second Substitute Senate Bill 5160 into law (ch.115, Laws of 2021, sec. 4(1)) which took effect that day. This legislation substantially changes the law governing landlord-tenant relations, generally prevents eviction for failure to pay unpaid rents accrued during the Governor’s eviction moratorium, changes unlawful detainer practice and procedure, provides statewide authorization and support for court-established Eviction Resolution Pilot Programs (ERPPs) and establishes a right to counsel for indigent tenants in unlawful detainer proceedings.
- C. The final FY 2021-23 operating budget enacted by the Washington State Legislature provides funding to underwrite ERPP operations, implement the right to counsel program for indigent tenants, and includes \$658,000,000 for rent assistance payments to tenants

¹ ERP changed to ERPP given language in ch. 115, Laws of 2021, Sec. 7.

² Per ch. 115, Laws of 2021, Sec. 7(9).

and landlords, offering landlords and tenants significantly expanded opportunities to resolve rent related disputes that might otherwise lead to the filing of an unlawful detainer action following expiration of the eviction moratorium.

- D. Court operations have been substantially curtailed since April 2020 due to the COVID-19 pandemic. Mandatory orders issued by the Washington Supreme Court and the need to comply with essential public health and safety protocols have caused this court to suspend a range of operations, delay criminal and civil trials, and establish other procedures that have had profound negative impact on this court's ability to provide timely consideration and render judgments in cases in virtually all dockets. This has resulted in a continuing substantial backlog of civil, criminal, juvenile, and child welfare matters. The COVID-19 challenges have been compounded by the anticipated new demands on this court resulting from *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021).
- E. Given the administrative backlog this court is facing, the anticipated deluge of unlawful detainer filings following expiration of the eviction moratorium presents a continuing threat to the ability of this court to timely hear and fairly decide such cases consistent with statutory deadlines, due process and mandated procedures.
- F. State and local rent-assistance programs offer the opportunity for immediate assistance in addressing rent arrearages (or portions thereof) and avoiding the need to seek recourse through the unlawful detainer process. Even in unlawful detainer cases that are filed, it is in this court's interest in managing its docket, facilitating just outcomes, and wisely utilizing scarce judicial resources and capacity to divert cases away from the contested unlawful detainer process where there is a reasonable likelihood of a just resolution.
- G. Sec. 7(2) of ch. 115, Laws of 2021 requires that, where an ERPP is established under authority of a standing judicial order, landlords use that program before filing an unlawful detainer action. Section 7(3) requires that the landlord provide an ERPP-approved notice to the tenant of the eviction resolution program prior to filing an unlawful detainer action. The Court adopts and requires the Landlord to use the form Notice developed by AOC in collaboration with the Office of the Attorney General. See *Exhibit A* hereto.

- H. It is understood that the local Dispute Resolution Center (DRC) and local Housing Justice Project (HJP) or legal aid program are prepared to assist tenants facing the threat of eviction and help tenants resolve that threat through non-judicial processes including the Eviction Resolution Program (ERPP).
- I. This court has determined it appropriate to issue this standing order to establish an eviction resolution pilot program to divert unlawful detainer cases from the docket and facilitate both pre-filing and post-filing resolution of cases where the principle issue is non-payment of rent. The court designates that Judges Blaine Gibson and Elisabeth Tutsch will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERPP and such designation has been provided to the Administrative Office of the Courts.

2. **Order**

- A. **Landlord/Landlord counsel's Obligations regarding Eviction Resolution.** Prior to serving or filing a summons and complaint for unlawful detainer for nonpayment of rent incurred during the moratorium and the 6 month period after the moratorium, the landlord or landlord's counsel shall: (i) ***strictly comply with*** the notice, service, and certification requirements of Sec. 7(3), (4), and (5) of Chapter 115, Laws of 2021, and (ii) confer with the local DRC and the tenant and tenant's attorney to facilitate the resolution of the issue of nonpayment of rent. Participating with the local DRC may include one or more of the following as determined by the local DRC: conciliation, mediation, or meet and confer.
- B. **DRC Certification of ERPP.** The DRC shall provide a Certification Form no later than 30 days after the Notice for Mediation was served on the tenant and provided to the DRC. The parties and the DRC will make efforts to ensure that the telephone conciliation, meet and confer or mediation occur within that 30-day period. The Certification Form attached as *Exhibit B* must be filed with the clerk at the time of filing a summons and complaint. The local DRC may provide tenants and landlords with a history of ERPP participation to describe: whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance available in the

relevant locality at this time), the date the DRC received the notice and the date on the notice, dates the DRC attempted contact with the parties and first date of communication, whether the parties participated in ERPP efforts, whether the parties had counsel during ERPP, what level of service the DRC provided, if offers of resolution were made, the last offer made by each party, and any other relevant information to help the court determine whether the matter is ripe for adjudication.

- C. **DRC Reporting Obligations.** On a quarterly basis, the local DRC shall provide to the Court Administrator the ERPP data/information required by ch. 115, Laws of 2021, Sec. 7 (b)-(f) in a useable and readable format.
- D. **Initial Hearing Procedures for Unlawful Detainer Cases.**
- i. Upon implementation of the right to counsel plan for this court by OCLA pursuant to Secs. 8 and 9 of Chapter 115, Laws of 2021, the following provision will take effect: At the first hearing, the court will advise the tenant of their right to appointed counsel if indigent and inquire whether they wish to assert that right. If the tenant does not have an attorney and asks for appointed counsel, the court shall provide the tenant with contact information for the county-specific entity designated by the Office of Civil Legal Aid (OCLA) for eligibility screening and/or appointment of counsel (e.g. Eviction Defense Hotline or legal aid program). If a tenant is referred for appointment of counsel, the Court may continue the initial hearing as appropriate to allow the litigant to receive assistance from assigned counsel within appropriate timeframes as allowed by law.
 - ii. At the first hearing, or at the first hearing after the tenant has been afforded an opportunity to be appointed counsel, the court shall determine: **(a)** whether the landlord has complied with the notice, service, participation, and certification filing requirements of Sec. 7 of Chapter 115, laws of 2021, and **(b)** whether the landlord and tenant conferred with the local DRC for purposes of resolving the issue of nonpayment of rent. Sanctions available for the landlord's noncompliance with notice, service, or certification filing requirements include but are not limited to: awarding attorney's fees and costs, granting or denying a continuance, or redirecting the parties back to the DRC for attempted resolution.

E. **Mediated Agreements are Enforceable.** Agreements reached in DRC Certification cases are enforceable by the court.

DATED this 16th day of July, 2021.

Richard H Barthel

The Honorable RICHARD H. BARTHELD
Presiding Judge