

Superior Court of Washington, County of _____

Plaintiff/s (*landlord or owner*):

vs.

Defendant/s (*tenant*):

No. _____

Motion to Strike Show Cause Hearing
(Ejectment or Quiet Title)

(*No mandatory form*)

Motion to Strike Show Cause Hearing (Ejectment or Quiet Title)

Use this form if the Plaintiff served you notice of a Show Cause Hearing in an ejectment or quiet title lawsuit. This motion asks the court to cancel or remove the hearing from the court's schedule (docket or calendar). Use this form together with the Order on Motion to Strike Show Cause Hearing (NJP Housing 669).

To the person filing this motion:

You must schedule a hearing to ask the court to sign the *Order on Motion to Strike Show Cause Hearing* (NJP Housing 669). You may use the *Notice of Hearing* form (NJP General 008) unless your county's Local Court Rules require a different form.

You must notify the other party in advance of the hearing and give them enough time to respond. Contact the Superior Court Clerk's office for the deadlines and procedure in your county.

To the person receiving this motion:

If you don't agree with the requests in this motion, file a statement explaining why the court shouldn't approve those requests. You may file other written proof supporting your side.

To both parties:

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

Bring proposed orders to the hearing. You may use the *Order on Motion to Strike Show Cause Hearing* (NJP Housing 669).

1. **My name is** _____. I am the defendant in this case.

2. **Request**

I ask the court to strike:

- Plaintiff's Motion for Order to Show Cause
- The Order to Show Cause entered by the Court on (date) _____
- The show cause hearing scheduled for (date and time) _____

I ask this Court to order any other relief that it deems just and equitable (fair).

3. **Evidence relied upon**

I make this motion based on all pleadings, motions, declarations, and other documents filed in this lawsuit.

4. **Legal authority and argument**

Washington law provides two methods of removing a tenant from the landlord's premises: an action in *ejectment* under RCW 7.28 or an action for *unlawful detainer* (eviction) under RCW 59.12. *Housing Authority of the City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 489 (1990); *see also Bar K Land Co. v. Webb*, 72 Wn.App. 380, 383, 864 P.2d 435 (1993).

Ejectments and unlawful detainers are not the same type of proceeding. *Petsch v. Willman*, 29 Wn.2d 136, 138, 185 P.2d 992 (1947); *see also Kessler v. Nielsen*, 3 Wn.App. 120, 122-23, 472 P.2d 616 (1970). Ejectment is a common law action; an unlawful detainer is a purely statutory and summary procedure. *Id.*

Unlawful detainer actions are special statutory proceedings "with the limited purpose of hastening recovery of possession of rental property, and the superior court's jurisdiction in such action is limited to the primary issue of the right of possession, plus incidental issues such as restitution and rent, or damages." *Phillips v. Hardwick*, 29 Wn.App. 382, 385-86, 628 P.2d 506 (1981). The plaintiff in an unlawful detainer action may set a show cause hearing not less than seven nor more than thirty days from the date of service on the defendant. RCW 59.18.370.

However, ejectment is an ordinary civil action commenced with a 20-day summons. *See* CR 3, 4; *Johnson v. Chittenden*, 146 Wn. 645, 647, 264 P. 425 (1928). In ejectment actions, there is no statutory priority over other civil actions, unlike unlawful detainer actions. There is no statutory right to either reasonable attorney's fees or double damages if the landlord prevails. *See* RCW 59.12.130; RCW 59.12.170; RCW 59.18.290. Further, unlike unlawful detainer actions, there is no statute or procedure in chapter 7.28 RCW for the plaintiff to set a show cause hearing or otherwise obtain a pre-trial writ of restitution.

The show cause procedure in unlawful detainer applies a lower standard by a "preponderance of the evidence that the tenant violated or breached material terms of the lease, and, thus, the landlord is entitled to immediate possession of the property pending a final judgment." *Webster v. Litz*, 18 Wn.App.2d 248, 252-53, 491 P.3d 171 (2021). **Such a summary proceeding is not available under an ejectment action under RCW 7.28.**

Plaintiff may ask for a restraining order or injunctive order, but must meet a higher standard, showing “(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.” *Port of Seattle v. Int’l Longshoremen’s & Warehousemen’s Union*, 52 Wn.2d 317, 324 P.2d 1099 (1958). Injunctive relief is an extraordinary equitable remedy and does not protect a plaintiff from mere inconveniences or speculative and insubstantial injury. *Tyler Pipe Indus., Inc. v. State, Dep’t of Revenue*, 96 Wn.2d 785, 796, 638 P.2d 1213 (1982).

CR 11(a) requires every pleading to be “well grounded in fact” and “warranted by existing law.” This Court should strike Plaintiff’s Motion for Order to Show Cause, the Order to Show Cause previously entered by the court, and the show cause hearing, because RCW 59.18.370-.380 do not apply to an ejectment action. In addition, the ejectment statutes provide no similar procedure or method by which a plaintiff may seek a writ of restitution or otherwise be restored to the property during litigation (*pendente lite*).

This Court should reject any argument by Plaintiff to treat its application for a writ of restitution as a request for injunctive relief under the procedures and statutory scheme set forth in chapter 7.40 RCW. Plaintiff did not note the motion for injunctive relief under RCW 7.40 and cannot meet the higher burden of proof required for injunctive relief.

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (*city and state*): _____ Date: _____



Defendant signs here

Print name

I agree to accept legal papers for this case at (*check all that apply*):

☐ the following address (*this does **not** have to be your home address*):

Street or mailing address

city

state

zip

☐ Email: _____