

HOUSE BILL REPORT

ESHB 1865

As Passed House:

February 13, 2008

Title: An act relating to limiting the obligations of landlords under writs of restitution.

Brief Description: Limiting the obligations of landlords under writs of restitution.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Williams, O'Brien, Springer, Fromhold, Warnick and McCune).

Brief History:

Committee Activity:

Judiciary: 2/13/07, 2/21/07 [DPS].

Floor Activity:

Passed House: 3/7/07, 97-0.

Floor Activity:

Passed House: 2/13/08, 96-0.

Brief Summary of Engrossed Substitute Bill

- Requires a landlord to store an evicted tenant's property if the tenant requests it in writing within three days of service of the writ of restitution.
- Creates a presumption that storage has been requested when the landlord knows a tenant has a disability that impairs or prevents the tenant from making a written request for storage.
- Requires the sheriff when executing a writ of restitution, to also give the tenant a form provided by the landlord that allows the tenant to request the landlord to store the tenant's property.
- Changes procedures that apply when a landlord sells or disposes of the tenant's property.

HOUSE COMMITTEE ON JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Trudes Tango (786-7384).

Background:

The Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes the duties and liabilities of the parties, and provides procedures for each side to enforce its rights.

The RLTA provides a court process, called an unlawful detainer action, by which a landlord may evict a tenant from the premises. The landlord must serve the tenant with a summons and complaint of the unlawful detainer action, which must designate a specific date by which the tenant must respond. The landlord may also request a show cause hearing directing the tenant to appear in court and show why a writ of restitution (an order directing the sheriff to physically evict the tenant) should not be issued.

If the court issues a writ of restitution, the sheriff must deliver a copy of the writ to the tenant, informing the tenant that he or she can be physically removed from the premises after a certain date. The sheriff must also give the tenant a written notice informing the tenant what can happen to the tenant's personal property if it is not removed by the date of the eviction.

When the sheriff executes the writ, the landlord may enter and take possession of the tenant's property left on the premises and store the property in any reasonably secure place. If the tenant objects to the storage of the property, the landlord must deposit the property onto the nearest public property. If the tenant is not present at the time of eviction, it is presumed that the tenant does not object to storage.

The tenant is liable for the actual or reasonable moving and storage costs, whichever is less. If the cumulative value of the property is over \$50, the landlord may sell or dispose of the property, including personal papers, family pictures, and keepsakes, after 45 days from the date the landlord mails or personally delivers notice of the sale or disposal to the tenant. If the cumulative value of the property is \$50 or less, the landlord may sell or dispose of the property, except for personal papers, family pictures, and keepsakes, after seven days following the notice to the tenant of the pending sale or disposal. The landlord may apply any income from the sale to the costs of moving and storage, and then must hold any excess income from the sale for the tenant up to a year. If the tenant does not claim the remaining income within a year, the landlord must treat it as abandoned property and deposit it with the Department of Revenue.

Recently, the Washington Court of Appeals interpreted the statute to mean that a landlord has an affirmative duty to store the tenant's property upon the execution of a writ of restitution unless the tenant objects to the storage. Up until this decision, the practice in some

jurisdictions was to, at the landlord's discretion, either store the property (absent any objection from the tenant) or deposit the tenant's property onto public property.

Summary of Engrossed Substitute Bill:

Upon the execution of a writ of restitution, the landlord must take possession of any property of the tenant found on the premises. The landlord *may* store the property in any reasonably secure place, including on the premises, unless: (a) the tenant has requested storage by serving the landlord with a written request within three days of service of the writ of restitution (in which case the landlord *must* store the property); or (b) the tenant has objected to storage (in which case the landlord must deposit the property upon the nearest public property).

If the landlord knows that the tenant is a person with a disability and the disability (as defined by the law against discrimination) impairs or prevents the tenant from making a written request for storage, it is presumed that the tenant has requested storage unless the tenant objects in writing. The presumption that the tenant does not object to storage if the tenant is not present during the eviction is removed.

The procedures for selling and disposing stored property are changed. The threshold cumulative value of property for when a landlord must provide more notice to the tenant before selling the property is changed from \$50 to \$100. For property with a cumulative value over \$100, the landlord may sell the property (but not dispose of it) after 30 days, rather than 45 days, from the date the landlord sent notice of the sale to the tenant. The landlord may dispose of any property not sold. The notice must be delivered to the tenant's last known address.

When serving the writ of restitution, the sheriff must also serve the tenant with a form provided by the landlord in which the tenant may request the landlord to store the tenant's property. The landlord's form must substantially comply with the form created by the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The intent of the original 1992 legislation was to provide a mechanism for landlords to recover costs of storage if the landlord opted to store the tenant's property. Most landlords and sheriffs have been operating under the belief that landlords had no affirmative duty to store a tenant's property. This new duty to store property is very expensive and burdensome on landlords. The Washington Court of Appeals case also creates a risk that landlords will be subject to conversion actions and claims of inappropriate handling of the tenant's property. The tenant has already gone through the unlawful detainer process and has

received many notices to leave the premises. Requiring storage will increase the costs imposed on landlords, which will eventually result in higher rent to the tenants. Landlords will have to arrange for storage and transportation before the eviction and provide for more manpower to carefully pack up a tenant's property. Requiring landlords to store property only extends the already problematic relationship that exists between the tenant and landlord. If tenants are unable to pay rent, they will not be able to pay the storage costs to get their property back.

(Opposed) This bill is premature and unnecessary. The court case did not make new law. One scholar on real property wrote in a treatise that the 1992 statute created a duty on landlords to store a tenant's property. The court looked at the plain language of the statute and found that it was not ambiguous. The court also considered the public policy of requiring storage. Other jurisdictions require landlords to store property. Most tenants move their property out themselves. Some tenants will abandon their property, and there is a specific statute to address those situations. When a tenant's property is left on the curb, the property is often stolen or damaged. The tenant's property includes family keepsakes and family photos that can be stolen. When evicted, the tenant loses everything, and this bill will make it even harder for tenants to recover and get back on their feet.

Persons Testifying: (In support) Representative Williams, prime sponsor; Joseph Pukett, Washington Multi-Family Housing Association; John Woodring, Manufactured Housing Community of Washington and the Rental Housing Association; Joe Gaddy, King County Sheriff's Office; Doug Neyhard, Rental Housing Association; and Eric Stevens, Washington Apartment Association.

(Opposed) Nick Federici, Washington Low-Income Housing Alliance; Greg Provenzano, Columbia Legal Services; Pat Tassoni, Thurston County Tenants Union; and Seth Dawson, Washington State Coalition for the Homeless.

Persons Signed In To Testify But Not Testifying: None.