

SENATE BILL REPORT

SSB 6338

As Passed Senate, February 15, 2010

Title: An act relating to intermediate tenancies for persons with criminal backgrounds or substance abuse issues.

Brief Description: Concerning intermediate tenancies for persons with criminal backgrounds or substance abuse issues.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Carrell, Hargrove, Shin and Kline).

Brief History:

Committee Activity: Human Services & Corrections: 1/28/10, 2/03/10 [DPS].
Passed Senate: 2/15/10, 48-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6338 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Shani Bauer (786-7468)

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. A tenant's duties include, for example, the duty to keep the premises clean, not intentionally destroy property, maintain smoke detector devices, and not engage in certain activity that is dangerous to others.

The landlord may terminate a tenancy if there has been a substantial noncompliance with the tenant's duties. The landlord must give the tenant written notice before termination and, depending upon the circumstances, allow the tenant time to come into compliance. The type of written notice depends on the reason for termination. For example, if the tenant fails to pay rent, the landlord must serve the tenant with a three-day notice to pay or vacate. If the tenant is not complying with an agreement in the lease, the landlord must serve a ten-day notice. If the tenant does not comply and continues to be in possession of the property, the

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tenant may be guilty of unlawful detainer.

An unlawful detainer action is a court procedure to evict a tenant who remains on the rental premises beyond the time the person is required to leave. The landlord must serve the tenant with a summons and complaint, 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. The court will examine the parties at the show cause hearing and ascertain whether the landlord has the right to be restored to possession of the property. Once a writ of restitution is ordered, the sheriff has a certain amount of time to physically evict the tenant. This process can take 30-60 days to remove a tenant.

Certain living arrangements are exempt from the RLTA. These include residence at an institution, residence in a hotel, and occupancy by an employee whose right to occupy the premises is conditioned on employment.

A person is guilty of criminal trespass if the person knowingly enters or remains unlawfully in or upon the premises of another. Criminal trespass may be a misdemeanor or gross misdemeanor.

Summary of Substitute Bill: An intermediate tenancy is a voluntary tenancy agreement entered into between a landlord and an eligible tenant to provide a supportive living program for persons who have criminal backgrounds or addiction issues and therefore struggle to secure permanent housing. A person is eligible to be an intermediate tenant if the person:

- was released from a correctional facility or convicted of a crime within the past 24 months; or
- is a recovering alcoholic or drug addict and is participating in a program of recovery.

To qualify as an intermediate tenancy, each of the dwelling units must be occupied by at least one eligible tenant, the term of the tenancy must be no more than 24 months, each tenant must be provided with an intake interview and written intermediate tenancy agreement, and the landlord must have a supportive living program that includes a structured plan for monitoring residents for compliance with program rules.

The program must also include at least one of the following components:

- a clean and sober environment;
- referral services for mental health counseling, chemical dependency treatment, or personal growth;
- referral for case management services; or
- a group living environment where all residents agree to hold each other accountable.

An intermediate tenancy agreement must be in writing and prohibit the tenant from engaging in any criminal activity. The agreement may include other provisions such as refraining from the use of alcohol, authorizing periodic inspections, or agreeing to take random drug tests at the landlord's expense.

A landlord may terminate an intermediate tenancy and require the tenant to vacate within 48 hours of receipt of written notice if the tenant has failed to remain clean and sober, engaged

in illegal activity, engaged in harassment or verbal abuse of staff or other tenants, failed to pay amounts within ten days of the due date, has lost contact with staff for five days or more, or has been returned to the physical custody of the Department of Corrections. If the tenant has failed to comply with any other term of the agreement, upon three written violation notices, the tenant must vacate within 48 hours of receipt of notice.

If the tenant fails to vacate the premises within the 48-hour period, the person is guilty of criminal trespass and the landlord may enlist the cooperation of law enforcement in removing the person without having to obtain a court order or writ of restitution. The landlord must provide law enforcement with a signed written statement attesting to the facts that substantiate the termination of the intermediate tenancy and subsequent criminal trespass. Law enforcement is immune from liability for assisting in the removal of a tenant under these provisions.

A landlord must give a tenant who leaves an intermediate tenancy on good terms with a written rental reference.

A provider of transitional housing is not liable for civil damages arising from the criminal conduct of the tenant to any greater extent than a regular tenant. The provisions of the RLTA apply to an intermediate tenancy only to the extent that those provisions are not inconsistent with the terms of this chapter. Local regulations and ordinances are preempted to the extent that they conflict with the provisions of this chapter.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Reentry housing providers need the ability to evict residents who violate the terms of the house rules or their release plan for the good of other residents and the safety of the community. For people in the trenches, this law is absolutely needed. There is a lack of public support for housing providers that provide this type of housing, and current laws make it extremely difficult to run these programs. Most providers do this as a public service and therefore operate very close to the profit line. The time and money involved in trying to evict someone can sink an entire program. This bill provides very important legal support to providers of transitional housing. This type of housing is beneficial in helping people establish a rental history and save money for a deposit in order to obtain permanent housing. Providers should not be exempt from providing housing that complies with all applicable safety, health, and building codes, but we need an ability to remove individuals that do not comply with the program. The program and services need to be beneficial not just to the individual, but the entire community in the facility. A long protracted procedure can allow that resident to become a negative influence on other members of the residence and make for difficult relationships in the neighborhood. Current providers operate outside the law in getting people to move when they are out of compliance. There is no statutory authority for the way these programs

currently operate. It would be helpful to have some codification of existing practice with appropriate and balanced guidelines. There are solid qualifications required for a provider to qualify for these provisions. It also requires a provider to provide a positive written rental reference for an individual who succeeds so that they can have some ability to obtain future housing. This bill provides more legal structure between the resident and the provider. If people will go the extra mile to put these types of programs together, we believe it will help to reduce homelessness for these populations.

CON: Unfortunately a variety of ideas that would help these populations cost money. This bill does not solve the problem that we started out trying to solve. Many provisions are unfair and criminalize behavior that isn't currently criminal and involves law enforcement in a process they don't necessarily want to be involved in. This bill threatens to erode protections that are needed to end homelessness, not just for offenders, but for a larger group of individuals. It exempts a narrow group of housing providers not simply from provisions that prevent them from getting rid of tenants, but all provisions in the RLTA. Although there are other provisions under the law that are exempt from the RLTA, there is another law that overlays that situation to regulate the provider and protect the rights of the residents. It allows housing providers to serve a person with notice to vacate not just for a criminal act, but also for not paying rent. Failure to pay rent can be treated as criminal trespass without any kind of judicial oversight. The definitions used in the bill cause confusion because they are very narrow and conflict with definitions currently used in the homeless housing community. This bill works against our effort to keep people from being homeless. If this bill moves forward, we have suggestions for how the language can be improved including striking the current language and adding to the current provision that provides for alcohol and drug free housing; limiting the applicability of these provisions to former offenders; and using a different term from transitional housing because that terminology applies to a wide variety of other persons who may experience homelessness. There are federal problems with including disabled persons or persons with mental illness in this bill. Additionally, the RLTA has a balance of control and authority between a landlord and a tenant. This bill shifts that balance way too far in the direction of the provider. This bill sets up a culture of control. A resident is really at risk of homelessness because they can be on the street within 48 hours. There needs to be some checks and balances in these provisions, which is not included in this bill. There is no shortage of housing in this state for former offenders. What this problem needs is money in order to provide housing for these populations.

Persons Testifying: PRO: Jim Tharpe, Ed McGill, Unity House; Steve Schwalb, Pioneer Human Services; Michael Westford, Transitional Housing Provider; Gary Friedman, Jewish Prisoner Services Int'l.

CON: Greg Provenzano, Columbia Legal Services; Tera Bianchi, WA State Coalition for the Homeless; David Lord, Disability Rights WA; Ari Kohn, Post-Prison Education Program.