

SENATE BILL REPORT

SSB 5538

As Amended by House, April 13, 2015

Title: An act relating to deceased tenants.

Brief Description: Concerning procedures and requirements relating to the death of a tenant.

Sponsors: Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Angel and Sheldon).

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/05/15, 2/19/15 [DPS].

Passed Senate: 3/05/15, 49-0.

Passed House: 4/13/15, 97-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5538 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Darneille, Fain, Hobbs, Litzow, Pedersen and Roach.

Staff: Shani Bauer (786-7468)

Background: The Residential Landlord Tenant Act (RLTA) governs the relationship between the renter of residential property (the tenant) and the property owner or the property owner's agent (the landlord). The RLTA outlines the specific duties of the landlord and the tenant and establishes procedures for each party to enforce their rights.

The RLTA does not explicitly address what procedures a landlord should follow in the case of the tenant's death. In general it is believed that under a month-to-month tenancy, notice of the tenant's death acts as a 30-day notice and signals the end of the lease. Under a longer term lease, the deceased tenant's estate would continue to be legally responsible for rental payments until the lease expires.

The law is also silent on what the landlord should do with respect to a tenant's property. The RLTA provides a procedure for landlords to follow in handling a tenant's personal property in the event that the tenant abandons the tenancy. Upon determination that the tenancy has been abandoned, and an accompanying default in the payment of rent, the landlord may take

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immediate possession of the tenant's personal property and store the property in a reasonably secure place. The landlord must make reasonable efforts to notify the tenant of the location where the property is stored, and of any impending sale. If the tenant does not come forward to claim the property within 45 days of notice, the landlord may sell or dispose of the property. The landlord may apply the proceeds against monies due to the landlord by the tenant. The landlord must hold any excess income for the benefit of the tenant for one year, after which the balance is property of the landlord.

The Uniform Residential Landlord and Tenant Act was codified by the Uniform Law Commission (ULC) in 1972 and subsequently adopted in 21 states, including Washington. In 2012 the ULC began meeting to address new developments affecting residential landlord and tenant law and to codify the best current practices in a revised act. The ULC anticipates the act will be ready for approval mid-July of this year and the final version will be available for distribution in the fall.

Summary of Substitute Bill: The RLTA provides procedures on how a landlord must dispose of a tenant's property in the event of a tenant's death.

A tenant representative is defined according to the hierarchy of legal authority to act for the estate:

- a personal representative, if known to the landlord;
- a successor who has filed an affidavit in a small estate proceeding;
- a designated person; or
- a person reasonably known to the landlord as a successor as defined in law.

Upon written request by a landlord or on the tenant's own initiative, a tenant may designate a person to act for the tenant on the tenant's death when the tenant is the sole occupant of the property. A designation must be in writing and include the following:

- contact information of a designated person in the event of the tenant's death; and
- a signed statement allowing the designated person, upon the tenant's death, to access the tenant's unit and property, and to accept the tenant's security deposit for the benefit of the estate; and
- a conspicuous statement that the designation remains in effect until it is revoked in writing or replaced with a new designation.

If a tenant dies and is the only occupant of the premises, the landlord must send a notice to the personal representative, designated representative, emergency contact, any known successor, and the deceased tenant at the address of the premises. Contents of the notice are prescribed. A tenant representative has 15 days or the date through which rent is paid to respond or remove the property. The tenant representative may make arrangements to pay rent for an additional 60 days to arrange for orderly removal of the property.

If the property is not removed within the 15-day time period, the landlord may put the property in storage and send a second notice to all known contacts and representatives with notice that the property will be sold or disposed of in 45 days. If the landlord does not know of a personal representative or successor who has filed a small estate affidavit, the landlord may turn over possession of the property to any designated person or a person the landlord

reasonably believes is a successor of the estate. The landlord has no obligation to identify all heirs or successors;

If the landlord is not contacted in the 45-day period, the landlord may sell or dispose of the property. If the landlord estimates the value of the property is in excess of \$1,000 and a commercially reasonable method of sale is available through a third party, the landlord must make arrangements for the sale of the property.

If the property value does not meet the threshold, the landlord must dispose of property in a reasonable manner, which is defined as the donation to a charitable organization, removal of the property by trash hauler or recycler, or any other method reasonable under the circumstance. The landlord, employee of the landlord, or family members may not acquire property sold or disposed of. Personal papers and photographs may not be disposed of for 60 days following the date of sale or disposition.

Upon learning of the death of a tenant, the landlord may enter the dwelling and dispose of any perishable items and turn over any animals to a tenant representative or animal control.

A landlord who violates this section is liable for actual damages; compliance will relieve the landlord from liability. The process for abandonment does not apply to the disposition of property for a deceased tenant.

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: This is an issue that needs to be fixed. A son or daughter typically may come to the landlord wanting to get the deceased tenant's property. After releasing the property, another sibling will want the property and the landlord ends up getting sued. Landlords are not looking to take people's things or make money, they are just looking for some legal certainty as to what to do with people's belongings. Landlords are committed to participating in the stakeholder process to attempt to resolve the issues in the bill. The abandonment statute does not work because a landlord would have to allege that the person intentionally abandoned property. This is not true and technically dishonest.

CON: Tenant groups are amenable to working with stakeholders to find a solution. The probate question is very difficult. The small estate process does not allow a successor to take possession of property for 40 days. If a tenant has paid rent, the lease continues so long as rent is paid. A landlord should have the same duties in selling or disposing of property as provided in the abandonment statute. The vast majority of estates are not of great value. The abandonment process works well and provides liability protection for landlord. This bill has lots of liability traps for the landlord.

Persons Testifying: PRO: Senator Angel, prime sponsor; Chester Baldwin, WA Rental Owner's Assn.; Kyle Woodring, WA Multi Family Housing Assn.

CON: Bruce Neas, Columbia Legal Services; Tim Seth, WA Landlord Assn.

House Amendment(s): The landlord's written notice regarding the death of a tenant must be sent promptly upon learning of the tenant's death.

When a tenant representative makes arrangements with the landlord to pay rent in advance for up to 60 days, the landlord must mail a second notice to any known personal representative, known designated person, emergency contact, known successor, and the deceased tenant at the dwelling unit. The notice must include the following:

- The name, address, and phone number or other contact information for the tenant representative, if known, who made arrangements with the landlord;
- The amount of rent paid in advance and the date through which rent was paid; and
- A statement that the landlord may sell or dispose of the property on or after the later of the date through which rent is paid or 45 days from the date of the notice if a tenant representative does not claim and remove the property.

Within 14 days of removal of the tenant's property, the landlord must refund any unearned rent and give a full and specific statement of the basis for retaining any deposit together with any refund payment due under the terms of the rental agreement to the tenant representative.

When a deceased tenant's property has been stored, the landlord must turn over the property to a tenant representative if a written request is made within the 45-day period as long as the tenant representative pays the costs of drayage and storage and gives the landlord an inventory and signed acknowledgement that the tenant representative has been given possession but not ownership of the property.

Language is removed stating that a landlord must sell property valued at over \$1,000 in a commercially reasonable manner only if a commercially reasonable sale is available through a third party. Instead, property valued at over \$1,000 must be sold in a commercially reasonable manner. Property that is not sold must be disposed in a reasonable manner. "Commercially reasonable manner" and "reasonable manner" are each defined.

Personal papers and photos must be held for an additional 90 days – rather than 60 days – after the sale or disposal of the tenant's other property, and then requires them to be either destroyed or held for the benefit of a successor.

The definition of "tenant representative" is revised to provide that a successor is any person who provides the landlord with reasonable evidence that the person is a successor and that a landlord need not identify all successors of the deceased tenant.

A number of other changes are made for clarity and consistent use of terms.