
Civil Rights & Judiciary Committee

HB 1446

Brief Description: Addressing mediation under the residential landlord-tenant act.

Sponsors: Representatives Jenkins, Macri, Robinson, Morgan, Gregerson, Santos and Ormsby.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires compliance with a mediation process prior to commencement of an unlawful detainer action under the Residential Landlord-Tenant Act.
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Hearing Date: 2/6/19

Staff: Cece Clynych (786-7195).

Background:

Residential Landlord Tenant Act.

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, and includes provisions regarding the duties of tenants and landlords and remedies for violations of those duties. Subject to a few exceptions spelled out in statute, the rental of a dwelling unit for living purposes is generally covered under the RLTA. "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place.

Duration and Termination of Tenancy.

A tenancy for a specified time, sometimes also called a lease, is deemed terminated at the end of the specified period. A tenant who terminates a lease prior to the end of the lease period is liable for rent until the end of the period, although the landlord is required to mitigate his or her damages by attempting to re-rent the unit at a fair rental price.

Alternatively, premises may be rented for an indefinite time, from period to period or month to month. Such a tenancy is automatically renewed for another period until terminated by either the

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landlord or the tenant by giving at least 20 days' written notice prior to the end of any of the months or periods of tenancy.

Enforcement Remedies and Unlawful Detainer.

Landlord remedies for a tenant's failure to comply with his or her duties includes eviction of a tenant in unlawful detainer status. The definition of "unlawful detainer" applicable under the RLTA, as well as with respect to other tenancies not governed by the RLTA, is found in a chapter separate from the RLTA, chapter 59.12 RCW. A tenant is in unlawful detainer status when he or she:

- holds over after the expiration of the specified term for which it is let to him or her. When real property is leased for a specified term or period, the tenancy shall be terminated without notice at the expiration of the specified term or period.
- continues in possession of premises leased for an indefinite period, such as month to month, after the end of any month or period when the landlord, more than 20 days prior to the end of the month or period, served notice requiring the tenant to quit the premises at the end of the month or period.
- continues in possession after a default in rent, and after a three-day notice to pay rent or vacate has been served, without complying with the duty to pay.
- continues in possession after failing to comply with a duty of tenancy other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the duty.
- permits waste upon the premises, or carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a three-day notice to quit the premises.
- enters upon the premises without permission and without having color of title and refuses to leave after a three-day notice. Such a person may also be subject to criminal laws.
- commits or permits any gang-related activity as prohibited by the RLTA.

Arbitration and Mediation under the Residential Landlord-Tenant Act.

The RLTA authorizes, but does not require, arbitration and mediation. Both parties must agree to their use in writing, and there are parameters with respect to when they may be used. For instance, arbitration may not be used in any situation where court action has been started and it would substantially affect the controversy.

Dispute Resolution Centers.

The creation of Dispute Resolution Centers (DRCs) was first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation.

Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee which is based upon the participant's ability to pay. Typical cases handled by DRCs involve:

- landlords and tenants;
- consumers and merchants;
- neighbors;
- citizens and agencies;

- employees and employers;
- families; and
- divorcing and divorced couples.

County legislative authorities may impose a surcharge of up to \$10 on each civil filing fee in district court, and a surcharge of up to \$15 on each filing fee for small claims actions for the purpose of funding DRCs. Surcharges are collected by the clerk of the court and remitted to the county treasurer for deposit in a separate account used solely for DRCs.

Summary of Bill:

The definition of unlawful detainer is changed for purposes of the Residential Landlord-Tenant Act (RLTA), and the notice period is set at a uniform 30 days. A tenant is in unlawful detainer status when he or she:

- holds over or continues in possession of property after the expiration of the specified term for which it is let, and after the landlord's service of a written notice to terminate of 30 days or more and compliance with mediation provisions;
- continues in possession of property leased for an indefinite period after the end of any such month or period, and after the landlord's service of a written notice to terminate of 30 days or more preceding the end of any of the months or periods of tenancy and compliance with the mediation provisions; or
- continues in possession after failing to comply with any of the statutory duties of tenancy after the landlord's service of a written notice to comply or vacate within 30 days and compliance with the mediation provisions.

Every notice to terminate must specify the grounds for termination, and every notice to comply or vacate must specify the noncompliance. Accompanying any notice to terminate or comply must be a written notice of opportunity to mediate (mediation notice). The landlord must send a copy of the mediation notice to the mediation program identified by the court for that county, which shall be a dispute resolution center for that community or locale if one has been established and if the court is satisfied that the program has the requisite capacity to conduct the mediation program.

Within five days of receiving the mediation notice, the mediation program shall send a notice to the landlord and the tenant:

- stating that the parties have been referred to mediation;
- identifying the mediator selected;
- indicating the date of the mediation, which shall be no more than 30 days after receipt of the notice;
- specifying the documents, if any, required for mediation and the date by which they must be received;
- providing that either party may be represented by an attorney or other advocate;
- stating that a person with authority to agree to a resolution must be present during the mediation; and
- stating that the parties have a duty to mediate in good faith and that failure to do so may impair the landlord's ability to prevail in an unlawful detainer action or the tenant's ability to remain as a tenant or take advantage of other alternatives to an unlawful detainer action.

A violation of the duty to mediate in good faith may include: failure to timely participate without good cause; failure to provide any required documentation; and failure to designate a representative with adequate authority to fully settle, compromise, or otherwise reach resolution.

If the mediator reasonably believes, based on the tenant's conduct, that the tenant will not attend, the mediator may cancel the mediation session and send a written cancellation to both the tenant and the landlord. The landlord may proceed with an unlawful detainer action after receipt of this confirmation of cancellation.

Within five days after the conclusion of a mediation session, the mediator must send a written certification to both the tenant and the landlord that indicates the:

- date, time and place of the session;
- the names of all persons attending or participating;
- whether resolution was reached, including whether any failure to comply was cured or some other alternative to either termination of the tenancy or to an unlawful detainer action was agreed upon; and,
- whether the parties participated in good faith.

If the parties were unable to reach an agreement, the landlord may proceed with an unlawful detainer action upon receipt of this written certification from the mediator. However, a certification that the landlord failed to act in good faith constitutes a defense to an unlawful detainer action predicated on the notice to comply or vacate or notice of termination that was served with the mediation notice that initiated the mediation process. Failure to act in good faith does not constitute a defense to such an action if an agreement is reached and the tenant subsequently fails to comply with the agreement.

The landlord must pay the costs of mediation.

In addition to the mandatory mediation requirements, landlords and tenants may continue to agree to submit disputes to mediation by an independent third party and the voluntary mediation provision currently in the RLTA is amended to so provide.

Appropriation: None.

Fiscal Note: Requested on January 29, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.