

# HOUSE BILL REPORT

## HB 1656

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to protecting tenants in residential tenancies.

**Brief Description:** Protecting tenants in residential tenancies.

**Sponsors:** Representatives Macri, Jinkins, Shewmake, Robinson, Doglio, Ryu, Morgan, Goodman, Cody, Orwall, Slatter, Thai, Reeves, Appleton, Dolan, Bergquist, Peterson, Pollet, Gregerson, Frame and Davis.

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/6/19, 2/15/19 [DPS].

**Brief Summary of Substitute Bill**

- Amends the Residential Landlord-Tenant Act in a variety of ways, including specifying what constitutes cause for eviction.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Irwin, Ranking Minority Member.

**Staff:** Cece Clynch (786-7195).

**Background:**

Residential Landlord Tenant Act.

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*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.*

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. A "tenant" is defined as any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement. Subject to a few exceptions spelled out in statute, the rental of a dwelling unit for living purposes is generally covered under the RLTA.

#### 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 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.

The RLTA specifies the remedies available to a tenant for a landlord's violation of his or her duties. Generally the tenant must provide the landlord with written notice and a reasonable opportunity to fix or comply with the duty, the timeframe for which varies depending upon the type of problem. If the landlord does not perform, the RLTA specifies a tenant's remedies, but generally the tenant must be current in rent before exercising any remedies. Damages may be awarded to a tenant when a landlord engages in certain unlawful practices. If a landlord includes prohibited provisions in a rental agreement, the tenant may recover statutory damages of up to \$500 together with costs of suit.

Eviction pursuant to an unlawful detainer action is a remedy a landlord may pursue against 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; or
- commits or permits any gang-related activity as prohibited by the RLTA.

If the tenant is in unlawful detainer status, a landlord may bring a court action to evict the tenant. A landlord prevailing in an unlawful detainer action is entitled to a judgment for restitution of the premises together with damages and rent found due. The prevailing party in an unlawful detainer action may be awarded costs and reasonable attorneys' fees. The landlord may not physically force the tenant off the property, but must rely on the sheriff to do that.

#### Damage or Security Deposits.

Landlords often collect deposits and fees and other amounts prior to, or at the outset of, a tenancy. One such deposit is a damage or security deposit, the purpose of which is to cover any damage caused to the property by the tenant, in excess of wear resulting from ordinary use. There are no statutory restrictions upon the amount of such a deposit, but the RLTA does require that the amount be placed in a trust account. Any interest earned generally belongs to the landlord.

Within 21 days after the termination of the rental agreement and vacation of the premises, or after abandonment by the tenant, the landlord must give a full and specific statement of the basis for retaining any of the deposit and pay any refund due the tenant. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises. A landlord complies with this requirement if the required statement or payment, or both, are delivered to the tenant personally or deposited in the mail within 21 days.

Failure to provide the statement and refund within the time specified subjects the landlord to liability to the tenant for the full amount of the deposit and the landlord is prohibited, in any action brought by the tenant to recover the deposit, from asserting any claim or raising a defense for retaining any of the deposit unless the landlord shows that circumstances beyond his or her control prevented compliance or that the tenant abandoned the premises. The court may award up to two times the amount of the deposit for intentional refusal by the landlord to provide the statement or refund due.

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#### **Summary of Substitute Bill:**

A number of changes are made to the Residential Landlord-Tenant Act (RLTA).

#### Cause Under the Residential Landlord-Tenant Act.

A new section is added to the RLTA which provides that a landlord may not evict or terminate a tenancy absent cause, and specifies that the following are the only reasons that constitute cause under the RLTA:

1. The tenant continues in possession after a failure to pay rent following a 14-day notice to pay or vacate.

2. The tenant continues in possession after a failure to remedy a breach following a 14-day notice to remedy a substantial breach of a program requirement of a subsidized program or material term of a rental agreement or vacate.
3. The tenant continues in possession after receipt of a three-day notice to quit due to an ongoing, substantial interference with the use and enjoyment of the premises.
4. The tenant continues in possession after the owner of a residential building in good faith seeks possession so that his or her immediate family may occupy the unit as a principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has provided at least 90 days' notice.
5. The tenant continues in possession after the owner elects to withdraw the premises from the rental market and after at least 120 days' notice.
6. The tenant continues in possession of the premises after service of a 120 days' notice regarding plans to substantially rehabilitate or demolish the dwelling; notice must include approvals and plans for the local jurisdiction.
7. The tenant continues in possession after the landlord has served a 30 days' notice that the premises has been condemned as uninhabitable, subject to some conditions.
8. The tenant continues in possession after an owner or lessor with whom the tenant shares access to a common kitchen or bathroom area has served a 20-day notice to quit or vacate.
9. The tenant continues in possession after the expiration of a rental agreement without signing a proposed new rental agreement proffered by the landlord, subject to some conditions.
10. The tenant continues in possession after having received a 20-day notice to quit due to chronic, harmful, and unjustified failure to pay rent.
11. The tenant continues in possession after having received a 20-day notice to quit for other good cause, including legitimate economic or business reasons.

The new section requiring cause:

- does not apply to tenants residing in "transitional housing." "Transitional housing" means housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than 24 months;
- applies to certain specified persons who have co-resided with the tenant for six months. An owner shall not unreasonably withhold approval of these persons, and shall approve or disapprove on the same basis that the landlord approves or disapproves of any new tenant. Nothing prevents an owner from denying an application to occupy where it would violate applicable occupancy standards as set forth by state or local law. This provision regarding persons co-residing with the tenant is not applicable to tenants residing in subsidized housing. "Subsidized program" refers to housing in receipt of government-sponsored assistance aimed towards alleviating housing costs and expenses for impoverished people with low to moderate incomes.

A landlord is prohibited from terminating a fixed term tenancy before the completion of the term for the fourth, fifth, or sixth causes listed above. A landlord acting in bad faith in violation of the new cause section shall be held liable in a civil action up to four and one-half

times the monthly rent of the property at issue, as well as for court costs and reasonable attorneys' fees.

Damage or Security Deposits.

Together with the specific statement of the basis for retaining part or all of a damage or security deposit, the landlord must include copies of estimates received or invoices paid to substantiate damage charges. Where repairs are performed by the landlord or his or her employee, if a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. The landlord may substantiate the cost of materials or supplies already in the landlord's possession or purchased on an ongoing basis by providing certain specified documents. Where repairs are performed by the landlord or the landlord's employee, the landlord shall include a statement of the time spent performing repairs and the reasonable hourly rate charged. Any damages not substantiated may not be charged against the security deposit.

No portion of any deposit may be withheld on account of "normal wear and tear" (rather than "wear") resulting from ordinary use of the premises. "Normal wear and tear resulting from ordinary use of the premises" means deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. Such wear does not include deterioration that results from negligence, carelessness, accident, or abuse of the unit, fixtures, equipment, or other tangible personal property of the landlord by the tenant or the tenant's guests.

The court "shall" (rather than "may") award up to two times the amount of the deposit for the intentional refusal of the landlord to provide the required statement, documentation, or refund due.

Miscellaneous.

"Rent" or "rental amount" is defined to mean consideration for use and occupancy of the premises. These terms do not include charges for costs incurred due to late fees, damages, utilities, deposits, legal costs, or other fees, including attorneys' fees. A landlord must first apply any payment made by a tenant toward rent, before applying any payment toward these other costs. Continued tenancy or relief from forfeiture may not be conditioned on a tenant's payment or satisfaction of any monetary amount other than rent. However, this does not foreclose a landlord from pursuing other lawful remedies to collect these other costs.

If a landlord deliberately includes statutorily prohibited provisions in a rental agreement, the landlord is liable for actual damages sustained by the tenant, statutory damages not to exceed one month's rent or treble actual damages (rather than not to exceed \$500), as well as costs of suit and reasonable attorneys' fees.

Protections afforded to a tenant or an occupant pursuant to the RLTA survive a nonjudicial foreclosure sale of the property.

In a retaliation action, the fact that legal services were provided at no cost does not affect whether the party may recover attorneys' fees.

**Substitute Bill Compared to Original Bill:**

The substitute retained the underlying bill with the following additions, deletions, and changes:

- strikes language that provided that a landlord may not evict or terminate without a court order;
- revises and adds to the list of reasons that constitute cause, as follows:
  - revises the failure to pay rent provision to require a 14-day notice to pay or vacate (rather than a 21-day notice);
  - strikes the associated requirement that property be in compliance with local code;
  - revises the failure to comply after substantial breach provision to require a 14-day notice to comply or vacate (rather than a 30-day notice) after breach of a subsidized program or material term of the rental agreement, other than one for monetary damages; provides exception for situations in which remedy cannot be completed by date specified but has been commenced;
  - strikes the provision that prohibited a landlord from terminating/evicting a person 60 years old or disabled so that the landlord or his/her family can occupy the unit;
  - adds a cause for situations in which a tenant shares access to a common kitchen or bathroom area with the owner or lessor;
  - adds a cause for situations in which the landlord has proffered a new rental agreement at least 30 days, and no more than 90 days, before the expiration of the current rental agreement and the tenant has not signed the new agreement;
  - adds a cause for situations in which the tenant continues in possession after having received a 20-day notice to quit due to chronic, harmful, and unjustified failure to pay rent;
  - adds a cause for situations in which the tenant continues in possession after receipt of a 20-day notice to quit for other good cause, including legitimate economic or business reasons;
  - applies the cause section to certain persons who have co-resided with the tenant for six months prior to the tenant vacating the unit, and provides that the owner shall not unreasonably withhold approval to co-reside but shall approve or disapprove on the same basis that the landlord approves or disapproves of any new tenant (subsidized housing is not subject to this provision); and
  - provides that the cause section does not apply to tenants residing in transitional housing;
- strikes the provision that would have applied the Residential Landlord-Tenant Act to occupancy by an employee of the landlord whose right to occupy is conditioned on employment on the premises;
- strikes language that required third party documentation for all damages charged to a tenant and provides for situations in which repairs are performed by the landlord or his or her employee; and
- revises the definition of "tenant" and adds definitions of "immediate family," "subsidized program," and "transitional housing."

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) There is a long history of housing injustice and discrimination that has had an impact in terms of segregation by race and income. This also impacts access to education, jobs, and opportunity. Policies such as redlining were allowed to continue. People do not want to look back on some of the policies of today that have such disparate and detrimental impacts and ask why these policies were allowed to continue. Seattle is the only jurisdiction that requires cause for eviction. This bill includes provisions that: will allow people to live with their families; provide rules with respect to the retention and return of deposits; and bring more balance and justice to residential tenancies. Reasons for termination are identified. People with month-to-month tenancies now lose their homes with only 20 days' notice. Tenants are vulnerable, and no one is gender or color blind. "No cause" termination can mask discrimination. Two other states and many local jurisdictions require "just cause." One tenant received a 20-day notice for no cause, despite the fact that the tenant had always paid rent on time. Preceding receipt of that notice, the landlord had called the police on the tenant's biracial son when he was working on his car in the parking lot. The 68-year-old tenant fears that she will have to put all of her belongings in storage and live out of her car. Background checks inquire whether a tenant has ever been asked to leave a tenancy. If the answer is "yes," that tenant is not going to get the new place. Despite what some may say, the rental stock has not gone down because of just cause regulations. A review of court records has showed that evictions can lead to death. In a hot housing market, landlords are incentivized to evict for no cause. Tenants request some due process, including a reason for an eviction. Some private landlords already operate this way. The three-day notice for nuisance remains. If the term tenancy does not automatically result in a month-to-month tenancy, the protections are lost and Seattle is seeing this.

(Opposed) The provisions of this bill are ineffective and will be harmful to neighboring tenants. The City of Tacoma deliberated about including a "just cause" provision in the new residential landlord-tenant ordinance, but decided not to do it. Landlords are open to discussing extending the length of the required notices, but not instituting "just cause." Seattle implemented "just cause" in 1981; a decrease in evictions was not seen until 20 years later in 2001. Providing that a term tenancy automatically converts to a month-to-month messes with the heart of the industry and will take out term tenancies for the entire state. There would be no reason whatsoever for a landlord to use a term tenancy. They would be stuck with the tenant forever. Landlords are leaving the industry and real property exchanges, known as 1031 exchanges, are happening. Most landlords do try to work with their tenants. The banks want the money from the landlords, and banks do not care why the landlords do not have it. The bill would make it difficult for landlords of rental properties that are rented to Oxford House. Opponents are open to discussing the provisions of the bill. In section 6, the term "unreasonable" needs definition. Landlords have to mitigate risks for themselves and for other tenants, and in order to do this they must know who is living in each unit. For those tenants that are unable to make it in a particular tenancy, a 20-day notice can

allow the tenant to leave with some grace and without an unlawful detainer action on their record.

**Persons Testifying:** (In support) Representative Macri, prime sponsor; John Stovall, Washington Low Income Housing Alliance; Chris Heer; Carl Anderson, Tacoma Tenants Organizing Committee; Xochitl Maykovich, Washington Community Action Network; Dinah Braccio, Tenants Union of Washington; and Molly Nichols, Tacoma Tenants Organizing Committee.

(Opposed) Sean Flynn and Heather Pierce, Rental Housing Association of Washington; Ronald Bunn; Krystelle Purkey, Washington Multifamily Housing Association; Jim Henderson, National Association of Real Estate Management; and Susan Willadsen.

**Persons Signed In To Testify But Not Testifying:** Mark Bowie; Michael Mirra; Lyle Crews; Jerry Rheault; and Shirley Rheault.