

HOUSE BILL REPORT

EHB 1694

As Passed Legislature

Title: An act relating to allowing tenants to pay certain sums in installments.

Brief Description: Allowing tenants to pay certain sums in installments.

Sponsors: Representatives Morgan, Macri, Riccelli, Goodman, Jinkins, Cody, Stonier, Robinson, Appleton, Pollet, Gregerson and Frame.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/5/19, 2/15/19 [DP].

Floor Activity:

Passed House: 2/17/20, 54-44.

Senate Amended.

Passed Senate: 3/3/20, 30-17.

House Concurred.

Passed House: 3/7/20, 53-44.

Passed Legislature.

Brief Summary of Engrossed Bill

- Requires landlords to permit tenants to pay deposits, nonrefundable fees, and last month's rent in installments, subject to exceptions and general parameters regarding the number and timing of the installments.
- Allows for applications for reimbursement from the Landlord Mitigation Program in certain circumstances related to a tenant's failure to make installment payments.
- Limits the amount of holding fees or deposits requested by landlords.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Dufault, Assistant Ranking Minority Member; Klippert, Shea and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Irwin, Ranking Minority Member; Graham.

Staff: Cece Clynch (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, remedies for violations of those duties, and definitions. 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.

A tenancy may be for a specified time, such as one year. Alternatively, premises may be rented for an indefinite time, from period to period or month to month.

Deposits and Fees.

Landlords often collect deposits and fees and other amounts prior to, or at the outset of, a tenancy:

- Tenant screening fee: The RLTA includes provisions governing the amount that may be charged and the information that must be provided to the tenant.
- Holding deposit or fee to hold the dwelling unit after the tenant has been offered the unit. If the tenant moves in, the landlord must credit the fee or deposit to the first month's rent or the security deposit.
- Damage or security deposit: The purpose of such a deposit is to cover any damage caused to the property by the tenant, in excess of normal wear and tear. Under the RLTA, deposits must be placed in a trust account. Any interest earned generally belongs to the landlord.
- Nonrefundable fee: This may include a cleaning fee; if that is the case, the landlord may not also charge the tenant for normal cleaning.
- First and last month's rent.

Installment Payment Plans.

A landlord must first apply any payment made by a tenant toward rent before applying any payment toward late payments, damages, legal costs, or other fees. Generally, the tenant's right to possession of the premises may not be conditioned on a tenant's payment or satisfaction of any monetary amount other than rent. There is an explicit statutory exception, however, with respect to situations in which the landlord has provided an installment payment plan, at the commencement of the tenancy, for nonrefundable fees or deposits and the tenant defaults in payment. In that situation, the landlord may treat the default in payment as rent owing and bring an unlawful detainer action.

Landlord Mitigation Program.

In 2018 both the Landlord Mitigation Program Account (Account), in the custody of the State Treasurer, and the Landlord Mitigation Program (Program), in the Department of Commerce (Commerce), were created. The \$10 affordable housing-for-all surcharge which is charged by county auditors for each document recorded was raised to \$13. Of the remaining funds after county administrative and distribution costs, 40 percent of the revenue generated through the surcharge must be transmitted to the State Treasurer for deposit as follows:

- The portion of the funds attributable to the original \$10 of the surcharge must continue to be deposited into the affordable housing-for-all account.
- The portion of the funds attributable to the additional \$3 of the surcharge must be deposited into the Account.

Landlords of private market rental units rented to low-income tenants using a housing subsidy program may be reimbursed by the Program for certain types of claims:

1. improvements identified as necessary in an inspection by the tenant's source of income. In order to be eligible, a landlord must pay the first \$500 for improvements and rent to the tenant whose source of income was conditioned on passing the inspection. Reimbursement may include up to 14 days of lost rental income;
2. reimbursement for damages as reflected in a court judgment against the tenant;
3. reimbursement for damages established by means of specified documentation presented to Commerce; and
4. reimbursement for unpaid rent and utilities to the extent that Commerce is satisfied by the evidence.

In 2019 the Program was expanded. With respect to any application for a stay in the context of an unlawful detainer action for failure to pay rent, the court must issue a finding as to whether the tenant is low-income, of limited resources, or experiencing hardship in order to determine if the parties would be eligible. If the court finds that the tenant is low-income, has limited resources, or is experiencing hardship, the court may issue an order finding that the landlord is eligible to receive on behalf of the tenant and may apply for reimbursement from the Program.

Summary of Engrossed Bill:

Installments and Fees: Installment Payments.

Upon written request from a tenant, a landlord must generally permit the tenant to pay any deposits, nonrefundable fees, and last month's rent in installments, as follows:

- In all cases where premises are rented for a specified time that is three months or longer, the tenant may elect to pay in three consecutive and equal monthly installments, beginning at the inception of the tenancy.
- In all other cases, the tenant may elect to pay in two consecutive and equal monthly installments, beginning at the inception of the tenancy.
- A landlord is not required to permit a tenant to pay in installments if the total amount of the deposits and nonrefundable fees do not exceed 25 percent of the first full month's rent and payment of the last month's rent is not required at the inception of the tenancy.

A landlord may not impose any fee, charge any interest, or otherwise impose a cost on a tenant because the tenant elects to pay in installments. Installment payments are due at the

same time as rent is due. All installment schedules must be in writing and signed by the landlord and the tenant.

A landlord who refuses to permit a tenant to pay any deposits or nonrefundable fees and last month's rent in violation of installment payment requirements is subject to a statutory penalty of one month's rent plus reasonable attorneys' fees, payable to the tenant.

Holding Fees or Deposits.

Fees or deposits to hold a dwelling unit or secure that the tenant will move into the unit are not considered a deposit or nonrefundable fee for purposes of the installment payment requirements.

A landlord may not request a fee or deposit to hold a dwelling unit or secure that the prospective tenant will move into a dwelling unit in excess of 25 percent of the first month's rent.

Landlord Mitigation Program.

In any application seeking relief on grounds that the tenant defaulted in payment on an installment payment plan for nonrefundable fees or deposits, the court must issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship to determine if the landlord would be eligible for reimbursement from the Landlord Mitigation Program (Program).

In making this finding, the court may include an inquiry into the tenant's income relative to area median income, household composition, extenuating circumstances, or other factors and may rely on written declarations and oral testimony. After making a finding that the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order:

- finding landlord eligibility and that the landlord may apply to the Program;
- and
- directing the clerk to remit, without further order of the court, any future payments made by the tenant in order to reimburse the Program.

Nothing in these provisions is to be deemed to obligate the Department of Commerce to provide assistance through the Program if there is not sufficient funds. Upon payment of the remaining or total amount of the judgment to the landlord from the Program, the judgment is satisfied, and the landlord shall file a satisfaction of judgment with the court.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Washington has an affordable housing and homelessness crisis that affects every corner of the state. The Tacoma City Council passed a rental housing code. Among its

protections is a provision like this bill, which allows installment payments. This bill will provide that same provision to people all across the state. The amounts required of tenants for deposits and fees can be prohibitive. This bill is about equity and putting a stop to good families going homeless. If there are concerns, the sponsor is open to working with other members. While every part of the state is touched by this crisis, not all people are impacted equally by it. The City of Tacoma reports that more than 1,600 people are homeless at any given time; 48 percent of those people are people of color. Rents have increased by 39 percent and home values have nearly doubled, yet household incomes have only increased by 20 percent. People who rent are more likely to be overburdened by housing costs and at greater risk for displacement. This was seen this last year in Tacoma when tenants of one complex were displaced. Many of these tenants were people on fixed incomes and people with disabilities. This particular incident shined a bright light on the challenges faced by renters from vulnerable populations when they are unexpectedly displaced in this housing market. The amounts required to get into a rental unit can be as much as \$5,000. Over 90 percent of tenants in a survey said that high move-in costs were a barrier. Landlords cannot touch deposits until the end of a tenancy anyway, and the last month's rent is for the last month, so landlords do not need to collect the entire amount at the beginning of a tenancy. Tenants currently are only entitled to 20 days' notice to move. It can be prohibitive to come up with these deposits and installments in that short amount of time. One man on a limited fixed income received notice that he had to move from his home of 38 years. He had to part with many of his possessions in order to make the move. The rent for the new place represented a 100 percent increase from what he had been paying. In addition, there was a large deposit required and other expenses.

(Opposed) Landlords should not be treated like banks. This bill will cause landlords to get out of the business. One organization with a membership of about 7,000 has already lost hundreds of member landlords over the last couple of years. When landlords have tried something similar to what this bill proposes, it has not worked because the tenants were unable to continue to pay. Tenants should be assisted, but not in this way.

Persons Testifying: (In support) Representative Morgan, prime sponsor; Xochitl Maykovich, Washington Community Action Network; Michele Thomas, Washington Low Income Housing Alliance; and Joseph Atkinson.

(Opposed) Chester Baldwin, Washington Landlord Association; and Jim Henderson and Lyle Crews, National Association of Rental Property Managers.

Persons Signed In To Testify But Not Testifying: Kyle Woodring; Jim Henderson; Linda Mickey; and Robert Mickey.