

# HOUSE BILL REPORT

## HB 2520

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

**Title:** An act relating to documentation and processes governing landlords' claims for damage to residential premises.

**Brief Description:** Addressing documentation and processes governing landlords' claims for damage to residential premises.

**Sponsors:** Representatives Thai, Macri, Doglio, Morgan, Entenman, Kilduff, Pollet, Ryu and Robinson.

#### **Brief History:**

##### **Committee Activity:**

Civil Rights & Judiciary: 1/24/20, 2/7/20 [DPS].

#### **Brief Summary of Substitute Bill**

- Defines "wear resulting from ordinary use of the premises" for purposes of the Residential Landlord-Tenant Act.
- Establishes additional parameters with respect to damage claims and expressly requires:
  - certain documentation to reasonably substantiate damage charges; and
  - a landlord to provide a walkthrough prior to termination, if requested by the tenant, and to supply a post-walkthrough checklist;
- Establishes a one-year statute of limitations with respect to any action taken against a tenant to recover sums exceeding the amount of the damage deposit.

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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 Kilduff, Chair; Thai, Vice Chair; Goodman, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

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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.*

**Minority Report:** Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Rude and Ybarra.

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

**Background:**

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. Tenants have the duty to restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under the RLTA.

Landlords often collect a damage or security deposit, the purpose of which is to cover any damage caused to the property by the tenant, in excess of normal wear and tear resulting from ordinary use. The RLTA requires that the deposit be placed in a trust account. Any interest earned generally belongs to the landlord.

The RLTA also requires that, in order to collect such a deposit, the rental agreement be in writing and a written checklist or statement (checklist) specifically describing the condition and cleanliness of, or existing damages to, the premises and furnishings, including walls, floors, countertops, carpets, drapes, furniture, and appliances be provided by the landlord to the tenant at the commencement of the tenancy. Both the landlord and the tenant must sign the checklist or statement, and the tenant must be provided with a copy. Failure to provide the written checklist at commencement subjects the landlord to liability for the amount of the deposit.

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 may 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 do so within the time specified subjects the landlord to liability to the tenant for the full amount of the deposit. 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.

The RLTA expressly recognizes that landlords have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible, together with reasonable attorneys' fees.

## Summary of Substitute Bill:

"Wear resulting from ordinary use of the premises" is defined as 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 premises, fixtures, equipment, or furnishings by the tenant, immediate family member, occupant, or guest. A landlord may not withhold a deposit on account of wear resulting from ordinary use of the premises. Current references in the Residential Landlord-Tenant Act (RLTA) to "normal wear and tear" and "reasonable wear and tear" are amended to refer to wear resulting from ordinary use of the premises.

The written checklist or statement (checklist) that must be provided at the commencement of the tenancy generally covers the same fixtures, equipment, and furnishings, but specific references are added to wall paint, wallpaper, and other flooring in addition to carpet.

With the statement required within 21 days after termination of the rental agreement and vacation of the premises, or abandonment, the landlord must include copies of estimates received or invoices paid to reasonably 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 must provide a copy of the bill, invoice, or receipt and a statement of the time spent and the reasonable hourly rate charged. Provision is made for the landlord to document the cost of materials or supplies already possessed or purchased on an ongoing basis.

No portion of a deposit may be withheld:

- for wear resulting from ordinary use;
- for carpet cleaning unless the landlord documents wear to the carpet that is beyond wear resulting from ordinary use of the premises;
- for the costs of repair and replacement of fixtures, equipment, appliances, and furnishings if their condition was not reasonably documented in the written checklist supplied at the commencement of the tenancy; or
- in excess of the cost of repair or replacement of the damaged portion in situations in which the premises are damaged in excess of wear resulting from ordinary use, but the damage does not encompass the entirety of the item.

A tenant may request a walkthrough of the premises not more than 30 days and not less than 14 days before the termination of the rental agreement. Immediately following the walkthrough, at which the tenant may be present, the landlord must provide a written checklist specifically describing the condition and cleanliness of, or existing damages to, the premises. The written checklist must be signed by both the landlord and the tenant, and the tenant must be provided with a copy.

Any action to recover sums exceeding the amount of the damage deposit must be commenced within one year of the termination of the rental agreement or the tenant's abandonment of the premises. Damages for wear resulting from ordinary use of the premises or not substantiated by documentation, including the walkthrough checklist if a walkthrough was requested by the tenant, may not be:

- charged to the tenant;
- reported to any credit agency, tenant screening service, or prospective landlord; or
- submitted for collection by any third-party agency.

The requirements with respect to checklists and documentation do not apply to situations in which part or all of a security deposit is withheld by the landlord for reasons unrelated to damages to the premises, fixtures, equipment, appliances, and furnishings, such as for rent or other charges owing.

### **Substitute Bill Compared to Original Bill:**

The substitute bill retains the original bill with the following additions, deletions, and changes:

- deletes the requirement that the checklist or statement prepared at the commencement of the tenancy indicate the age of all fixtures, equipment and furnishings, the time since their installment or replacement, and their remaining useful life;
- strikes language that provided:
  - that any part of premises that requires replacement/repair but has reached the end of its useful life shall be deemed to have deteriorated as a result of wear resulting from ordinary use; and
  - that any tenant who damages the premises in excess of wear resulting from ordinary use may be charged only that proportion of the cost that reasonably represents the remaining useful life;
- restructures and amends provisions to provide that no portion of any deposit may be withheld:
  - for wear resulting from ordinary use of the premises;
  - for carpet cleaning unless there is documented wear beyond that resulting from ordinary use;
  - for costs of repair/replacement if the original condition was not reasonably documented; or
  - in excess of the cost of repair/replacement of the damaged portion of the item if damage was in excess of wear beyond that resulting from ordinary use but the damage does not encompass the item's entirety;
- provides that the requirements with respect to checklists and documentation do not apply to situations in which part or all of a security deposit is withheld for reasons unrelated to damages, such as for rent or other charges owing;
- strikes all references to useful life, the requirement that the Department of Commerce (Commerce) shall adopt, by rule, tables regarding useful life, and the requirement that once developed by Commerce, useful life must be determined by reference to Commerce's tables;
- amends the new definition of "wear resulting from ordinary use of the premises" to also include an occupant (in addition to tenant, family member, or guest) as one whose negligence, carelessness, accident, or abuse of the premises may result in deterioration that is not considered wear resulting from ordinary use of the premises;
- restores language in current law that allows the court discretion as to whether to award up to two times the amount of the deposit for the intentional refusal of the landlord to provide certain information or any refund due, rather than requiring the court to make such an award; and

- adds a short intent section as the final section of the bill.
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**Appropriation:** None.

**Fiscal Note:** Available.

**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) Pharmacists are taught the importance of documentation in training. This bill requires documentation and protects both tenants and landlords. It is aimed at achieving fairness for everyone, including for the children of today, many of whom will be tenants. In the news recently there have been articles about the fact that more and more people are tenants. Many people simply cannot afford to own their own homes.

Legal service attorneys see instances in which a landlord claims damages caused by a tenant, but the landlord offers no receipts or documentation to substantiate the claim. Some try to shift the burden to the tenant for the cost of replacing worn items whose useful life is over. Tenants should only be responsible for the damage that they cause. One tenant faced eviction and a \$2,000 charge for damages. The landlord had no receipts. With legal help, the tenant was able to clear the eviction from her record, but the debt for damages kept her from being able to find new housing. The bill establishes reasonable limits and will serve as an equalizer.

The second highest volume of complaints heard by the Tenants Union involve the loss of deposits. This is especially so for Section 8 tenants and those on Social Security. One tenant was charged for plumbing repairs outside of the unit. Another tenant who left a unit pristine was charged \$600 for some grease on the oven. Tenants are frequently denied housing because damage claims have been sent to collection. Even if they contest that they were responsible for the damage, their only realistic option is to pay off the debt.

(Opposed) As a result of landlord-tenant legislation enacted last year, one landlord has incurred \$2,500 in legal costs associated with making changes to forms and documents. If this piece of legislation passes, the landlord would have to replace all of the appliances in her rental units. Landlords want to keep their rental housing affordable, but this effort to keep them affordable is undercut if landlords must incur costs as a result of new laws.

The bill is unworkable. There are just too many variables. The age of a fixture or an appliance cannot always be determined, particularly when a landlord purchased the premises with those fixtures and appliances already in place. Landlords of older homes would be especially hard hit since they would be hard-pressed to document the age of fixtures. The walkthrough requirement will mean that the landlord has to be on call for inspections of occupied units.

The bill is not necessary. Tenants do, in fact, get their deposits back when they leave the premises undamaged and in good order. Under current law, landlords and tenants can use a detailed checklist and photographs before and after the tenancy as pre- and post-tenancy documentation. If a tenant trashes the premises, the tenant should have to pay damages. If someone broke the windshield on another person's car, they would have to pay for a replacement windshield regardless of its age.

**Persons Testifying:** (In support) Representative Thai, prime sponsor; Sarah Nagy, Columbia Legal Services; Carrie Graf, Northwest Justice Project; Violet Lavatai, Tenants Union of Washington; and Kimberlee Thornton.

(Opposed) Erika Nava Sanchez, Selah Rental Association; Dan White, Washington Landlord Association; Stephanie Elguera, National Association of Residential Property Managers; and Melissa Keonig, Washington Multi-Family Housing Association.

**Persons Signed In To Testify But Not Testifying:** Jon Abbot; Bruce Becker; Richard Benton, Washington Apartment Owners; Freya Brugstaller and Paul Lombardi, Yakima Valley Landlords Association; Don Casad; Jason Clifford, National Association for Rights Protection and Advocacy; Mel Codd, Chesterfield Mortgage Investors Incorporated; Eric Harting, Rob Trickler, Charles Welle, and Errin Reynolds, Washington Landlord Association; Dawn Langston, Pettit Property Management; David Nagel; Dale Olson; Jerry Rheault; Shirley Rheault; Brenda Rumball; Matthew Satter; Jane Totten; Keith Walker, Walker's Property Management; John Wey; and Lisa Wolters, Association of Washington Housing Authorities.