

# HOUSE BILL REPORT

## ESHB 2535

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### As Amended by the Senate

**Title:** An act relating to providing for a grace period before late fees may be imposed for past due rent.

**Brief Description:** Providing for a grace period before late fees may be imposed for past due rent.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kirby, Pollet, Ormsby and Santos).

#### **Brief History:**

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

Civil Rights & Judiciary: 1/24/20, 1/31/20 [DPS].

##### **Floor Activity:**

Passed House: 2/16/20, 92-4.

Senate Amended.

Passed Senate: 3/3/20, 48-1.

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

- Provides that a landlord may not charge late fees for past due rent unless the rent is at least five days past due; however, if the rent is more than five days past due the landlord may charge late fees commencing from the first day after the due date until paid and the landlord may serve a notice to pay rent or vacate at any point after the rent becomes due.

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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 11 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kirby, Orwall, Peterson, Rude, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert and Ybarra.

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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:** Without recommendation. Signed by 2 members: Representatives Dufault, Assistant 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, defines terms, and includes provisions regarding the duties of tenants and landlords, as well as remedies for violations of those duties. With some statutory exceptions, 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, resident, or sleeping place.

One section of the RLTA provides that any provision of a lease or rental agreement that waives an RLTA provision is deemed against public policy and is unenforceable. That section also expressly prohibits rental agreements from including certain types of provisions, including those that:

- waive or forgo rights or remedies under the RLTA;
- authorize any person to confess judgment on a claim arising out of the agreement;
- agree to pay the landlord's attorneys' fees, except as authorized by the RLTA;
- agree to exculpation or limit liability of the landlord arising under the law or to indemnify the landlord for that liability; and
- agree to a particular arbitrator at the time that the rental agreement is executed.

If a landlord deliberately uses a rental agreement containing provisions he or she knows to be prohibited, the tenant may recover actual damages together with statutory damages not to exceed \$500, costs of suit, and reasonable attorneys' fees.

Rent.

The terms "rent" and "rental amount" are defined under the RLTA to mean recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. It is specified in the definition that these terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. An exception is included for nonrefundable fees or deposits which a landlord permits to be paid in installments.

A landlord must first apply any payment made by a tenant toward rent, before applying any payment toward late fees, damages, legal costs, or other fees, including attorneys' fees. Generally, a tenant's right to possession of the premises may not be conditioned on the payment of any amount other than rent. However, a landlord is not foreclosed from pursuing other lawful remedies to collect late fees, legal costs, or other fees, including attorneys' fees.

A tenant is liable for unlawful detainer when he or she continues in possession of the dwelling unit after a default in rent, and after a 14-day notice to pay rent or vacate has been served, without paying the rent during that 14-day period.

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

The Residential Landlord-Tenant Act is amended to provide that a landlord may not charge late fees for past due rent unless the rent is at least five days past due. If the rent is more than five days past due, the landlord may charge late fees commencing from the first day after the due date until paid. Similarly, a landlord is not prohibited from serving a notice to pay rent or vacate at any time after the rent becomes due. A rental agreement may not include a provision pursuant to which the tenant agrees to pay late fees for rent that is paid within five days following its due date; however, if rent is more than five days past due, the landlord may charge late fees commencing from the first day after the due date until paid and a landlord is not prohibited from serving a notice to pay rent or vacate at any time after the rent becomes due.

## **EFFECT OF SENATE AMENDMENT(S):**

### The Senate striking amendment:

- retains the underlying Engrossed Substitute House Bill 2535 in its entirety.
- adds a subsection which provides that:
  - when late fees may be assessed after rent becomes due, the tenant may propose that the date rent is due in the rental agreement be altered to a different due date of the month;
  - the landlord shall agree to such a proposal if it is submitted in writing and the tenant can demonstrate that his/her primary source of income is a regular, monthly source of governmental assistance that is not received until after the date rent is due per the rental agreement;
  - the proposed due date may not be more than 5 days after the date the rent is due in the rental agreement; and
  - nothing in this subsection shall be construed to prevent a tenant from making a request for reasonable accommodation under federal, state, or local law.

**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) This is a simple bill to address a discrete situation which arose following the passage of legislation last year. After passage, some landlords who had previously provided a short grace period for payment of rent stopped providing any grace period after the rent due date. This was not a grace period that they had been legally obligated to provide, but it had become a standard practice with some landlords. Typically, if a person is late paying his or her mortgage, he or she is provided with a short grace period. This bill provides a five-day grace period within which a tenant can pay his or her rent without incurring late fees. If the tenant is more than five days late with payment, the landlord can go back and charge a late fee for all of those days.

One tenant who has used a Section 8 voucher for three years receives her Social Security Disability check on the third day of the month every month; her rent is due on the second day of the month. In the past, the landlord allowed her to pay on the third day without charging a fee. That grace period is being eliminated, and the landlord will now be charging a \$50 late fee, plus \$5 for every day payment is late. In addition, the tenant will also be reported to the housing authority for being late with rent. Persons with low income have the least ability to access money, and they have to pay more. Most landlords do allow a grace period within which tenants may pay without incurring late fees. Late fees puts a burden on those least able to pay. Washington law already includes a limit on late fees charged by storage facilities, which seems to suggest that people's belongings are worth more.

(Opposed) Many landlords, such as one small landlord of an apartment in West Seattle, take great pride in the condition of their buildings and in knowing that the residents and neighboring business owners are well served by their labors, and that they bring value to the neighborhood and the state. The committee is urged to please look at both sides of the argument.

(Other) Legislation enacted last year brought the largest changes to landlord tenant law in this state in over 40 years. Landlords are still adjusting to those changes. Landlords know that the prime sponsor can be trusted and are willing to come to the table on this piece of legislation.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; Mindy Woods, Resident Action Project; and Dinah Braccio, Tenants Union of Washington.

(Opposed) David Nagel.

(Other) Chester Baldwin, Washington Landlord Association.

**Persons Signed In To Testify But Not Testifying:** Don Casad; Jason Clifford, National Association for Rights Protection and Advocacy; Dawn Langston, Pettit Property Management; Paul Lombardi, Yakima Valley Landlords Association; Dale Olson; Jerry Rheault; Matthew Satter; and Charles Welle, Washington Landlord Association.