

HOUSE BILL REPORT

ESSB 5600

As Passed House - Amended:
April 12, 2019

Title: An act relating to residential tenant protections.

Brief Description: Concerning residential tenant protections.

Sponsors: Senate Committee on Housing Stability & Affordability (originally sponsored by Senators Kuderer, Das, Nguyen, Frockt, Cleveland, Darneille, Saldaña, Hasegawa, Wilson, C., Conway, Randall, Wellman, Keiser, Hunt, Pedersen and Liias).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/19/19, 3/28/19 [DPA].

Floor Activity:

Passed House - Amended: 4/12/19, 51-46.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Makes a number of changes to the Residential Landlord-Tenant Act, including:
 - affording tenants 14 days (up from three days) to comply with a notice to pay rent or vacate prior to commencement of an unlawful detainer action; and
 - authorizing the use of judicial discretion to issue a stay in unlawful detainer proceedings.
- Authorizes landlords in certain circumstances to seek payment of a judgment from the Landlord Mitigation Program Account.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. 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 2 members: Representatives Klippert and Shea.

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 1 member: Representative Irwin, Ranking Minority Member.

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. 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.

Unlawful Detainer.

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. The eviction summons must be substantially in the form specified in the RLTA. The return day for the tenant to respond with a Notice of Appearance and Answer may not be less than seven days nor more than 30 days from the date of service. Failure to respond constitutes a default.

In the event that a landlord, under the RLTA (or the Manufactured/Mobile Home Landlord Tenant Act), is unable to have the tenant personally served, the court may authorize alternative service that includes posting the summons and complaint in a conspicuous place and mailing. In such cases, the relief available is limited to restitution of the premises and no money judgment may be awarded.

A landlord prevailing in an unlawful detainer action is entitled to a judgment for restitution of the premises and, if there has been personal service, a judgment for any damages and rent found due. Additionally, the prevailing party in an unlawful detainer action may also be awarded costs and reasonable attorneys' fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after entry. During that time, the tenant or any subtenant or mortgagee or other party may pay into court for the landlord the amount of the judgment and costs, and the tenant shall be restored to the tenancy.

Landlord Mitigation Program.

In 2018 both the 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.

All of the remaining funds generated by the entire surcharge continue to be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities.

Subject to the availability of funds for this purpose, 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. up to \$1,000 for 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.

Claims must total at least \$500. Claims may exceed \$5,000, but reimbursement may not exceed that cap. Reimbursements are to be made on a first-come, first-served basis, to the extent of available funds. Commerce must make best efforts to notify a tenant of the amount and reason for reimbursement.

A landlord in receipt of reimbursement from the Program is prohibited from taking legal action against the tenant for damages attributable to the same tenancy, or from pursuing

collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy. If a landlord is denied reimbursement from Commerce, he or she may seek a court judgment for the damages and, if successful, may resubmit a claim for damages supported by the judgment.

Summary of Amended Bill:

Residential Landlord-Tenant Act.

Provisions in the Residential Landlord-Tenant Act (RLTA) are amended. Most of these changes relate to unlawful detainer actions for failure to pay rent.

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 payments, damages, legal costs, or other fees, including attorneys' fees. Except as provided in the section governing unlawful detainer court proceedings, 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 payments, legal costs, or other fees, including attorneys' fees. A landlord who has provided an installment payment plan for nonrefundable fees or deposits may treat a tenant's default on such a payment as rent owing.

Unlawful Detainer for Failure to Pay Rent.

A tenant is liable for unlawful detainer when he or she continues in possession after a default in rent, and after a 14-day (up from three-day) notice to pay rent or vacate has been served, and has remained uncomplied with for the period of 14 days after service. A new 14-day notice to pay or vacate form is codified in statute, and notices are required to be substantially in this form. The Office of the Attorney General (AGO) is required to:

- produce and maintain, on its website, translated versions of the 14-day notice in the top 10 languages spoken in the state; and
- provide, on its website, information on where tenants can access legal or advocacy resources.

In the event that a judgment is rendered against the tenant in an unlawful detainer proceeding, late fees may be assessed if such fees are due under the lease and do not exceed \$75 in total.

When the tenant is liable for unlawful detainer after default in the payment of rent, execution upon the judgment shall not occur until the expiration of five court days (rather than five days) after the entry of the judgment. Before such time, the tenant or others on his or her behalf may pay into court or to the landlord the amount of the rent due, any court costs incurred, late fees if the fees are due under the lease and do not exceed \$75 in total, and

attorneys' fees if awarded, in which case any judgment entered shall be satisfied and the tenant restored to the tenancy. A tenant shall pay an additional \$50 for each time the tenant was reinstated after judgment within the previous 12 months prior to payment. Once the judgment is satisfied, the landlord must file a satisfaction of judgment.

New provisions are added which allow for, and prescribe a process for, a tenant against whom a judgment has been entered for the restitution of the premises and forfeiture of the tenancy due to nonpayment of rent to obtain a stay of the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. A request for a stay may be considered at the time of the show-cause hearing or trial, or upon subsequent motion of the tenant but before the execution of the writ of restitution.

A court may issue an ex parte stay provided that a declaration is submitted indicating that good faith efforts were made to notify the landlord or, if no efforts were made, why notice could not be provided prior to the application, and describing the immediate or irreparable harm that may result if an immediate stay is not granted.

In making a determination with respect to a stay, the court is to consider several factors including the tenant's willful or intentional default, whether nonpayment was caused by exigent circumstances beyond the tenant's control, the tenant's conduct, and hardship on the tenant if evicted. The tenant bears the burden of proof for such relief.

A number of conditions and requirements with respect to such a stay are specified, including:

- The court shall not stay the writ of restitution more than 90 days from the date of the stay order, but may order repayment of the judgment balance within such time.
- The court shall require the tenant to pay to the landlord or to the court one month's rent within five court days of issuance of the stay order.
- The sheriff may serve the writ of restitution before expiration of the five court days following issuance of the stay order; however, the sheriff shall not execute the writ of restitution until after expiration of the five court days in order for payment of one month's rent to be made by the tenant. In the event that the payment is made, the court shall stay the writ ex parte without prior notice to the landlord upon the tenant filing and presenting a motion to stay with a declaration of proof of payment.

If the tenant pays the one month's rent but subsequently defaults on the payment plan, the landlord may enforce the writ of restitution after serving a notice of default. The form of the notice of default is prescribed. Upon service of the notice of default, the tenant has three calendar days to vacate before the sheriff may execute the writ.

If a tenant seeks to satisfy a condition related to a stay by relying on an emergency rental assistance program provided by a government or nonprofit entity, the court shall stay the writ of restitution as necessary to afford the tenant an equal opportunity to comply.

A tenant who has been served with three or more notices to pay or vacate within 12 months prior to the notice to pay or vacate upon which the unlawful detainer proceeding is based is prohibited from seeking a stay.

Attorneys' Fees.

Some limitations are placed on the court's authority to award reasonable attorneys' fees. The court is not to award such fees if a judgment restoring possession of the property to the landlord is entered after the tenant has failed to appear in the proceedings or if the total amount of rent awarded in the judgment for rent is equal to or less than two months of the tenant's monthly contract rent or \$1,200, whichever is greater. If a tenant has filed a motion to stay a writ of restitution from execution, the court may only award attorneys' fees to the landlord if the tenant is permitted to be reinstated, and the fees are subject to repayment.

Landlord Mitigation Program.

With respect to any application for a stay, the court shall 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 for disbursement from the Landlord Mitigation Program (Program). 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; and
- directing the clerk to remit, without further order of the court, any future payments made by the tenant in order to reimburse the Department of Commerce (Commerce).

Nothing shall be deemed to obligate Commerce to provide assistance in claim reimbursement through the Program if there are not sufficient funds. If Commerce fails to disburse payment to the landlord within 30 days from submission of the application, the landlord may renew an application for a writ of restitution and for other rent owed by the tenant since the time of entry of the prior judgment. If Commerce does pay the landlord for the remaining or total amount of the judgment, the landlord shall file a satisfaction of judgment. In the event that a tenant defaults on a payment plan, a landlord is not prohibited from applying for reimbursement from the Program.

The statutes governing the Program are amended to provide that:

- Commerce must provide, on its website, a form for tenants and landlords to complete after a court order has been issued permitting the parties to apply for funds from the Program. The contents of the form are specified.
- Claims made to the Program under this new provision are not subject to existing Program requirements that claims must total at least \$500, and that claims may exceed \$5,000, but reimbursement may not exceed that cap.
- When a landlord has been reimbursed from the Program, the tenant shall reimburse Commerce by depositing the amount into the court registry and requesting an ex parte order that such funds be disbursed by the court clerk to Commerce.
- Commerce may deny an application made by a tenant who has failed to reimburse Commerce.

Claims made to the Program are exempt from post-judgment interest. If funds do not exist in the account, Commerce must create and maintain a waitlist and make distributions in the order claims were received. It is expressly stated that any claim is not an entitlement, and that payments shall only be made from the Program account. Commerce shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them regarding the provision or lack of provision of funds for reimbursement.

Miscellaneous Provisions.

A variety of other changes are made, as follows:

- The AGO may also produce and maintain on its website translated versions of common notices used in unlawful detainer actions, including those relevant to subsidized tenancies, low-income housing tax credit programs, or the federal Violence Against Women Act.
- The required contents of an eviction summons under the RLTA remain as is in current law; however, the summons form that is specified in statute is stricken, and a new form is set forth.
- The process for alternative service is amended to permit alternative means of service, without first requiring a court order so authorizing, when the landlord, after due diligence, is unable to personally serve the summons. "Due diligence" is met if the landlord attempts personal service on the tenant at least three times over the course of two days and at different times of the day. Before the entry of any judgment or issuance of a writ of restitution due to the tenant's failure to appear, the landlord shall provide the court with a declaration from the person or persons attempting service that describes the service achieved, and if by alternative service, that describes the efforts at personal service before alternative service was used and a declaration from the landlord stating his or her belief that the tenant cannot be found.
- Finally, RLTA terminology is amended to speak in terms of liability for, rather than guilty of, unlawful detainer. References in current law to "plaintiff" and "defendant" are changed to "landlord" and "tenant."

Appropriation: None.

Fiscal Note: Available. A new fiscal note was requested on March 28, 2019.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The House of Representatives has worked for many years on issues related to residential tenancies. The Senate recently established the Housing Stability and Affordability Committee. A work session held by that committee was an impetus behind this bill. The leading cause of homelessness is eviction, and the vast majority of those cases are for failure to pay. There are two goals behind this legislation: (1) to make sure people are housed; and (2) to make sure that landlords are paid. Under this bill, the required three-day notice to pay or vacate is extended to 14 days. Washington is an outlier in affording only three days. This is inhumane. Across the country, 26 states allow longer time. In some places, a tenant is afforded as much as 30 days. With a longer time, tenants are able to pay and landlords get paid. The notice to pay or vacate is made uniform and put on the website of the Office of the Attorney General in a variety of languages. This will allow landlords who do not want to hire an attorney the opportunity to avoid attorney costs associated with the notice. The notice will also provide the tenant with important information. The judicial discretion piece that is included is a compromise between landlords and tenants. There have been many stakeholder meetings since House Bill 1453 was heard. There have been concessions made,

improvements built in, and there is a new piece regarding the Landlord Mitigation Fund. There are some changes to the language that people are still working on. Strong tenant protections are important. A property manager, who has in the past been low-income herself, expresses support for the bill. Last year, the property manager had a tenant who had lost his job and could not pay the rent. By the end of the month, he had found another job and the property manager set him up on a payment plan. This bill will allow landlords to recover damages. According to the case law, the current three-day notice requirement refers to calendar days, not working days.

(Opposed) The landlord's concerns have not been addressed. There is already a delay for the landlords who have not been paid. The three-day notice to pay or vacate is issued on a weekday. Then, another six to eight days have to pass between serving a summons and complaint and getting into court. This bill will destroy the ability of landlords, who often allow their tenants to pay deposits over time, to get the deposits paid since any monies paid by tenants must first go to rent. Landlords will quit renting residential housing and rents will go up. Evictions cost landlords a lot of money and much heartache. The three-day notice is necessary. Landlords rely upon the rental income. They have mortgage payments to make. Even with a three-day notice, a landlord may lose \$3,500 to \$4,800 before the whole eviction process is complete. With a 14-day notice, those losses will be in the neighborhood of \$6,000 to \$6,500. A 14-day notice will make it so the attorney will not be able to get a case heard during the first month of nonpayment. Landlords do try to help tenants. Some landlords report offering tenants relocation money when they cannot afford to pay the rent, but the tenants still cannot afford to move. Another landlord with disabilities reported that the money from her two rental houses provides her retirement income. Even one bad tenant can cost the landlord thousands of dollars. In one instance, a tenant who lived in the rental unit just two months caused a tremendous amount of damage and brought dogs and cats and extra people into the rental unit. This bill will just make it more expensive to get bad tenants out.

Extending the three-day notice to 14 days will tie those landlords' hands who want to help tenants. The judicial discretion piece undermines the rule of law. Landlords already have the authority to issue a no-cause 20-day notice. Rental income can be a landlord's only source of income. Landlords frequently have mortgages on their properties that they have to pay. Banks are not sympathetic, and failure to pay on a mortgage can mean a hit to the landlord's credit or it can mean losing the property. The three-day notice is only the first step. An eviction already takes at least one month and costs at least \$1,000 in attorneys' fees. One landlord already gives tenants five days, and opposes giving them 14 days. These 14-day notices will have to be handed out on the second of the month in order to get into court in the same month. A landlord who has owned 17 rental units for 40 years reports evicting only four tenants during that timeframe, and in none of those four cases were the tenants told to vacate in just three days.

(Other) The clerks request some language changes. That language will be provided. The landlords have worked with stakeholders on this bill in order to at least come to neutral. There are still concerns regarding the 14-day pay or vacate notice. And, there is a need for continued work to figure out the pieces of this bill related to the Department of Commerce, the Landlord Mitigation Program, and the courts.

Persons Testifying: (In support) Senator Kuderer, prime sponsor; Michele Thomas, Washington Low Income Housing Alliance; Aley Thompson, Association of Washington Housing Authorities; Tara Nelson; and Edmund Witter, King County Bar Association.

(Opposed) Robert Richmond; Jane Totten; Kelvin Barton; Patti Barton; Michael Gustavson, Washington Landlord Association; John Gipson; Doug Neyhart; and Curtis Bidwell.

(Other) Kyle Woodring, Rental Housing Association of Washington; and Michael Shaw, Washington Association of County Clerks.

Persons Signed In To Testify But Not Testifying: Tedd Kelleher; and Deborah Bermudez.