

SENATE BILL REPORT

ESHB 2535

As Passed Senate - Amended, March 3, 2020

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

Committee Activity: Financial Institutions, Economic Development & Trade: 2/25/20, 2/27/20 [DPA].

Floor Activity:

Passed Senate - Amended: 3/03/20, 48-1.

Brief Summary of Engrossed First 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.
- Provides that 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.
- Allows a landlord to serve a notice to pay rent or vacate at any point after the rent becomes due.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

Majority Report: Do pass as amended.

Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Wilson, L., Ranking Member; Braun, Das, Ericksen and Hobbs.

Staff: Clint McCarthy (786-7319)

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.

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 they know to be prohibited, the tenant may recover actual damages together with statutory damages not exceeding \$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. A tenant's right to possession of the premises may not be conditioned on the payment of any amount other than rent. 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 they continue 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 First Substitute Bill: The RLTA 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. 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. 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. Tenants may propose altering due date for rent to a different date

if it relates directly to a regular, monthly source of governmental assistance that is not received until after the date rent is due as long as the due date is no more than five days later than the due date in the rental agreement.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Not all landlords start charging fees the day after rent is due. This is a bill intended to keep everyone honest. This bill does not have anything to do with the "Just Cause" issue. All your credit cards have a grace period. Our mortgages have grace periods. These are common in rental agreements as well. A lot of rental agreements have a five day grace period built in, but they are not required. Mortgages have a ten day grace period, so landlords would not be materially affected by this change. A lot of people on fixed income receiving benefits for federal disability payments where the timing does not quite align with having funds available on the first of the month. This is a simple but important change. Tenants with means cannot always pay the day that rent is due. It is wrong for low income people to have to pay a monthly penalty when their income stream doesn't allow for a perfectly timed payment. Fees are a growing problem across Washington State, and this is a necessary change to give tenants flexibility.

Persons Testifying: PRO: Representative Steve Kirby, Prime Sponsor; Dinah Braccio, Tenants Union of Washington State; Xochitl Maykovich, Washington Community Action; Sarah Nagy, Columbia Legal Services; Michele Thomas, Washington Low Income Alliance; Brett Waller, Washington MultiFamily Housing Association.

Persons Signed In To Testify But Not Testifying: No one.