

SENATE BILL REPORT

ESSB 5600

As Amended by House, 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: Housing Stability & Affordability: 1/28/19, 2/18/19 [DPS, DNP].

Floor Activity:

Passed Senate: 3/09/19, 31-15.

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

Brief Summary of Engrossed First Substitute Bill

- Extends the 3-day notice to pay and vacate for default in rent payment to 14 days notice for tenancies under the Residential Landlord-Tenant Act.
- Creates a uniform 14-day notice to pay and vacate that includes information on how tenants can access legal and advocacy resources.
- Requires the Attorney General's Office to provide translated versions of the uniform 14-day notice on its website in at least the top 10 languages used in the state.
- Requires a landlord to first apply any tenant payment to rent before applying the payment toward other charges.
- Requires a tenant to pay into court or to the landlord upon judgment for default in the payment of rent within five court days any rent due, any court costs incurred at the time of payment, late fees that may not exceed \$75 in total, and attorneys' fees if awarded, to be restored to his or her tenancy.
- Provides requirements and limitations on the award of attorneys' fees under unlawful detainer actions, based on the amount of rent awarded in the judgment and on whether the tenant or landlord prevails at a hearing where judicial discretion is exercised.

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.

- Provides the court with discretion to provide relief from forfeiture or to stay a writ of restitution based upon the required consideration of certain factors and with the burden of proof for relief on the tenant.
- Expands eligibility of the Landlord Mitigation Program to include landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

Majority Report: That Substitute Senate Bill No. 5600 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Darneille and Saldaña.

Minority Report: Do not pass.

Signed by Senators Zeiger, Ranking Member; Fortunato and Warnick.

Staff: Brandon Popovac (786-7465)

Background: Residential-Landlord Tenant Act. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, and remedies for violations of the RLTA. The RLTA covers a wide variety of other issues governing the landlord-tenant relationship, including:

- landlord and tenant obligations if the tenant fails to pay rent owned to the landlord and remains uncompliant if after a notice period of three days and the resulting unlawful detainer court process;
- how and when a tenancy terminates; and
- the alternative means to serve an evictions summons on a tenant, including the required court form for such summons.

Some issues not covered under the RLTA include how rent is defined, how and when landlords apply tenant payments to rent or other costs and fees, and how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving the non-payment of rent.

Landlord Mitigation Program. The Landlord Mitigation Program allows landlords to seek reimbursement for claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program by submitting such claims to the Department of Commerce (Commerce). The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days' rent loss, and up to \$5,000 in qualifying damages caused by a tenant during the tenancy. Any landlord that has screened, approved, and offered rental housing to any applicant that will be using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities.

Summary of Engrossed First Substitute Bill: For tenancies under the RLTA, a landlord must provide a tenant 14 days notice instead of 3 days notice in order to cure default in the payment of overdue rent. A uniform 14-day notice to pay and vacate for default in the payment of overdue rent is created that delineates what amounts are owed to the landlord and contains information about where to find legal or advocacy resources and the tenant's right to interpreter services at court. The Attorney General's Office (AGO) must produce and maintain on its website translated versions of the 14-day notice in the top ten languages spoken in Washington State and, at the discretion of the AGO, other languages. From the website, the notice must be made available in printable form on one 8.5 by 11 inch paper in an easily readable font size. The AGO must also provide on its website information on where tenants can access legal or advocacy resources and which cultural organizations can provide assistance in the primary language of the tenant.

Landlords must first apply any payment by a tenant to the rent amount before applying it toward other charges. A tenant's right to possession of the premises may not be conditioned upon tenant payment or satisfaction of any monetary amount other than rent, but landlords may still pursue other lawful remedies to collect late payments, costs, or other fees. "Rent" is defined to mean recurring and periodic charges identified in the rental agreement for use and occupancy of premises, including any charges for utilities, and expressly excludes non-recurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees such as attorneys' fees.

When the tenant is liable for unlawful detainer after a default in the payment of rent, the tenant must pay into court or to the landlord upon judgment for such default within five court days any rent due, any court costs incurred at the time of payment, late fees that may not exceed \$75 in total, and attorneys' fees if awarded, to be restored to their tenancy. The tenant must pay an additional \$50 in late fees for each prior reinstatement of tenancy that occurred within the previous 12-month period.

The court may not award attorneys' fees when judgment is entered after default for failure to appear if the total amount of rent awarded in the judgment is equal to or less than two months of the tenant's monthly contract rent or is less than \$1,200. The court may award attorneys' fees only if the tenant prevails on the motion to stay a writ of restitution based on judicial discretion, and such fees may be included as a part of the tenant's right to reinstatement. However, the court may not award attorneys' fees against the tenant if the landlord prevails on the tenant's motion to stay a writ of restitution based on judicial discretion.

The court, at the show cause hearing or at trial, or upon a subsequent motion of the tenant, may provide relief from forfeiture or to stay a writ of restitution upon good cause and based on what is deemed fair and just to both parties, following the entry of judgment for the landlord over the tenant, based upon the consideration of factors that include:

- evidence or lack thereof of tenant's willful or intentional default or failure to pay rent;
- payment history of the tenant;
- ability of tenant to timely pay judgment;
- evidence that nonpayment was caused by exigent circumstances beyond tenant's control and are not likely to recur;
- if tenant is otherwise in substantial compliance with the lease;
- relative burden on parties if tenancy is reinstated or not;

- conduct related to other notices served with a notice to pay and vacate regardless if other notices were part of the court's judgment; and
- whether the landlord can obtain disbursement from the Landlord Mitigation Program.

The tenant has the burden of proof to be granted relief from forfeiture, and if relief is sought at the time of the show cause hearing the court must hear the matter at that time or as soon as possible to avoid unnecessary delay or hardship.

The court may sever any or all of the monetary judgment based on judicial discretion, the landlord may still pursue other lawful remedies to collect on the remainder of the judgment. A tenant who has been served with three or more notices to pay or vacate within 12 months prior to the current notice to pay or vacate may not seek relief under judicial discretion

The court may issue an order upon use of judicial discretion that may include the payment or severing of all or part of the monetary judgment, but affirms that any severing of the judgment does not preclude the landlord from pursuing other lawful remedies to collect the remainder of the judgment. In such an order:

- the court may not stay the writ of restitution more than three months from the date of judgment, but may order repayment of the balance within such time;
- the court must require the tenant to pay the landlord or into the court one month's rent within five court days of the order, and the sheriff may serve the writ of restitution in case of default but may not execute the writ until after expiration of five court days;
- the writ of restitution must be stayed if timely repayment of the balance is made by the tenant, but if the tenant is in default, the sheriff must serve the writ again before execution or the landlord must serve a notice of default indicating the tenant has three calendar days to vacate the premises before execution of the writ;
- a tenant who seeks to satisfy the repayment conditions under the order by relying on emergency rental assistance from a government or nonprofit entity may stay the writ of restitution by providing sufficient documentation to readily pay any balance set forth in the order;
- the court may order payment to be made directly to the landlord or landlord's agent if payment to the court cannot be made by the tenant; and
- the court must extend the writ as necessary to enforce the order in case of default.

Eligibility of the Landlord Mitigation Program is expanded to include landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs. Specifically, if, at a hearing where judicial discretion is exercised following the entry of judgment for the landlord, the landlord indicates that the landlord will submit an application to the Landlord Mitigation Program to satisfy the outstanding judgment, the court must restore the tenancy, issue an order sustaining the judgment and denying or vacating the writ of restitution, and indicate that the landlord is entitled to disbursement from the Landlord Mitigation Program for the amount entered within the judgment subject to available appropriated funds. A landlord may renew an application for a writ of restitution if Commerce fails to disburse payment under the program to the landlord. Any payment by Commerce to the landlord for the judgment amount satisfies the judgment. A tenant has three months to repay the disbursement made to the landlord based on the judgment back into the court registry. The court must forward such

funds to Commerce. The tenant or other interested party may seek an ex parte order of the court to order such funds be disbursed by the court.

The eviction summons form is modified to include the following changes:

- how tenants can receive assistance by calling 2-1-1, which can refer the tenant to legal aid or assistance to help pay for a lawyer;
- how tenants should respond via a notice of appearance and how to file a response to the court;
- to whom tenants should respond, either the landlord's lawyer or to the landlord if a lawyer is not named on the complaint, and the method of response; and
- by when tenants should respond, with warnings and consequences if the tenant does not respond.

The alternative means of service of process for landlords is modified by requiring the landlord, before entry of judgment or issuance of a writ of restitution based on the tenant's failure to appear, to provide the court with an affidavit by the person attempting service that: describes the personal service achieved or the efforts at personal service using the alternative process and an affidavit by the landlord or their agent or attorney stating the belief the tenant cannot be found. Due diligence by the landlord under such alternative means of service is met when the landlord attempts personal service on the tenant at least three times over not less than two days and at different times of the day.

Conforming amendments are made to address conflicts or inconsistencies under the RLTA, including the removal of a requirement for a bond to be posted before a judge may hear a tenant's case to seek relief under judicial discretion and modifying references to tenants and landlords where appropriate.

The act is null and void if funding is not provided in the capital or omnibus appropriations act for the 2019-2021 fiscal biennium.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a need to overhaul our statewide approach to housing and homelessness by focusing on prevention as opposed to being primarily reactive. Inflexible eviction policies are a major source of housing instability around our state. If we are serious about long-term prevention, we must address this primary driver of homelessness. Currently, 26 states and the District of Columbia have pay or vacate notice periods longer than three days, including some with a 14-day notice. Washington State is outside the norm and for individuals living paycheck to paycheck, which is now nearly half of all Americans, these extensions of notice matter. We should also offer

resources, flexibility, and compassion to help since one unexpected medical bill or car accident or government shutdown can lead to an eviction.

The bill gives tenants more time to pay rent although 21 days would probably be best to a deal with most medical emergencies since it can take several weeks or even months to heal and be able to deal with outside responsibilities, like paying rent. Housing stability is crucial for healing. Emergencies happen to everyone at all income levels and we all need flexibility to deal with emergencies.

Over three quarters of tenants in the city of Seattle who received notices to pay and vacate for failure to pay rent ended up vacating their apartments. The leading cause for eviction in a recent survey revealed tenants were behind a month or less on rent and most of those tenants were either in western Washington, but not Seattle, or in eastern Washington. The reforms in the bill are not going to increase housing costs. Some landlord will apply rent payments to overdue utilities instead of rent. The rental system is literally designed to kick people when they are down; in contrast, when a homeowner becomes delinquent on their mortgage payment, they have at least 90 days before issuance of a notice of default. Our eviction system is a complete mismatch with homelessness interventions. There is not nearly enough time for a tenant to get rental assistance to their landlord before the costs and the risks escalate. Attempting to get legal aid might eat up two days so the current time period is not long enough. Once the paperwork is filed, the tenant is almost always forced to pay extremely expensive attorneys' fees in court costs as well as late fees. Some tenants might be lucky enough to get homelessness assistance to help pay off these costs. Ohio and New York City allow judges to consider circumstances as to why a tenant fell behind on rent.

Seventy-one percent of the lowest-income households in Washington State are paying over 50 percent of their income towards rent, which means that one small household crisis can lead to the inability to pay rent on the first of the month. Judges have little discretion over the process and tenants often leave court owing much more in court costs and attorneys' fees than they ever owed. The Legislature must seriously consider the significant race and gender issues at stake - female headed households and people of color are much more likely to face eviction in Washington State. Black women are four to five times more likely to face eviction. If we are going to get Washington State ahead of our homelessness crisis we must keep people in their homes and protect tenants. Over the past five years, 132,000 adults have had been formally evicted in Washington, which is 1.8 percent of the state's population. Informal evictions are even higher. Nine percent of the black adult population in King County has an eviction; in Pierce County, 17 percent of the black adult population has had an eviction. Across the state, women are evicted 50 percent more than men. Forty-six percent of renters are rent burdened. If we are going to get Washington State ahead of our homelessness crisis, we must keep people in their homes and protect tenants.

The number of individuals becoming homeless continues to outpace our efforts. Extending the current three-day notice to allow up to 14 days for rent to be paid would make a significant difference in preventing homelessness for these households. It is going to be adequate for the tenant to go to a program do the intake, verify the debt, contact the landlord, and make the payment. We also need to ensure all eviction notices have information about legal resources and we need to allow courts to come up with alternatives.

CON: The attrition rate of landlords show that they are getting out of the business because they can no longer afford it or handle the risk. Landlords are selling by the thousands in a market that is fairly high right now. This is going to devastate the amount of rental housing inventory. Landlords are also one medical trip to the hospital or one crisis away from having the same sort of issues as tenants. Many are struggling day to day as well.

Many landlord's profit-loss statement for one year does not show that they are making money. With property taxes and operating costs, landlords are just one late mortgage payment away from losing their building. By the time that tenant replies to a three-day notice, there is an additional ten days for them to come up with funds or work with the landlord, of which many do work with their tenants. Communication between the tenant and the landlord is critical. Many landlords do not want the vacant unit or have turnover costs, so landlords want to keep these tenants in the units and keep them maintained in a good working order. Some landlords offer payment plans or provide education information about the consequences of not paying rent.

There is concern that the remedies proposed in the bill may reduce a landlord's flexibility to work with tenants. Many of the remedies proposed may not actually address the true causes of homelessness or housing availability and affordability, which is more of a supply and demand issue. Landlords are not interested in arbitrarily terminating a tenancy since it costs money to do so. The Legislature should work with both landlords and tenants to create a regulatory environment that is fair and protective. The Legislature needs to put together a work group to look at all of the landlord-tenant bills and solve the issues before the end of this session. The plain language requirement for the 14-day notice should be written into statute. Lawyers should not have to argue in court as to whether or not a particular notice is in plain language.

Both the landlord and tenant lose if eviction notices have to be issued. Many landlords try to work with the tenant in multiple ways over an extended period of time and use eviction as a last case scenario. If the bill passes as is, all tenants will eventually absorb the resulting costs and unintended consequences. The bill would force landlords to stop working with tenants and immediately start the eviction process as a result of the increase in timeframes and costs. The three-day notice is only a nuclear option for some landlords. Most tenants respond when they get a three-day notice on their door. Extending the notice to 14 days is going to cause landlords to be more aggressive with tenants.

One alternative is to only allow a longer notice period for first-time late rent or fees. Language regarding a term lease not coming to an end is concerning. A lot of landlords own one single rental property but because of a work reassignment they have to rent out their home but plan to move back into it. Also, having a month-to-month renewal on fixed-term leases is difficult for landlords of student housing since the transition of students year after year without automatic renewal allows students to know that housing will always be available. Language regarding the provision of written estimates for move-out costs is also concerning. Some repairs are custom jobs and not done through a vendor. There needs to be a distinction made between single family homes versus a one thousand unit apartment community. It is problematic to have the same rules apply to very different types of rental housing.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Gina Owens, citizen; Xochitl Maykovich, Political Director, Washington Community Action Network; Justin Gifford, Physician's Assistant; KeAndra Radchenko, citizen; Michele Thomas, Washington Low Income Housing Alliance; Colleen Mancino, citizen; Dinah Braccio, Tenant's Union; Edmund Witter, King County Bar Association; Tim Thomas, Moore-Sloan and WRF Data Science Fellow at University of Washington; Renee Kimball, citizen; Mark Chattin, CCS Tenant Law Center; Mary Jo Shannon, St. Vincent de Paul Society of King County; Keilani Luxmore, Washington Community Action Network; Kelly Rider, King County—Department of Community & Human Services.

CON: Chris Dobler, citizen; Jennifer Wamboldt, citizen; Kaitlyn Jackson, citizen; Rob Trickler, Washington Landlord Association; Errin Reynolds, Washington Landlord Association; Duncan Green, citizen; Joseph Fisher, citizen; Cory Brewer, citizen; Bryant Casal, citizen; David Nagel, citizen; Joseph Puckett, citizen; Melissa Koenig, citizen; Steve Williams, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Lindsey Grad, SEIU Healthcare 1199NW; Laura Downing, Parents Organizing for Welfare and Economic Rights; Sarah Nagy, Staff Attorney, Columbia Legal Services; Kim Thornton, citizen; Violeta Sialer, Washington Community Action Network; John Vanek, citizen; Melodie Clark, Real Change.

CON: Chrysztyna Rowek, Northwest Regional VP, National Association of Residential Property Managers; Dan White, Washington Landlord Association; Drew Mazzeo, citizen; Kristin Stewart, Windermere Property Management; Daren Rogers, D&L Properties; Cheryl Sesnon, Jubilee Women's Center.

OTHER: Lynn Kohner, citizen.

EFFECT OF HOUSE AMENDMENT(S):

- Adds an intent section.
- Modifies the 14-day uniform notice to pay or vacate for default in payment of rent and/or utilities to:
 1. include recurring or periodic charges, as appropriate, with itemized amounts owed for rent, utilities, and recurring or periodic charges identified in the lease; and
 2. refer to service rather than receipt as the date from which the 14-day period begins to run.
- Provides that the 14-day notice to pay or vacate form does not abolish any additional notice requirements to tenants as required by federal, state, or local law.
- Permits the Office of the Attorney General to produce and maintain on its website translated versions of other notices, in addition to the 14-day notice to pay or vacate.
- Modifies the definition of "rent" to mean recurring or periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities.
- Provides an exception within the definition of rent to encompass deposits in situations in which, at the inception of the tenancy, the landlord has allowed the tenant to pay any non-refundable deposits or fees in installments, and permits the landlord to treat a failure to pay such deposits and fees as a failure to pay rent.

- Revises the factors that the court must consider in determining whether to stay or vacate the writ of restitution for good cause (judicial discretion) to focus entirely upon the tenant and his or her circumstances.
- Creates a payment plan process if judicial discretion is exercised, addressing the timing and amount of payments and tenant options depending on the date of the court order.
- Provides that any court order staying a writ of restitution after the tenant's payment of one month's rent must require the tenant to serve a copy of the order on the landlord, and specifies how a tenant is to serve a landlord with such an order.
- Prescribes a notice of default in statute which a landlord may serve upon a tenant if the tenant defaults on a payment plan, and provides the tenant with three calendar days from date of service of the notice of default to vacate the premises before execution of the writ of restitution.
- Authorizes the court to issue an ex parte stay of a writ of restitution sought by a tenant if the tenant or tenant's attorney indicates good faith efforts were made to notify the other party, why notice could not be provided if no efforts were made, and describes the harm that may result if an immediate stay is not granted.
- Provides that the court's exercise of judicial discretion to issue a stay of the writ of restitution does not obligate Commerce to provide assistance in claim reimbursement through the Landlord Mitigation Program (LMP) if there are not sufficient funds.
- Clarifies that the court after a finding that the tenant is low-income, has limited resources, or is experiencing hardship may find that the landlord may apply for reimbursement from the LMP.
- Provides that reimbursement claims under the LMP:
 1. may include the unpaid portion of a judgment on which the tenant has defaulted;
 2. are exempt from post-judgment interest;
 3. are not an entitlement;
 4. may only be paid from the LMP account.
- Requires that a landlord submitting a reimbursement claim to which the tenant has not added their signature must attest to the amount of money owed and sign under penalty of perjury.
- Removes language regarding the durability of reimbursement claims, and provides that if funds do not exist in the LMP account, Commerce must create and maintain a waitlist and make distributions in the order claims are received.
- Provides that Commerce may not be civilly or criminally liable or have any penalty or cause of action of any nature arise against them regarding the provision or lack of provision of funds for LMP claim reimbursement.
- Tasks Commerce with providing for an LMP claim form on its website.
- Provides that when a landlord has been reimbursed from the LMP account, Commerce shall notify the tenant regarding reimbursing the LMP account.
- Authorizes landlords to renew an application for writs of restitution if Commerce fails to disburse payment to the landlord within 30 days of application to the LMP.
- Authorizes Commerce to deny an LMP application made by a tenant if the tenant has failed to reimburse Commerce for prior payments issued under the LMP.
- Sets forth the criteria for an award of reasonable attorneys' fees where the court has entered a judgment in favor of the landlord restoring possession of the property or if the tenant has filed a motion to stay a writ of restitution from execution, and clarifies that the limitations with respect to an award of reasonable attorneys' fees are not applicable to an award of statutory costs.

- Provides that due diligence under the alternative means of service is met when the landlord attempts personal service on the tenant at least three times over not less than two days and at different times of the day.