

# HOUSE BILL REPORT

## ESSB 5197

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### As Passed House - Amended:

April 7, 2023

**Title:** An act relating to addressing landlord-tenant relations by providing technical changes to eviction notice forms and modifying certain eviction processes.

**Brief Description:** Addressing landlord-tenant relations by providing technical changes to eviction notice forms and modifying certain eviction processes.

**Sponsors:** Senate Committee on Housing (originally sponsored by Senators Kuderer, Saldaña, Frame, Nguyen, Nobles, Wellman and Wilson, C.).

### Brief History:

#### Committee Activity:

Housing: 3/14/23, 3/20/23 [DPA].

#### Floor Activity:

Passed House: 4/7/23, 57-40.

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

- Revises certain eviction processes under the Residential Landlord-Tenant Act, including allowing remote participation in eviction proceedings, extending certain timelines for satisfying an unlawful detainer judgment and for suspending court action, and specifying certain exceptions to the prohibition on seeking good cause judicial discretion by tenants who have received three or more pay-or-vacate notices in the preceding 12 months.
- Eliminates the requirement that landlords provide 14-day pay-or-vacate notices to dispute resolution centers upon expiration of the Eviction Resolution Pilot Program.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON HOUSING

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Bateman, Chopp, Entenman, Reed and Taylor.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Low.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Barkis and Hutchins.

**Staff:** Audrey Vasek (786-7383).

### **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, how and when a tenancy expires or may be ended, and remedies for violations of the RLTA.

#### *Eviction Proceedings for Nonpayment of Rent.*

A landlord subject to the RLTA may seek to evict a tenant for nonpayment of rent by bringing an unlawful detainer action in court if a tenant does not comply with a properly served 14-day notice to pay rent or vacate the premises. The 14-day pay-or-vacate notice must be in substantially the same form as provided in statute. If a court finds in favor of the landlord, the court must enter judgment against the tenant for restitution of the premises and damages in the amount of any rent due, any late fees due under the lease up to \$75 in total, and any attorneys' fees awarded by the court.

Execution of the judgment may not occur until five court days have expired after the entry of the judgment. If the tenant pays the amount of any rent and fees due before the five court days have expired, the judgment is satisfied and the tenancy is restored. Any tenant that seeks to restore the tenancy with funds acquired through an emergency rental assistance program provided by a governmental or nonprofit entity must provide a copy of the pledge from the appropriate governmental or nonprofit entity.

Before the expiration of any 14-day pay-or-vacate notice, a landlord must accept a pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity for the full amount of the rent owing under the rental agreement. After the expiration of the pay-or-vacate notice, a landlord must accept any written pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity if the pledge

will contribute to the total payment of both the rent due and any other required amounts.

A landlord must suspend any court action for seven court days after providing necessary payment information to the nonprofit or governmental entity to allow for payment of the emergency rental assistance funds. Once a judgment has been satisfied, a landlord must file a satisfaction of judgment with the court.

*Process for Seeking Good Cause Judicial Discretion to Stay a Writ of Restitution.*

Following the entry of a judgment against a tenant for restitution of the premises due to nonpayment of rent, at the time of the show cause hearing, trial, or upon motion of the tenant before the execution of the writ of restitution, the court may stay the writ of restitution upon good cause and on terms that the court deems fair and just for both parties. The burden of proof is on the tenant. In making this decision, the court must consider evidence of the following factors:

- the tenant's willful or intentional default or intentional failure to pay rent;
- whether nonpayment of the rent was caused by exigent circumstances that were beyond the tenant's control and are not likely to recur;
- the tenant's ability to timely pay the judgment;
- the tenant's payment history;
- whether the tenant is otherwise in substantial compliance with the rental agreement
- hardship on the tenant if evicted; and
- conduct related to other notices served within the last six months.

Specific requirements apply to an order staying a writ of restitution for good cause. The court must not stay the writ of restitution for more than 90 days. The court may order a payment plan for repayment of the judgment balance within that timeframe. If the payment plan exceeds 30 days, the total cumulative payments for each 30-day period following the order must be no less than the tenant's share of one month's rent. The total judgment and all additional rent due must be paid within 90 days.

Within any payment plan, the court must require the tenant to pay one month's rent within five court days of the issuance of the order. Additionally, under the payment plan, the tenant must remain current with ongoing rental payments as they become due. However, if the order is issued after the fifteenth of the month, the tenant must have the option to apportion the following month's rental payment within the payment plan. Afterwards, rental payments must be paid as they become due.

To allow time for the tenant to make the first payment of one month's rent, the sheriff must not execute the writ of restitution until five court days have expired after issuance of the order. If the tenant pays one month's rent within five court days and files a motion to stay the writ of restitution with a declaration of proof of payment demonstrating compliance with the payment plan, then the court must stay the writ of restitution without prior notice to the landlord. Any order staying the writ of restitution must require the tenant to serve a copy of the order on the landlord.

A court must stay a writ of restitution as necessary to allow a tenant who seeks to make payment through an emergency rental assistance program provided by a governmental or nonprofit entity with an opportunity to comply with the payment plan.

If a tenant pays one month's rent within five court days but defaults on a subsequent payment required by the plan, the landlord may enforce the writ of restitution by serving a notice of default informing the tenant that the tenant has defaulted on rent due under the lease agreement or payment plan. The tenant must have three calendar days from the date of service of the notice of default to vacate the premises before the sheriff may execute the writ of restitution. The notice of default must be in substantially the same form as provided in statute. The court must extend the writ of restitution as necessary to enforce the order in the event of default.

*Prohibition on Seeking Good Cause Judicial Discretion to Stay a Writ of Restitution.*

A tenant who has been served with three or more pay-or-vacate notices for nonpayment of rent within the preceding 12 months is prohibited from requesting that the court stay the writ of restitution for good cause.

Landlord Mitigation Program—Tenancy Preservation Program.

The Landlord Mitigation Program (LMP) allows landlords to seek reimbursement for unpaid rent, damages, and other costs by submitting a claim to Department of Commerce (Commerce) under several separate programs, including the Tenancy Preservation Program. Under the Tenancy Preservation Program, the following types of claims related to landlord mitigation are eligible for reimbursement from the LMP: unpaid judgments for rent, installment payment agreements, late fees, attorneys' fees, and other costs, including any unpaid portion of the judgment after the tenant defaults on a court-ordered payment plan.

In any action where a tenant seeks good cause judicial discretion to stay a writ of restitution, the court must issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship. After finding that the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order finding that the landlord is eligible to receive reimbursement on behalf of the tenant from the LMP. This order must be accompanied by a copy of the order staying the writ of restitution.

Commerce must provide forms on its website for tenants and landlords to apply for landlord reimbursement funds. Any claim for reimbursement must be accompanied by a court order staying the writ of restitution for good cause. If Commerce does not reimburse the landlord for the judgment within 30 days of application, the landlord may seek to renew the writ of restitution and seek any unpaid rent owed by the tenant since the time of entry of the prior judgment. Upon payment by Commerce to the landlord for the amount of the judgment, the judgment is satisfied and the landlord must file a satisfaction of judgment with the court.

The eviction moratorium instituted by Governor's proclamation 20-19.6 ended on June 30, 2021. For the period that extended one year beyond the expiration of the eviction moratorium, if a tenant sought to reinstate the tenancy by demonstrating an ability to pay by means of disbursement through the LMP account:

- tenants who were served with three or more pay-or-vacate notices for nonpayment of rent in the preceding 12 months were not prohibited from seeking good cause judicial discretion to stay a writ of restitution; and
- reimbursement to the landlord from the LMP account was authorized for up to three months of prospective rent to stabilize the tenancy as determined by the court.

#### Eviction Resolution Pilot Program.

In 2020 the Washington State Supreme Court issued an order authorizing an Eviction Resolution Pilot Program (ERPP) in the superior courts. Six counties were selected to participate in the ERPP. Each ERPP operates in accordance with the court enabling order and a standing order of the local superior court. These orders require landlords to undertake efforts to engage tenants in pre-filing resolution efforts, including direct negotiation, facilitated conciliation services, and upon agreement of both parties, formal mediation provided by the participating dispute resolution center (DRC). Eligible cases are those where nonpayment of rent or noncompliance with previously agreed upon payment plans are the primary reason for the decision to evict.

In 2021 the Legislature passed Engrossed Second Substitute Senate Bill 5160, which in part required the Administrative Office of the Courts to contract with DRCs within or serving each county to establish a two-year, statewide court-based ERPP in accordance with the state supreme court order. Before filing an unlawful detainer action for nonpayment of rent, landlords must provide a 14-day pay-or-vacate notice and an additional notice to the tenant informing them of the ERPP. Landlords must also secure a certification of participation with the ERPP by the appropriate DRC before an unlawful detainer action for nonpayment of rent may be heard by the court. The legislatively created two-year, statewide ERPP is set to expire July 1, 2023.

Upon expiration of the ERPP, a landlord must provide a 14-day pay-or-vacate notice to the DRC located within or serving the same county as the dwelling unit. It is a defense to an eviction action for unlawful detainer of the premises that a landlord did not provide the required notice to the local DRC. Once notice is received from the landlord, the DRCs are encouraged to notify the Housing Justice Project or Northwest Justice Project located within or serving the same county as the DRC.

#### **Summary of Amended Bill:**

##### Remote Participation in Eviction Proceedings.

In any forcible or unlawful detainer proceeding, also known as an eviction proceeding, hearings may be conducted remotely. At the court's discretion, parties, witnesses, and others may attend a hearing in person or remotely, including by telephone, video, or other

electronic means where possible. The court must grant any request for a remote appearance unless the court finds good cause to require in-person attendance or attendance through a specific means. Courts must require assurances of the identity of persons who appear remotely. Courts may not charge fees for remote appearances. Courts must provide instructions for remote access either on the official court website or in writing directly to the party requesting to appear remotely, or both. Any party must be permitted to make an emergency application by phone or video conference and file emergency application documents remotely.

Timeline for Satisfying an Unlawful Detainer Judgment.

If a tenant provides a pledge of financial assistance letter from a governmental or nonprofit entity, the tenant has until the date of eviction, instead of until the expiration of five court days after entry of an unlawful detainer judgment, to satisfy the judgment and be restored to the tenancy.

Timeline for Suspending Court Action for Emergency Rental Assistance Funds.

A landlord must suspend court action for 14 days, instead of seven days, to allow for payment of emergency rental assistance funds from a governmental or nonprofit entity that has pledged financial assistance to the tenant.

Exceptions to Prohibition on Seeking Good Cause Judicial Discretion to Stay a Writ of Restitution.

The prohibition on seeking good cause judicial discretion to stay a writ of restitution by tenants who have been served with three or more notices to pay or vacate for nonpayment of rent in the preceding 12 months does not apply if a court determines that any of the pay-or-vacate notices served were invalid or otherwise not in compliance with the requirements of the RLTA.

Additionally, the following exception to the prohibition is extended permanently: if a tenant demonstrates an ability to pay through the Tenancy Preservation Program, the prohibition does not apply, and reimbursement to the landlord from the LMP account may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

Requirement to Provide 14-Day Pay-or-Vacate Notices to Dispute Resolution Centers.

The requirement that a landlord must provide a 14-day pay-or-vacate notice to the local DRC, which is set to take effect upon expiration of the ERPP on July 1, 2023, is eliminated.

**Appropriation:** None.

**Fiscal Note:** Available.

**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) The bill reflects a lot of amendments from stakeholders, including both landlords and tenants. Focusing on two of the most important parts of this bill, these provisions permit a tenant who relies on rental assistance to be able to stop the eviction up to the date of eviction if the rental assistance can pay the entirety of the judgment to the landlord. This gives rental assistance programs time to process payments to the landlord and ensure they can function within the very tight eviction timelines that already exist. The bill would also give rental assistance programs additional time to process payments, from seven court days to 14 court days. That additional time is critical. Under current law, if a tenant receives help from a government or nonprofit agency that can pay the landlord the rent, costs, and fees owed, the rental assistance program must be able to process that payment within seven court days of receiving the payment information from the landlord. This could include where to send a check, how much is owed, and making sure all those fees are valid. It can be very impractical for the program to deliver that check within seven days, especially where a landlord resides out of state. This bill will make a modest change from seven to 14 days to allow for additional processing time so that these programs can work, and so that ultimately the landlords can be made whole and the tenants can keep their housing.

One of the biggest barriers for low-income persons going through the unlawful detainer process is simply the ability to participate by getting into court. Additionally, the number of courts that currently have electronic filing is greatly outweighed by those that do not. Section 1 of the bill helps reduce this barrier by allowing people to appear remotely. Not only will this bill allow tenants to appear remotely if they are in a rural area that has limited access to public transportation, it is also going to expand the ability for attorneys to appear in legal deserts where there are low numbers of available advocates. This will help reduce the barrier to appear, be heard, and participate in the judicial process.

(Opposed) None.

**Persons Testifying:** Edmund Witter, King County Bar Association; and Adam Paczkowski, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying:** None.