

HOUSE BILL REPORT

SHB 1865

As Passed House:

March 7, 2007

Title: An act relating to limiting the obligations of landlords under writs of restitution.

Brief Description: Limiting the obligations of landlords under writs of restitution.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Williams, O'Brien, Springer, Fromhold, Warnick and McCune).

Brief History:

Committee Activity:

Judiciary: 2/13/07, 2/21/07 [DPS].

Floor Activity:

Passed House: 3/7/07, 97-0.

Brief Summary of Substitute Bill

- Provides explicitly that a landlord, when evicting a tenant, has the option of either storing the property or placing the property onto the nearest public property.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Trudes Tango (786-7384).

Background:

The Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes the duties and liabilities of the parties, and provides procedures for each side to enforce its rights.

The RLTA provides a court process, called an unlawful detainer action, by which a landlord may evict a tenant from the premises. The landlord must serve the tenant with a summons and

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complaint of the unlawful detainer action, which must designate a specific date by which the tenant must respond. The landlord may also request a show cause hearing directing the tenant to appear in court and show why a writ of restitution (an order directing the sheriff to physically evict the tenant) should not be issued.

If the court issues a writ of restitution, the sheriff must deliver a copy of the writ to the tenant, informing the tenant that he or she can be physically removed from the premises after a certain date. The sheriff must also give the tenant a written notice informing the tenant what can happen to the tenant's personal property if it is not removed by the date of the eviction.

When the sheriff executes the writ, the landlord may enter and take possession of the tenant's property left on the premises and store the property in any reasonably secure place. If the tenant objects to the storage of the property, the landlord must deposit the property onto the nearest public property. If the tenant is not present at the time of eviction, it is presumed that the tenant does not object to storage.

The tenant is liable for the actual or reasonable moving and storage costs, whichever is less. After notice to the tenant, the landlord may sell the tenant's property, apply any income from the sale to the costs of moving and storage, and then must hold any excess income from the sale for the tenant up to a year. If the tenant does not claim the remaining income within a year, the landlord must treat it as abandoned property and deposit it with the Department of Revenue.

Recently, the Washington Court of Appeals interpreted the statute to mean that a landlord has an affirmative duty to store the tenant's property upon the execution of a writ of restitution unless the tenant objects to the storage. Up until this decision, the practice in some jurisdictions was to, at the landlord's discretion, either store the property (absent any objection from the tenant) or deposit the tenant's property onto public property.

Summary of Substitute Bill:

The statute is amended to make it explicit that, upon the execution of a writ of restitution, a landlord may either store the tenant's property (absent any objection from the tenant) or deposit the property onto the nearest public property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The intent of the original 1992 legislation was to provide a mechanism for landlords to recover costs of storage if the landlord opted to store the tenant's property. Most

landlords and sheriffs have been operating under the belief that landlords had no affirmative duty to store a tenant's property. This new duty to store property is very expensive and burdensome on landlords. The Washington Court of Appeals case also creates a risk that landlords will be subject to conversion actions and claims of inappropriate handling of the tenant's property. The tenant has already gone through the unlawful detainer process and has received many notices to leave the premises. Requiring storage will increase the costs imposed on landlords, which will eventually result in higher rent to the tenants. Landlords will have to arrange for storage and transportation before the eviction and provide for more manpower to carefully pack up a tenant's property. Requiring landlords to store property only extends the already problematic relationship that exists between the tenant and landlord. If tenants are unable to pay rent, they will not be able to pay the storage costs to get their property back.

(Opposed) This bill is premature and unnecessary. The court case did not make new law. One scholar on real property wrote in a treatise that the 1992 statute created a duty on landlords to store a tenant's property. The court looked at the plain language of the statute and found that it was not ambiguous. The court also considered the public policy of requiring storage. Other jurisdictions require landlords to store property. Most tenants move their property out themselves. Some tenants will abandon their property, and there is a specific statute to address those situations. When a tenant's property is left on the curb, the property is often stolen or damaged. The tenant's property includes family keepsakes and family photos that can be stolen. When evicted, the tenant loses everything, and this bill will make it even harder for tenants to recover and get back on their feet.

Persons Testifying: (In support) Representative Williams, prime sponsor; Joseph Pukett, Washington Multi-Family Housing Association; John Woodring, Manufactured Housing Community of Washington and the Rental Housing Association; Joe Gaddy, King County Sheriff's Office; Doug Neyhard, Rental Housing Association; and Eric Stevens, Washington Apartment Association.

(Opposed) Nick Federici, Washington Low-Income Housing Alliance; Greg Provenzano, Columbia Legal Services; Pat Tassoni, Thurston County Tenants Union; and Seth Dawson, Washington State Coalition for the Homeless.

Persons Signed In To Testify But Not Testifying: None.