

---

## Judiciary Committee

---

### SB 6143

**Title:** An act relating to tenant remedies upon landlord's failure to perform duties.

**Brief Description:** Clarifying tenant remedies upon landlord's failure to perform duties.

**Sponsors:** Senators Padden and Sheldon.

Brief Summary of Bill
<ul style="list-style-type: none"><li>Provides that the remedies found in the Residential Landlord-Tenant Act for defective conditions supercede those provided under the common law implied warranty of habitability.</li></ul>



**Hearing Date:** 2/25/14

**Staff:** Cece Clynch (786-7195).

**Background:**

Residential Landlord-Tenant Act.

First enacted in 1973, the Residential Landlord-Tenant Act (RLTA) regulates the relationship between landlords and tenants, setting forth requirements, duties, rights, and remedies with respect to the residential landlord-tenant relationship. Under the RLTA, a landlord has the duty to keep the premises fit for human habitation, including the following specific duties:

- maintaining the premises to substantially comply with any applicable ordinances, codes, and laws which could be enforced if such condition endangers or impairs the health or safety of the tenant;
- maintaining the structural components such as roofs, floors, and walls in reasonably good repair so as to be usable;
- keeping any shared or common areas reasonably clean, sanitary, and safe;
- providing a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy, as well as during the tenancy unless the infestation is caused by the tenant;

---

*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.*

- making repairs;
- maintaining electrical, plumbing, heating and other facilities and appliances in reasonably good working order;
- maintaining the dwelling in reasonably weather-tight condition; and
- providing facilities adequate to supply heat and hot and cold water.

Upon failure of the landlord to carry out any of these statutory duties, or any specified in the rental agreement, "the tenant may, *in addition to pursuit of remedies otherwise provided him or her by law*, deliver hand written notice to" the landlord specifying the nature of the defective condition. The landlord must commence remedial action as soon as possible after receipt of notice, but not later than the following specified periods (except where circumstances are beyond the landlord's control):

- not more than 24 hours where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;
- not more than 72 hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and
- not more than 10 days in all other cases.

The landlord has the duty to see that the remedial work is completed promptly. If completion is delayed due to circumstances beyond the landlord's control (including the unavailability of financing), the landlord must remedy the defective condition as soon as possible.

The RLTA includes certain remedies for a landlord's failure to timely perform repair duties. These include self-help remedies as well as court action. A tenant must be current in payment of rent in order to exercise the remedies.

#### Foisy v. Wyman.

Although decided by the Washington Supreme Court in October of 1973, the trial in Foisy v. Wyman (Foisy) predated enactment of the RLTA. The landlord in Foisy sought possession of his real property, unpaid rent, and damages. The tenant raised the affirmative defense of breach of the implied warranty of habitability, pointing to many defects, including lack of heat, no hot water tank, leaking toilet, and broken pipes. The trial court determined that the condition of the premises was not relevant to the issues before the court, disallowed testimony by housing inspectors as to code violations, and ruled in favor of the landlord. The tenant appealed.

The Supreme Court held that in all contracts for the renting of premises, there is an implied warranty of habitability and breach of this warranty constitutes a defense in an unlawful detainer action in which the issue of rent due and owing is central.

#### Landis v. Nation (2012).

In Landis v. Nation (Landis) a construction company leased a house for its construction crew to live in for a few months. The construction foreman inspected the house and later completed and signed the lease and a move-in checklist, obtained the keys, and paid \$2,437 in rent and deposits. A few days later, as the crew was moving in, they smelled a dead animal odor and found rodent feces and poison in the kitchen and pantry and food wrappers ripped into tiny pieces in the backyard. The crew never moved in and the foreman requested a refund. The landlord refunded the deposits but refused to return the prepaid rent in light of a lease provision that made the construction company responsible in the event of an early departure until a new tenant moved in.

The construction company sued for return of rent and the trial court granted the landlord's motion for summary judgment.

On appeal, the construction company argued that the landlord had breached the implied warranty of habitability. The landlord countered that the RLTA superceded common law remedies, and that the tenant had to proceed under the RLTA, pursuant to which written notice is required and the landlord is afforded certain time periods to remedy the situation.

Division One of the Court of Appeals held that common law remedies were not superceded, pointing to the RLTA language regarding the preservation of other additional remedies. A tenant may proceed against a landlord under the RLTA, the rental agreement, or the common law as recognized in Foisy.

**Summary of Bill:**

Intent.

The Legislature determines that the Landis court's interpretation of Foisy creates "an irreconcilable conflict between the judge-created remedy for defective conditions at the premises and the remedy created [in the RLTA]." Intent is expressed "to establish that the remedy for defective conditions at residential rental premises in Washington under [the RLTA] is paramount."

RLTA Remedies for Defective Conditions Supercede Implied Warranty of Habitability.

The remedies provided under the RLTA for defective conditions supercede those provided under common law implied warranty of habitability.

This applies to all causes of action commenced on or after the effective date, regardless of when the cause of action arose.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.