

SENATE BILL REPORT

ESHB 1236

As of March 9, 2021

Title: An act relating to protecting residential tenants from the beginning to end of their tenancies by penalizing the inclusion of unlawful lease provisions and limiting the reasons for eviction, refusal to continue, and termination.

Brief Description: Protecting residential tenants from the beginning to end of their tenancies by penalizing the inclusion of unlawful lease provisions and limiting the reasons for eviction, refusal to continue, and termination.

Sponsors: House Committee on Housing, Human Services & Veterans (originally sponsored by Representatives Macri, Taylor, Dolan, Gregerson, Berry, Fitzgibbon, Frame, Simmons, Ramel, Bateman, Johnson, J., Hackney, Chopp, Thai, Peterson, Santos, Orwall, Ortiz-Self, Ryu, Wicks, Lekanoff, Slatter, Berg, Senn, Harris-Talley, Ormsby and Pollet).

Brief History: Passed House: 3/7/21, 54-44.

Committee Activity: Housing & Local Government: 3/11/21.

Brief Summary of Bill

- Specifies exclusive causes for eviction, refusal to renew a tenancy, and termination of a tenancy under the Residential Landlord-Tenant Act.
- Clarifies penalties for inclusion of unlawful provisions in rental agreements.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Brandon Popovac (786-7465)

Background: Residential Landlord-Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, and includes provisions regarding the duties of tenants and landlords and remedies for violations

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of those duties. With some statutory exceptions, the rental of a dwelling unit for living purposes is generally covered under the RLTA.

Duration and Termination of Tenancy. Under the RLTA, a tenancy for a specified time terminates at the end of the specified lease period. A tenant who terminates a lease prior to the end of the specified period is liable for rent until the end of the period, although the landlord must mitigate their damages by attempting to re-rent the unit at a fair rental price. Alternatively, premises may be rented for an indefinite time, from period to period, or month to month. Such a tenancy is automatically renewed for another period until terminated by either the landlord or the tenant by giving at least a 20- days written notice prior to the end of any of the months or periods of tenancy. Landlords planning a change of use or demolition or substantial renovation must provide a 120- day notice to the tenant.

Enforcement Remedies. The RLTA specifies the remedies available to a tenant for a landlord's violation of their duties. The tenant must provide the landlord with written notice and a reasonable opportunity to fix or comply with the duty, the timeframe for which varies depending upon the type of problem. Rental agreements may not include provisions in which the tenant agrees to certain actions, including waiving rights and remedies under the RLTA, limiting liability of the landlord, and paying late fees within five days following the rent due date. If a landlord deliberately includes prohibited provisions in a rental agreement, the tenant may recover statutory damages up to \$500 with the costs of suit and reasonable attorneys' fees.

Unlawful Detainer. If a tenant is liable for unlawful detainer, a landlord may bring a court action to evict the tenant. A tenant is liable for unlawful detainer when the tenant:

- holds over or continues in possession after the expiration of the specified lease term—the tenancy is terminated without notice at the expiration of the specified lease term or period;
- continues in possession of premises leased for an indefinite period, such as month-to-month, after the end of any month or period when the landlord serves at least a 20-day notice prior to the end of the month or period requiring the tenant to quit the premises at the end of the month or period;
- continues in possession after a default in the payment of rent, and after a 14-day notice to pay rent or vacate has been served, without complying with the duty to pay;
- continues in possession after failing to comply with a condition or covenant of the tenancy, other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the condition or covenant;
- permits waste upon the premises, carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a 3-day notice to quit the premises;
- enters upon the premises without permission and without having color of title and refuses to leave after a 3-day notice—such a person may also be subject to criminal laws; or
- commits or permits any gang-related activity as prohibited under the RLTA.

Summary of Bill: Cause Required for Eviction, Refusal to Renew, and Termination of Tenancy. Except for tenancies of an indefinite period during the first year of occupancy, a landlord may terminate a tenancy without cause at the end of an initial lease term between three and 12 months upon a 60- day written notice. If the landlord does not provide a 60- day notice, the tenancy becomes a month-to-month tenancy, which may only be terminated for one of the specified causes. For any other tenancies with a specified period, a landlord may not terminate the tenancy except for one of the enumerated causes. If the tenancy is not terminated, it becomes a month-to-month tenancy. A landlord and tenant may enter into subsequent lease agreements that are in compliance with the provided termination requirements. A tenant may terminate a tenancy for a specified period by providing at least a 20- day written notice before the end date of the specified tenancy.

Otherwise, a landlord may not evict, refuse to continue a tenancy, or terminate a periodic tenancy, except for the following causes and after the applicable notice periods:

- failure to pay rent—14-day notice —that did not accrue between March 1, 2020, and the end of a declared federal or state public health emergency related to the COVID-19 pandemic.
 1. If there is unpaid rent accrued during this time period, the landlord must offer a reasonable repayment plan of monthly payments not more than one-third of the tenant's monthly rent, and if the tenant fails to accept the repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action.
 2. A court must consider the tenant circumstances, including decreased income or increase expenses due to COVID-19, and repayment plan terms during the unlawful detainer proceeding;
- substantial breach of a material program requirement of subsidized housing, a material term in the rental agreement, or a tenant obligation imposed by law—10-day notice;
- committing or permitting waste or nuisance, an unlawful activity that affects the use and enjoyment of the premises, or other substantial or repeated interference with the use and enjoyment of the premises by the landlord or tenant neighbors—3-day notice;
- the landlord, in good faith, seeks possession so that the owner or their immediate family may occupy the unit as their principal residence and no substantially equivalent unit is vacant and available in the same building—90-day notice.
 1. Acting in good faith is not presumed if the owner or immediate family fails to occupy the unit for at least 60 consecutive days during the 90-day period after the tenant vacates.
 2. Immediate family includes state registered domestic partners, spouses, parents, grandparents, children, siblings, and in-laws;
- the landlord elects to sell the premises if it is a single-family residence—90-day notice.
 1. An election to sell occurs when the owner makes a reasonable attempt to sell the premises within 30 days after the tenant has vacated, including listing the premises for sale with a realty agency or on the real estate multiple listing

service.

2. An intent to sell is not presumed if the premises are not listed for sale within the 30-day period or the owner withdraws the premises from the rental market or rents the premises to a new tenant within 90 days after the tenant vacates or the date the premises are listed for sale, whichever is later;
- the landlord plans to demolish, substantially rehabilitate, or change the use of the premises—120-day notice;
 - the owner elects to withdraw the premises from the rental market to pursue a conversion—120-day notice;
 - the premises are condemned as uninhabitable by a local agency—30-day notice, or less if continued habitation would subject the landlord to criminal or civil penalties;
 - service of notice to quit or vacate by the owner or lessor with whom the tenant shares the dwelling unit or access to a common kitchen or bathroom area—20-day notice;
 - upon expiration of a transitional housing program, when the tenant ages out of a transitional housing program, or when the tenant has completed an educational or training program and is no longer eligible to participate—30-day notice.
 1. Transitional housing is defined as housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to formerly homeless individuals and families, with the intent to move them to permanent housing within a period of not more than 24 months, or longer if certain conditions are met;
 - upon expiration of a subsidized housing rental agreement, and the landlord proffers a new rental agreement at least 30 days and no more than 90 days prior to the expiration, and the tenant does not sign.
 1. Subsidized housing includes rental housing for very low or low-income households operated directly by a public housing authority or its affiliate, or is insured, financed, or assisted by certain federal or state housing programs;
 - intentional and knowing misrepresentation or omission of material information on the tenant's application that, had the misrepresentations or omissions not been made, would have caused the landlord to request additional information or take adverse action—30-day notice;
 - other good cause exists constituting a legitimate economic or business reason—60-day notice.
 1. In such instances, the court may stay a writ of restitution for up to an additional 60 days for good cause shown, including difficulty obtaining alternative housing, but must condition the stay on continued payment of rent during the stay period; and
 - four or more violations of a substantial breach of a material program requirement of subsidized housing, a material term in the rental agreement, or a tenant obligation imposed by law that were cured by the tenant within the previous 12-month period and the landlord has provided a written warning notice for each violation—60-day notice.

A landlord may also refuse to renew a tenancy if the tenant:

- is required to register as a sex offender during the tenancy or prior to if not disclosed or otherwise known by the owner at the beginning of tenancy; or
- has made unwanted sexual advances or other acts of sexual harassment to the property owner, manager, employee, or other tenant based on race, gender, or protected status.

Notices must identify the facts and circumstances known and available to the landlord at the time the notice is issued that support the cause or causes with enough specificity to enable the tenant to respond and prepare a defense. The landlord may present other evidence regarding the allegations within the notice when the evidence was unknown or unavailable at the time the notice was issued.

Other Occupants. If a tenant has permanently vacated for reasons other than termination by the landlord, and occupants co-resided with the tenant prior to and up to the tenant's vacation, the occupant must apply or reapply as a prospective tenant within 90 days of when the primary tenant vacates and meet the same screening, background, and financial criteria as any other prospective tenant. If the occupant fails to apply within 90 days or the application is denied, the landlord may commence an unlawful detainer action. This new provision regarding occupants is not applicable to subsidized housing.

Enforcement Remedies. A landlord who removes a tenant or causes a tenant to be removed from a dwelling in violation of the provisions specifying enumerated causes for eviction or refusal to renew or terminate a tenancy is liable to the tenant for wrongful eviction and the greater of:

- the tenant's economic and noneconomic damages; or
- three times the monthly rent, as well as reasonable attorneys' fees and costs.

The existing statutory damages available for inclusion of prohibited provisions in the rental agreement are increased from \$500 to two times the monthly rent, and the landlord must have knowingly, instead of deliberately, included such provisions.

Miscellaneous. Other technical revisions are made to reflect the new enumerated causes for eviction and refusal to renew or terminate a tenancy under the RLTA, including removing provisions allowing a landlord to terminate a periodic or monthly tenancy with a 20-day notice and provisions that provide when premises are rented for a specified time the tenancy is terminated at the end of the specified time.

Appropriation: None.

Fiscal Note: Not requested.

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

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