

HOUSE BILL REPORT

ESHB 1453

As Passed House:
March 5, 2019

Title: An act relating to residential tenant protections.

Brief Description: Concerning residential tenant protections.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Macri, Jinkins, Morgan, Dolan, Frame, Peterson, Thai, Doglio, Gregerson, Pellicciotti, Orwall, Davis, Lekanoff, Senn, Kloba, Stanford and Ortiz-Self).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/5/19, 2/15/19 [DPS].

Floor Activity:

Passed House: 3/5/19, 54-44.

Brief Summary of Engrossed Substitute Bill

- Makes a number of changes to the Residential Landlord-Tenant Act, including:
 - affording tenants 14 days (up from three days) to comply with a notice to pay rent or vacate prior to commencement of an unlawful detainer action;
 - defining "rent," and providing that continued tenancy or relief from forfeiture may not be conditioned on the payment of any amount other than rent; and
 - authorizing the use of judicial discretion in unlawful detainer proceedings.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Dufault, Assistant Ranking Minority Member; Klippert, Shea and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Irwin, Ranking Minority Member; Graham.

Staff: Cece Clynch (786-7195).

Background:

Residential Landlord-Tenant Act.

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, defines terms, and includes provisions regarding the duties of tenants and landlords, as well as remedies for violations of those duties. Subject to a few exceptions spelled out in statute, the rental of a dwelling unit for living purposes is generally covered under the RLTA. "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place.

Tenant Duties.

Tenant duties under the RLTA include the following:

- paying rent;
- keeping the part of the premises occupied by the tenant as clean and sanitary as the conditions of the premises permit;
- properly disposing of rubbish;
- properly using and operating fixtures and appliances;
- not intentionally or negligently destroying or damaging any part of the structure or dwelling;
- not permitting a nuisance or common waste; and
- not engaging in drug-related or gang-related activity.

Unlawful Detainer.

A tenant is in unlawful detainer status when he or she:

- holds over after the expiration of the specified term for which it is let to him or her. When real property is leased for a specified term or period, the tenancy shall be terminated without notice at the expiration of the specified 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, more than 20 days prior to the end of the month or period, served notice requiring the tenant to quit the premises at the end of the month or period;
- continues in possession after a default in rent, and after a three-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 duty of tenancy other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the duty;
- permits waste upon the premises, or carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a three-day notice to quit the premises;

- enters upon the premises without permission and without having color of title and refuses to leave after a three-day notice. Such a person may also be subject to criminal laws; or
- commits or permits any gang-related activity as prohibited by the RLTA.

If the tenant is in unlawful detainer status, a landlord may bring a court action to evict the tenant. The eviction summons must be substantially in the form specified in the RLTA. The return day for the tenant to respond with a Notice of Appearance and Answer may not be less than seven days nor more than 30 days from the date of service. Failure to respond constitutes a default.

In the event that a landlord, under the RLTA or the Manufactured/Mobile Home Landlord Tenant Act, is unable to have the tenant personally served, the court may authorize alternative service that includes posting the summons and complaint in a conspicuous place and mailing. In such cases, the relief available is limited to restitution of the premises and no money judgment may be awarded.

The RLTA includes an additional, optional notice as well, which may be used when the landlord's action is predicated on a failure to pay rent. If this form is also served, the tenant must either pay the amount of rent allegedly due and owing into the court registry or file a sworn statement denying that the rent is owing. If the tenant fails to do one or the other, the landlord is entitled to obtain an immediate writ of restitution without further notice and without paying a bond.

A landlord prevailing in an unlawful detainer action is entitled to a judgment for restitution of the premises and, if there has been personal service, a judgment for any damages and rent found due. Additionally, the prevailing party in an unlawful detainer action may also be awarded costs and reasonable attorneys' fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after entry. During that time, the tenant or any subtenant or mortgagee or other party may pay into court for the landlord the amount of the judgment and costs, and the tenant shall be restored to the tenancy.

Summary of Engrossed Substitute Bill:

Provisions in the Residential Landlord-Tenant Act (RLTA) related to unlawful detainer are amended in a number of ways.

A tenant is liable for unlawful detainer when he or she continues in possession after a default in rent, and after a 14-day (up from three-day) notice to pay rent or vacate has been served, without complying with the duty to pay. A new 14-day notice to pay or vacate form is codified in statute, and notices are required to be substantially in this form. The Department of Commerce is required to:

- produce and maintain on its website translated versions of the 14-day notice in the top 10 languages spoken in the state; and
- provide, on its website, information on where tenants can access legal or advocacy resources.

The terms "rent" and "rental amount" are defined under the RLTA to mean consideration for use and occupancy of the premises, and may include charges for utilities. These terms do not include charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees.

A landlord must first apply any payment made by a tenant toward rent, before applying it toward these other charges for costs. Continued tenancy or relief from forfeiture may not be conditioned on the payment of any amount other than rent. However, a landlord is not foreclosed from pursuing other lawful remedies to collect these other charges for costs.

The required contents of an eviction summons required under the RLTA remains as is in current law; however, the summons form that is specified in statute is stricken, and a new form is put in its place.

The process for alternative service is amended to permit alternative means of service, without first requiring a court order so authorizing, when the plaintiff, after due diligence, is unable to personally serve the summons. Instead of requiring this initial court order, it is specified that before the entry of any judgment or issuance of a writ of restitution due to a defendant's failure to appear, the plaintiff must provide the court with an affidavit from the person attempting service that describes the service achieved, or if by alternative service, that describes the effort at personal service before alternative service was used, together with an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating his or her belief that the defendant cannot be found. The provision limiting the relief available in the event alternative service is used remains as is in current law.

In the event an unlawful detainer action is predicated on a default in the payment of rent or for violation of a condition of the rental agreement, and the judgment is for the plaintiff, the court may award reasonable attorneys' fees only after a finding that the tenant:

- did not act in good faith;
- willfully performed an act prohibited by the lease or the governing law; or
- willfully refrained from performing an act required by the lease or the governing law.

When the tenant is liable for unlawful detainer after default in the payment of rent, execution upon the judgment shall not be issued until the expiration of five court days (changed from five days after entry, and before such time, the tenant or any subtenant or mortgagee or other party interested in the continuance of the tenancy, may pay to the landlord or into court for the landlord the amount of the rent owed, court costs, incurred, late fees provided such fees are due under the lease and do not exceed \$75 in total, and attorneys' fees if imposed, in which event the tenant shall be restored to the tenancy. Language limiting this provision to situations in which the lease has not by its terms expired is stricken. If payment of this amount is not made within five court days after the judgment, the judgment may be enforced for its full amount and for the possession of the premises.

Additionally, a provision is added expressly allowing for the use of judicial discretion following the entry of judgment against a defendant due to nonpayment of rent, either at the time of the show cause hearing or trial, or upon subsequent motion of the tenant but before the execution of the writ of restitution. The burden of proof is upon the tenant. The court

may stay or vacate the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. The factors that the court is to consider in making this determination are identified.

Parameters are set forth governing any order issued pursuant to this new judicial discretion provision. The court may issue an order upon appropriate terms, which may include the payment or severing of all or part of the monetary judgment. Any severing of the judgment does not preclude the landlord from pursuing other lawful remedies to collect the remainder. In any order issued:

- the court shall not stay the writ more than three months from the date of judgment, but may order repayment of the balance within such time;
- the court shall require the tenant to tender to the landlord or deposit with the court one month's rent within five court days of the order; and
- providing for repayment of the balance found by the court, the court shall issue the writ of restitution, but require that the writ not be served by the sheriff on the tenant unless the tenant defaults on the repayment order. In the event of default, the court shall extend the writ as necessary to enforce the order.

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) Until recent work by Mathew Desmond of Princeton and Timothy Thomas of the University of Washington, the enormous impact of evictions was not understood. Rents have soared in the last decade. More than 70 percent of low-income residents pay more than half of their income towards rent in our state. Average rents have increased from \$1,034 in 2010 to \$1,725 in the central Puget Sound region today; this equates to \$8,300 in extra cost per year. The crisis is reaching all corners of our state. It was once thought that eviction was an outcome of poverty, but it is now known that eviction can be a cause of poverty. When people are evicted, they have to leave their neighborhoods and children must leave their schools. The impact is severe.

Some may testify that this bill will cause landlords to sell off their properties or increase rents, but this has not been seen in other jurisdictions. Washington's archaic system needs to catch up. Courts need discretion in these proceedings. In one instance, a woman was evicted who had been out of work for a while for health reasons. She had a steady job. If the court had had discretion, her tenancy could have been saved. Commercial parties in the justice system generally are afforded an opportunity to cure any breach, and almost always get at least 30 days to do so. The Residential Landlord-Tenant Act provides protections to landlords and business owners that are not found anywhere else. If a landlord falls behind on a mortgage payment, he or she will have some time to pay it before losing a property. People of color and women are evicted for smaller amounts than others. Black, single mothers face eviction more often than others. A survey of tenants going through eviction found that over

half of all evictions occurred for nonpayment of rent for one month or less, and one eviction was for even as little as \$10. About three dozen evictions occurred for under \$100 and over 100 evictions occurred for under \$500. Tenants faced \$1,000 to \$3,000 worth of legal fees that were added to the judgment that would be a burden for them later on when they were trying to find housing. Over half of tenants surveyed said that it was temporary unemployment that caused them to fall into unlawful detainer status. Medical emergencies were the cause in about 10 percent of the cases.

The problem is not that tenants do not want to pay the rent, the problem is that they have had bad luck. There have been no signs of a drop in rental housing stock in places that have made similar changes. The eviction process moves so quickly. A woman with disabilities and her daughter were evicted in just three weeks and spent the next two and one-half years homeless. Affording a longer time to pay rent or vacate could prevent homelessness. The judiciary in South Carolina and New York have discretion. In one case observed in South Carolina, a female tenant who had been hospitalized was given a month to get an attorney. In the past five years, 130,203 adults have been evicted in Washington. Statewide, one in 55 adults have faced eviction. In Pierce County, 17 percent of its black population, approximately one in five people, has faced eviction. In King County, 9 percent of the black population, or approximately one in 10 people, has faced eviction. Women are evicted about 15 percent more than men, and they often are single mothers.

(Opposed) Affording 21 days to pay or vacate is too long, but the discussions should continue. Other issues in the bill are problematic, such as a definition of rent that does not include utilities. In one situation, it was only after the unlawful detainer action was filed that the tenant paid their \$6,000 utility bill. Many landlords will leave the business with these changes. One national entity reports the loss of 30 percent of its portfolio of housing in the last several years. That is a huge loss. People need to be encouraged, not discouraged, from being landlords. Only four states afford more than 10 days. The focus should be upon education and also upon the provision of sources of money to pay. There needs to be common sense brought to this issue. Most landlords try to work with tenants. The loss of rental housing will only lead to a bigger problem. A landlord in Tacoma with over 34 years experience as a residential landlord reports over 550 rental contracts and zero evictions. The five-day notice to pay or vacate that is found in House Bill 1463 is what is needed. The problem is affordability of land and the cost of building permits.

(Other) Some of the housing authorities are the largest landlords in the business. Reasonable tenant protections are needed, but private landlords are key to having sufficient housing stock. Too much tenant protection may cause landlords to charge more.

Persons Testifying: (In support) Representative Macri, prime sponsor; Neal Black; Tatomya Wimbish; Edmund Witter, King County Bar Association; Tim Thomas; Xochitl Maykovich, Washington Community Action Network; and Gina Owens.

(Opposed) Kathryn Hedrick, Washington Multifamily Housing Association; Kyle Woodring, Rental Housing Association; Lyle Crews, National Association of Rental Property Managers; Linda Mickey; and Robert Mickey.

(Other) Aley Thompson, Association of Washington Housing Authorities.

Persons Signed In To Testify But Not Testifying: Sarah Holt-Knox; Linda Schneider; Colleen Glastetter; Lyle Crews; Chester Baldwin; and Zach Kosturos.