

SENATE BILL REPORT

ESHB 1453

As Reported by Senate Committee On:
Housing Stability & Affordability, April 1, 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: Passed House: 3/05/19, 54-44.

Committee Activity: Housing Stability & Affordability: 3/27/19, 4/01/19 [DPA-WM, w/oRec, DNP].

Brief Summary of Amended Bill

- Extends the 3-day notice to pay and vacate for default in rent payment to 14 days notice for tenancies under the Residential Landlord-Tenant Act.
- Creates a uniform 14-day notice to pay and vacate that includes information on how tenants can access legal and advocacy resources.
- Requires the Attorney General's Office to provide translated versions of the uniform 14-day notice on its website in at least the top ten languages used in the state.
- Requires a landlord to first apply any tenant payment to rent before applying the payment toward other charges.
- Requires a tenant to pay into court or to the landlord upon judgment for default in the payment of rent within five court days any rent due, any court costs incurred at the time of payment, late fees that may not exceed \$75 in total, and attorneys' fees if awarded, to be restored to their tenancy.
- Provides requirements and limitations on the award of attorneys' fees under unlawful detainer actions.
- Authorizes the court to exercise discretion to provide relief from forfeiture or to stay a writ of restitution based upon the required consideration of certain factors and with the burden of proof for relief on 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.

- Expands eligibility of the Landlord Mitigation Program to include landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Zeiger, Ranking Member; Darneille and Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senator Warnick.

Minority Report: Do not pass.

Signed by Senator Fortunato.

Staff: Brandon Popovac (786-7465)

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, and remedies for violations of the RLTA. The RLTA covers a wide variety of other issues governing the landlord-tenant relationship, including:

- landlord and tenant obligations if the tenant fails to pay rent owed to the landlord and remains uncompliant if after a notice period of three days and the resulting unlawful detainer court process;
- how and when a tenancy terminates; and
- the alternative means to serve an evictions summons on a tenant, including the required court form for such summons.

Some issues not covered under the RLTA include how rent is defined, how and when landlords apply tenant payments to rent or other costs and fees, and how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving the non-payment of rent.

Landlord Mitigation Program. The Landlord Mitigation Program allows landlords to seek reimbursement for claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program by submitting claims to the Department of Commerce (Commerce). The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days' rent loss, and up to \$5,000 in qualifying damages caused by a tenant during the tenancy. Any landlord that has screened, approved, and offered rental housing to any applicant using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities.

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: Notice to Pay or Vacate. For tenancies under the RLTA, a landlord must provide a tenant 14 days notice instead of three days notice in order to cure default in the payment of overdue rent. A uniform 14-day notice to pay and vacate for default in the payment of overdue rent is created that delineates what amounts are owed to the landlord and contains information about where to find legal or advocacy resources and the tenant's right to interpreter services at court. The uniform notice does not abolish any additional notice requirements to tenants as required under federal, local, or state law. The Attorney General's Office (AGO) must produce and maintain on its website translated versions of the 14-day notice in the top ten languages spoken in Washington State and, at the discretion of the AGO, other languages. From the website, the notice must be made available in printable form on one 8.5 by 11 inch paper in an easily readable font size. The AGO must also provide on its website information on where tenants can access legal or advocacy resources and which cultural organizations can provide assistance in the primary language of the tenant. The AGO may also produce and maintain on its web site translated versions of other notices used in unlawful detainer actions, including those relevant to subsidized tenancies, low-income housing tax credit programs, or the federal violence against women act.

Rent. Landlords must first apply any payment by a tenant to the rent amount before applying it toward other charges. A tenant's right to possession of the premises may not be conditioned upon tenant payment or satisfaction of any monetary amount other than rent, but landlords may still pursue other lawful remedies to collect late payments, costs, or other fees. "Rent" is defined to mean recurring and periodic charges identified in the rental agreement for use and occupancy of premises, including any charges for utilities, and expressly excludes non-recurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees such as attorneys' fees.

Unlawful Detainer for Nonpayment of Rent. When the tenant is liable for unlawful detainer after a default in the payment of rent, the tenant must pay into court or to the landlord upon judgment for such default within five court days any rent due, any court costs incurred at the time of payment, late fees that may not exceed \$75, and attorneys' fees if awarded, to be restored to their tenancy. The tenant must pay an additional \$50 in late fees for each prior reinstatement of tenancy that occurred within the previous 12-month period.

Attorneys' Fees. When the court has entered a judgment in favor of the landlord restoring possession of the property to the landlord, the court may award statutory costs and reasonable attorneys' fees to the landlord, but not if the judgment for possession is entered after the tenant failed to appear or the total amount of rent awarded in the judgment for rent is equal to or less than two months of the tenant's monthly contract rent or \$1,200, whichever is greater. If a tenant has filed a motion to stay a writ of restitution, the court may only award attorneys' fees to the landlord if the tenant is permitted to be reinstated subject to repayment under the court's exercise of judicial discretion.

Judicial Discretion. The court, at the show cause hearing or at trial, or upon a subsequent motion of the tenant, may provide relief from forfeiture or to stay a writ of restitution upon good cause and based on what is deemed fair and just to both parties, following the entry of judgment for the landlord over the tenant, based upon the consideration of factors that include:

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

The tenant has the burden of proof to be granted relief from forfeiture, and if relief is sought at the time of the show cause hearing the court must hear the matter at that time or as soon as possible to avoid unnecessary delay or hardship.

A tenant who has been served with three or more notices to pay or vacate within 12 months prior to the current notice to pay or vacate, may not seek relief through the exercise of judicial discretion

In any order issued upon the exercise of judicial discretion:

- the court may not stay the writ of restitution more than three months from the date of judgment, but may order repayment of the balance within such time. If the payment plan is for more than 30 days, the total payments for each thirty-day period after the order must be at least one month of the tenant's share of the rent, with options provided to the tenant if the order is issued before or after the fifteenth of the month, so that the total amount of the judgment is paid within 90 days;
- within such payment plan, the court must require the tenant to pay the landlord or into the court one month's rent within five court days of the order, and the sheriff may serve the writ of restitution in case of default but may not execute the writ until after expiration of five court days;
- the writ of restitution must be stayed ex parte without prior notice to the landlord when the tenant files and presents a motion to stay with a declaration of proof of payment demonstrating full compliance with the payment of one month's rent, but if the tenant defaults on any subsequent payment the landlord may enforce the writ by serving a notice of default indicating the tenant has three calendar days to vacate the premises before execution of the writ and the landlord may apply to the landlord mitigation program to pay the balance owed under the payment plan. Service of the notice of default does not include an additional day for purposes of execution of the writ;
- the court must stay the writ of restitution as necessary to ensure compliance by a tenant who seeks to satisfy the repayment conditions under the order by relying on emergency rental assistance from a government or nonprofit entity;
- the court may order payment to be made directly to the landlord or landlord's agent if payment to the court cannot be made by the tenant; and
- the court must extend the writ as necessary to enforce the order in case of default.

A uniform notice of default is provided for landlords to issue upon default by the tenant for subsequent payments under a payment plan.

Landlord Mitigation Program. Eligibility of the Landlord Mitigation Program is expanded to include landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs. Specifically, for an application seeking relief under the exercise of judicial discretion, the court must inquire if the tenant is low-income, limited resourced, or experiencing hardship, which may include an inquiry regarding the tenant's income relative to area median income, household composition, extenuating circumstances, or other factors necessary to make a determination, while relying on written declarations or oral testimony by the parties at the hearing if needed.

If the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order vacating the writ of restitution and for payment to be made to the landlord from the Landlord Mitigation Program subject to the availability of appropriated amounts, directing the clerk to remit any future payments made by the tenant to reimburse the Commerce, and directing the parties to submit an application on a form prescribed by Commerce to seek reimbursement. The form must include:

- space for the landlord and tenant to provide certain personal information of the tenant and any other identifying information necessary for Commerce to process payment;
- the landlord's statewide vendor identification number and how to obtain one;
- the name and address to whom payment must be made;
- the amount of the judgment with instructions to include any other supporting documentation Commerce may need to process payment;
- instructions for how the tenant is to reimburse Commerce and a description of the consequences if the tenant does not reimburse Commerce;
- a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and Landlord Mitigation Program; and
- any other information necessary for the operation of the program.

With any disbursement to the landlord under the Landlord Mitigation Program, Commerce must notify the tenant that the disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the program through the court registry may result in a denial of a future application to the program. Commerce may include any other additional information about how to reimburse the program.

When a landlord has been reimbursed under the Landlord Mitigation Program, the tenant must reimburse Commerce by depositing the amount disbursed into the court registry. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds be disbursed by the court. Upon entry of the order, the court clerk must disburse the funds and include a case number with any payment issued to Commerce. If directed by the court, a clerk must issue any payments made by a tenant to Commerce without further court order.

If Commerce does not disburse payment to the landlord for the judgment amount within 30 days from the time of application, the landlord may renew an application for a writ of restitution and for other rent owed by the tenant since the time of entry of the prior judgment. The tenant may exercise their rights under the exercise of judicial discretion after application renewal of the writ. After payment of the judgement amount, the judgment is satisfied and the landlord must file a satisfaction of judgment with the court.

If Commerce cannot satisfy a claim under the Landlord Mitigation Program due to lack of funds under the program, the claim is deemed durable and must be paid in the order received until funding is made available.

Summons. The eviction summons form is modified to include the following changes:

- how tenants can receive assistance by calling 2-1-1, which can refer the tenant to legal aid or assistance to help pay for a lawyer;
- how tenants should respond via a notice of appearance and how to file a response to the court;
- to whom tenants should respond, either the landlord's lawyer or to the landlord if a lawyer is not named on the complaint, and the method of response; and
- when tenants should respond, with warnings and consequences if the tenant does not respond.

Alternative Service of Process. The alternative means of service of process for landlords is modified by requiring the landlord, before entry of judgment or issuance of a writ of restitution based on the tenant's failure to appear, to provide the court with a declaration by the person attempting service that describes the personal service achieved or the efforts at personal service using the alternative process and a declaration by the landlord stating the belief the tenant cannot be found. Due diligence by the landlord under such alternative means of service is met when the landlord attempts personal service on the tenant at least three times over not less than two days and at different times of the day.

Miscellaneous. For any tenant that seeks to stay a writ of restitution under the RLTA, the court may issue an ex parte stay of the writ if the tenant or tenant's attorney submits a declaration indicating good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided before the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted. The court must schedule a hearing as soon as practicable on why the writ may not be further stayed or vacated.

The act is null and void unless funding is provided in the omnibus capital or operating budget.

Conforming amendments are made to address conflicts or inconsistencies under the RLTA, including the removal of a requirement for a bond to be posted before a judge may hear a tenant's case to seek relief under judicial discretion and modifying references to tenants and landlords where appropriate.

EFFECT OF HOUSING STABILITY & AFFORDABILITY COMMITTEE AMENDMENT(S):

- Adds an intent section.
- Modifies the 14-day uniform notice to pay or vacate for default in payment of rent and/or utilities to include recurring or periodic charges, as appropriate, with itemized amounts owed for rent, utilities, and recurring or periodic charges identified in the lease.

- Provides that the 14-day notice to pay or vacate form does not abolish any additional notice requirements to tenants as required by federal, state, or local law.
- Transfers the notice publication requirements to the Office of the Attorney General from the Department of Commerce.
- Permits the Office of the Attorney General to produce and maintain on its web site translated versions of other notices, in addition to the 14-day notice to pay or vacate.
- Modifies the definition of "rent" to mean recurring or periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities.
- Requires the tenant to pay an additional \$50 in late fees for each prior reinstatement of tenancy that occurred within the previous 12-month period.
- Revises the factors that the court must consider in determining whether to stay or vacate the writ of restitution for good cause (judicial discretion) to focus entirely upon the tenant and his or her circumstances.
- Creates a payment plan process if judicial discretion is exercised, addressing the timing and amount of payments and tenant options depending on the date of the court order.
- Prescribes a notice of default in statute which a landlord may serve upon a tenant if the tenant defaults on a payment plan. Provides the tenant with three calendar days from date of service of the notice of default to vacate the premises before execution of the writ of restitution.
- Allows the landlord, in the event of a default by a tenant on a payment plan, to submit an application to Commerce to pay the balance from the Landlord Mitigation Program (LMP).
- Requires the court, whenever a tenant seeks a stay or vacation of a writ of restitution following entry of a judgment for restitution due to nonpayment, to issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship; and if the tenant is so found, authorizes the court to issue an order vacating the writ and providing for payment from the LMP and to direct the clerk to remit any future payments made by the tenant to Commerce.
- Provides additional specificity regarding claims from the LMP for unpaid judgments for rent/late fees/attorneys' fees/costs. Tasks Commerce with providing for a claim form on its web site. Provides that when a landlord has been reimbursed from the LMP, Commerce shall notify the tenant regarding reimbursing the fund.
- Authorizes landlords to renew an application for writs of restitution if Commerce fails to disburse payment to the landlord within 30 days of application to the LMP.
- Provides that if a landlord claim to the LMP cannot be satisfied due to lack of existing funding, the claim is deemed durable and must be paid in the order received until funding in the LMP is replenished.
- Authorizes Commerce to deny an LMP application made by a tenant if the tenant has failed to reimburse Commerce for prior payments issued under the LMP.
- Authorizes the court to issue an ex parte stay of a writ of restitution sought by a tenant if the tenant or tenant's attorney indicates good faith efforts were made to notify the other party, why notice could not be provided if no efforts were made, and describes the harm that may result if an immediate stay is not granted.
- Sets forth the criteria for an award of reasonable attorneys' fees where the court has entered a judgment in favor of the landlord restoring possession of the property or if the tenant has filed a motion to stay a writ of restitution from execution.

- Provides that due diligence under the alternative means of service is met when the landlord attempts personal service on the tenant at least three times over not less than two days and at different times of the day.
- Makes technical corrections to implement the new judicial discretion language and to achieve consistency when referring to tenants and landlords in affected provisions.
- Makes the act null and void if funding is not provided in the capital or operating budget.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Striking Amendment: *The committee recommended a different version of the bill than what was heard.* PRO: This bill attempts to do three basic things: extend the period of time that tenants are allowed when they fall behind on rent during the pay or vacate period; require more equitable remedies available to the court to ensure there are appropriate opportunities for the tenant to remain housed; and standardize and simplify the language of the notices and summons to help both the landlords and tenants understand the unlawful detainer process. Nine out of ten evictions are due to nonpayment of rent and our eviction process currently is designed to be relatively swift, which can be very harmful to families when leading to displacement. The epidemic of evictions is definitely connected to the crisis of increasing housing costs that are hitting every corner of our state. The Legislature also needs to work on things like rental assistance and housing supply, and ensure that people have an array of supports.

The bill removes obstacles by giving people the opportunity to stay housed and for a low-income tenant to pay back a judgment or rent that is owed when they have the time and the energy to get back on their feet. That extra stability is going to provide a great opportunity for people to stay housed. Many tenants can pay the rent or pay it soon, or know where to get help. The addition of judicial discretion, especially in allowing tenants who have fallen behind because their family needed medical treatment, their car broke down, they had to miss work for a few days, or they had an emergency, this will give them that opportunity to take the time to satisfy the judgment. The bill will significantly reduce evictions in Washington State, and therefore, reduce homelessness.

This bill is a much needed step toward fixing our deeply unjust housing system given our region's history of redlining and racially restrictive covenants. This bill is one building block of many in the solution for truly equitable access to housing for all. Current eviction laws, including a very narrow timeframe of three days to pay or vacate, has destroyed individual lives, families, and communities. Many tenants who have lost their jobs or been through a medical emergency are at risk of losing their home and becoming homeless, and an eviction on their record adds yet another barrier to finding a new place to live. More time to pay rent allows for more resources to be accessed like emergency rental assistance. No human being

should have to endure living without shelter. Housing is a human right and this bill is a simple way to keep more people safely housed.

Since 2000, Washington State has lost about 91,000 affordable homes with about 85 percent of that loss since 2012, based on a lag effect from the Great Recession. Homelessness is now higher than it was during the Great Recession. There has been a great inversion of people moving to the urban centers and pushing people out, feeding people into the homeless population. This is a civil rights issue as well. In Pierce County alone, one in six black adults had an eviction. Forty-six percent of Washington State renters are households that are rent burdened. This bill is a bold and brave intervention that needs to be considered given the broad aspect of the issue.

A lot of the things brought into this bill are not unprecedented and are ideas taken from other states and jurisdictions. The landlords have come to the table and provided a sense of what would work in Washington. The bill brings a little bit more fairness and of what people would expect to happen in cases when they are falling behind in rent. This is not just about keeping tenants housed but also making sure that landlords are getting made whole as well. It will not be an issue if a landlord is serving the pay or vacate notice earlier in the 14-day period and starting the negotiation progress. Although some landlords will work with tenants under a three-day notice system, with some landlords it is just about the money. Many tenants come into court and have the money but for whatever reason the landlord does not want the money and wants to evict the tenant. The overall net effect of the bill is positive for everybody involved.

OTHER: This bill has undergone a long process and there are many people in the landlord industry that have concerns about the large extension of the pay or vacate notice period, but having money coming in from Commerce and being able to use that to reduce some of the costs is very valuable. The bill represents a balanced situation that will allow tenants to remain in their homes, but at the same time have some protection so that landlords do not have to bear those costs. Issues remain on how the landlord mitigation fund works, and some other technical issues, but those things should be figured out as the bill moves on.

Persons Testifying: PRO: Representative Nicole Macri, Prime Sponsor; Sarah Nagy, Columbia Legal Services; Michele Thomas, Washington Low Income Housing Alliance; Amy Tower, Tenants Union of Washington State; Edmund Witter, King County Bar Association; Tim Thomas, University of Washington.

OTHER: Kyle Woodring, Rental Housing Association.

Persons Signed In To Testify But Not Testifying: No one.