

FINAL BILL REPORT

ESSB 5600

C 356 L 19
Synopsis as Enacted

Brief Description: Concerning residential tenant protections.

Sponsors: Senate Committee on Housing Stability & Affordability (originally sponsored by Senators Kuderer, Das, Nguyen, Frockt, Cleveland, Darneille, Saldaña, Hasegawa, Wilson, C., Conway, Randall, Wellman, Keiser, Hunt, Pedersen and Liias).

Senate Committee on Housing Stability & Affordability
House Committee on Civil Rights & Judiciary

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 eviction 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 such 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 that will be using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities.

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.

Summary: Notice to Pay or Vacate. For tenancies under the RLTA, a landlord must provide a tenant 14 days notice instead of 3 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 website 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. When the landlord at the commencement of the tenancy has provided an installment payment plan for nonrefundable fees or deposits to secure the tenant's obligations and the tenant defaults in payment, the landlord may treat the default as rent owing. In such a scenario, the tenant and landlord may exercise their rights as to rent owing under the RLTA. "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. Once a judgement has been satisfied, the landlord must file a satisfaction of judgment with the court.

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. Any attorneys' fees awarded are subject to repayment under the court's exercise of judicial discretion.

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

- 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:

1. The court may not stay the writ of restitution more than 90 days from the date of the order, 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 30-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 15th of the month, so that the total amount of the judgment and all additional rent that is due is paid within 90 days.
2. 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 issuance 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.
3. 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. The order to stay the writ of restitution must require the tenant to serve a copy of the order on the landlord by personal delivery, first-class mail, facsimile, or email if agreed to by the parties. Service of the notice of default does not include an additional day for purposes of execution of the writ.
4. 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 tenant must also provide an offer of proof of such reliance on emergency rental assistance.
5. 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, including any unpaid portion of the judgment after the tenant defaults on the payment plan. 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 finding that the landlord is eligible to receive on behalf of the tenant and may apply for reimbursement from the Landlord Mitigation Program and directing the clerk to remit any future payments made by the tenant to reimburse Commerce, without obligating Commerce to provide assistance in claim reimbursement through the Landlord Mitigation Program if there are insufficient funds.

Such claims for reimbursement are exempt from any post-judgment interest and are not an entitlement.

Commerce must provide a form on its website for tenants and landlords to apply for reimbursement funds. The landlord may solely submit the form, if the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, but must attest to the amount of money owed and sign the form under penalty of perjury. 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. After payment of the remaining or total judgment amount, as applicable, by Commerce to the landlord, the judgment is satisfied and the landlord must file a satisfaction of judgment with the court.

If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted, Commerce must create and maintain a waitlist and distribute funds in the order claims are received. Payment of such claims may only be made from the Landlord Mitigation Program account. Commerce is not civilly or criminally liable or subject to any penalty or cause of action regarding the provision or lack of provision of reimbursement funds.

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 who served the tenant that describes the personal service achieved and 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.

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.

The act is null and void if funding is not provided in the capital or omnibus appropriations act for the 2019-2021 fiscal biennium.

Votes on Final Passage:

Senate	31	15	
House	51	46	(House amended)
Senate	30	18	(Senate concurred)

Effective: July 28, 2019