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## Housing, Human Services & Veterans Committee

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### **E2SSB 5160**

**Brief Description:** Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Lias, Conway, Das, Lovelett, Saldaña and Wilson, C.).

#### **Brief Summary of Engrossed Second Substitute Bill**

- Requires landlords to offer tenants a repayment plan for unpaid rent accrued during the public health emergency, with monthly payments no more than one-third of the tenant's monthly rent.
- Provides that landlords may file reimbursement claims under the Landlord Mitigation Program for unpaid rent that accrued between March 1, 2020, and the end of the public health emergency, when the tenant has vacated or abandoned the tenancy or when the tenant defaults on a repayment plan.
- Requires the Administrative Office of the Courts to contract with dispute resolution centers to establish a two-year, statewide eviction resolution pilot program to facilitate the resolution of nonpayment of rent cases.
- Provides a right to counsel for indigent tenants in unlawful detainer show cause hearings and trials.
- Authorizes landlords access to certain rental assistance programs through the Department of Commerce, if feasible.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Hearing Date:** 3/16/21

**Staff:** Lena Brodsky (786-7192).

**Background:**

Residential-Landlord Tenant Act.

The Residential Landlord Tenant Act (RLTA) regulates the relationship between landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and prohibited actions.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including requiring landlords to accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the notice to pay or vacate for nonpayment of rent expires, and to suspend any court action for seven court days after they provide necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds.

Enforcement Remedies and Unlawful Detainer.

Landlord remedies for a tenant's failure to comply with his or her duties includes eviction of a tenant in unlawful detainer status. The definition of "unlawful detainer" applicable under the RLTA, as well as with respect to other tenancies not governed by the RLTA, is found in a chapter separate from the RLTA, chapter 59.12 RCW. 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, 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.

Eviction Moratorium.

On March 18, 2020, Governor Inslee issued Proclamation 20-19 to prohibit a number of

activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions of the eviction moratorium with the current variation, Proclamation 20-19.5, set to expire on March 31, 2021.

The eviction moratorium prohibits residential landlords, manufactured housing community landlords, property managers, and property owners from:

- serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate, as applied to tenancies or other housing arrangements, such as hotel/motel or camping area stays of more than 14 days, that have expired or that will expire during the moratorium's effective period; and
- seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless, as applied to both circumstances:
  - an affidavit to the eviction or termination of tenancy notice attests that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or
  - at least 60 days' written notice of the property owner's intent to personally occupy the premises as a primary residence or sell the property is provided to the tenant by affidavit signed under penalty of perjury.

The current moratorium also prohibits landlords from:

- assessing, or threatening to assess, late fees for the nonpayment or late payment of rent or other charges as of February 29, 2020;
- retaliating against individuals for invoking their rights or protections under the moratorium or any other state or federal law providing rights or protections for residential dwellings, with the exception for landlords to engage in reasonable communications with tenants to explore repayment plans;
- assessing, or threatening to assess, rent or other charges for any period during which the resident's access to, or occupancy of, the dwelling was prevented as a result of COVID-19; and
- treating any unpaid rent or other charges as an enforceable debt or obligation that is owing or collectable, when nonpayment of rent or other charges resulted from COVID-19 and occurred on or after February 29, 2020, including attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means, with the exception for landlords who demonstrate by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

A failure to provide a reasonable repayment plan under the moratorium is a defense to any lawsuit or other attempts to collect. A landlord may engage in customary and routine

communications with residents of a dwelling or parcel of land occupied as a dwelling.

#### Eviction Resolution Pilot Program.

On September 9, 2020, the state Supreme Court issued an order authorizing superior courts to implement an Eviction Resolution Program (ERP). Six counties chose to participate in the pilot ERP. The ERP requires landlords to undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation provided by the participating Dispute Resolution Centers (DRCs).

The ERP is a two-step process. Along with a rent due notice/letter, a landlord will send notice #1, a request for a formal first meeting involving the two parties and DRC staff. Notice #1 also includes contact information of the participating DRC, rental assistance resources, and the county tenant attorneys. Upon receipt of the rent due notice and notice #1, the tenant has 14 days to voluntarily engage in the process. If the tenant does not respond to the initial contact, the landlord sends the tenant notice #2, which is another request to engage in the ERP program. The tenant has 10 days to respond to this second contact and the landlord sends a copy of notice #2 to the participating DRC.

Once a landlord and tenant voluntarily enter into the ERP process, specialists will work with both parties and external partners to resolve the issue of non-payment and future payments. If resolution cannot be achieved, formal mediation will be offered to the landlords/tenants at no cost.

The ERP process can be initiated by either the landlord or the tenant without service of a 14-day notice. If the tenant initiates or responds to a notice, the landlord is obligated to participate in the process. Once the Governor's eviction moratorium—Proclamation 20-19.5—and any of its amendments or extensions expire, the ERP will require landlords to engage in pre-litigation conciliation efforts prior to filing an unlawful detainer action.

#### Right to Counsel.

The United States and Washington constitutions, as well as state statutes and court rules, provide for the right to legal counsel for indigent persons in certain court proceedings, including criminal, juvenile, involuntary commitment, and dependency cases.

"Indigent" is defined as a person, at any stage of the court proceedings, who:

- receives one of several types of public assistance;
- has been involuntarily committed to a public mental health facility;
- has an annual income of 125 percent or below the federal poverty level; or
- has insufficient funds to retain counsel.

There is no federal or state guaranteed right to counsel for indigent tenants in unlawful detainer cases. A few cities in the country have implemented some form of right to counsel for tenants in eviction proceedings.

### Office of Civil Legal Aid.

The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. The OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. The OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. The OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

### Dispute Resolution Centers.

Dispute Resolution Centers (DRCs) were first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation. Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee that is based upon the participant's ability to pay. DRCs handle numerous types of cases, including those that involve landlords and tenants.

### State Rental Assistance Programs.

The Department of Commerce (Commerce) administers a number of rental assistance programs that serve a variety of populations depending on certain eligibility standards. Funds received from the federal CARES Act have allowed Commerce to set up an eviction rent assistance program to help qualifying households impacted by COVID-19. Funds are distributed to county grantees, such as county governments and nonprofit entities, which provide rent assistance to qualifying households.

### Landlord Mitigation Program.

The Landlord Mitigation Program (LMP) 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 Commerce. The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days of lost rental income, and up to \$5,000 in any unpaid rent and utilities and 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. The LMP also includes 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 a court ordered payment plan.

### Manufactured/Mobile Home Landlord-Tenant Act.

The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property, or in the association that owns the property.

## **Summary of Engrossed Second Substitute Bill:**

### Tenant Protections.

Any nonpayment of any rent that accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium may not be a factor in any housing decision effecting a tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants.

A landlord may not impose late fees or other charges for a tenant's nonpayment of rent during the public health emergency. A landlord may not deny, discourage application for, or otherwise make unavailable any dwelling unit based on a tenant's or prospective tenant's medical history, including any prior or current exposure or infection to the COVID-19 virus. A landlord may also not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request. Any violation of these prohibitions constitutes a violation of the laws against discrimination. A landlord in violation of these prohibitions and requirements is liable for 4.5 times the monthly rent, court costs, and attorneys' fees.

"Public health emergency" is defined as Governor Proclamation 20-05 and its amendments.

"Tenant" is defined to include persons residing in transient lodging, such as hotels/motels or camping areas as primary dwellings, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel, motel, or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel, motel, or camping area has provided the individual with a seven-day eviction notice, which must provide certain legal aid resource information, and does not include occupants of homeless mitigation sites or persons entering onto land without the permission of the owner or lessor. Any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

### Landlord Mitigation Program.

A landlord may file a reimbursement claim under the LMP for unpaid rent that accrued between March 1, 2020, and the end of the public health emergency, when the tenant has vacated or abandoned the tenancy or when the tenant defaults on a repayment plan. Claim reimbursement may not exceed \$5,000. For such claims, the landlord may not take legal action or pursue a collection action against the tenant to seek any remaining unpaid rent once reimbursed under the LMP.

### Repayment Plans.

If a tenant has unpaid rent accrued between March 1, 2020, and the end of the public health emergency, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent, with monthly payments no more than one-third of the monthly rent. If the tenant fails to accept the terms of a reasonable repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action subject to any requirements under the eviction

resolution pilot program. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the LMP up to \$5,000 or proceed with an unlawful detainer action, subject to any requirements under the ERP.

During any unlawful detainer proceeding, the court must consider the tenant's circumstances, including any decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding. It is a defense to an unlawful detainer action if the landlord did not offer a repayment plan.

Any repayment plan entered into by the landlord and tenant must:

- begin no sooner than 30 days after the plan is offered;
- cover rent only and not legal fees, late fees, or other charges;
- allow for payment from any source of income, including benefits, assistance or subsidy programs, or from pledges by nonprofits, churches, religious institutions, or government entities; and
- not be conditioned on:
  - the tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the agreement;
  - a requirement that the tenant apply for or provide proof of receipt of governmental benefits; or
  - the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

#### Eviction Resolution Pilot Program.

The Administrative Office of the Courts (AOC) must contract with DRCs within or serving each county to establish a two-year, statewide court-based Eviction Resolution Pilot Program (ERP) operated in accordance with Washington supreme court order no. 25700-B-639 and any standing judicial order of the individual superior court. The ERP must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action. Before filing an unlawful detainer action for nonpayment of rent, the landlord must provide a 14-day pay or vacate notice and an additional notice to the tenant informing them of the ERP. The landlord must retain proof of service or mailing of the additional notice.

The additional notice to the tenant must provide at least the following information regarding the Eviction Resolution Pilot Program:

- contact information for the local DRC;
- contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;
- a statement providing: "The Washington State Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";
- the name and contact information of the landlord, the landlord's attorney, if any, and the

tenant; and

- a statement that "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to:

- the local housing justice project or other designee of OCLA; and
- the local DRC serving the area where the property is located.

The AOC must establish ERP participation requirements for both the landlord and tenant consistent with any standing judicial order in effect. A landlord must be issued a certification of participation by the appropriate DRC before the landlord may file an unlawful detainer action for nonpayment of rent with the court.

Any superior court, in collaboration with the DRC located within or serving the same county, participating in the ERP must report annually to the AOC beginning January 1, 2022, until January 1, 2023, on the following:

- the number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;
- the number of referrals made to DRCs;
- the number of nonpayment of rent cases resolved by the ERP;
- how many instances the tenant had legal representation, either at the conciliation stage or formal mediation stage;
- the number of certifications issued by DRCs and filed by landlords with the court; and
- any other information that relates to the efficacy of the ERP.

By July 1, 2022, until July 1, 2023, the AOC must provide a report to the Legislature summarizing the ERP report data shared by the superior courts and DRCs.

#### Right to Counsel.

Subject to appropriations, the court must appoint an attorney for an indigent tenant at any show cause hearing or scheduled trial. Prioritization on the provision of legal representation services must be in those counties in which the most evictions occur, as determined by OCLA.

"Indigent" means any person who:

- receives assistance from certain public and medical benefits programs; or
- has an annual income, after taxes, at 200 percent or below the federal poverty level.

OCLA is responsible for implementation of the indigent tenant's right to counsel. OCLA must contract with attorneys and other agencies to implement tenants' right to counsel within appropriated amounts. Within 90 days of the effective date of the act, OCLA must also submit to the Legislature and AOC a plan outlining full implementation of the right to counsel program within 12 months of the effective date of the act.

The uniform 14-day pay or vacate notice for nonpayment of rent is updated to inform tenants of

the right to counsel mandate for qualifying low-income renters, general information regarding DRC services, as well as state and local rental assistance programs as listed on the Office of the Attorney General's website. The notice is also updated to inform tenants that upon expiration of the ERP:

- a landlord must provide the 14-day notice to the DRC located within or serving the county of tenancy;
- DRCs are encouraged to notify the housing justice project or Northwest Justice Project located within or serving the county in which the DRC is located, as appropriate, once the 14-day notice is received from the landlord; and
- it is a defense to an unlawful detainer eviction if a landlord does not provide the notice to the appropriate DRC.

The eviction summons is also updated to inform tenants of the right to counsel mandate for indigent tenants and to provide general information regarding DRC services.

#### State Rental Assistance Programs.

Commerce must authorize landlords an opportunity to apply to certain state rental assistance programs (the Consolidated Homeless Grant Program, Emergency Solutions Grant Program, and any rental assistance program funded through federal COVID-19 relief funds) if feasible, and establish necessary application and eligibility requirements and any conditions on the receipt of funds.

#### Payment of Rent Into Court Registry.

The additional, optional notice for landlords to use in nonpayment of rent cases, instructing tenants with unpaid rent to pay into the court registry the amount of rent allegedly owed or file a sworn statement denying that rent is owing, is eliminated.

#### Additional Changes to the RLTA and MHLTA.

Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer action in which the tenant agrees to pay any amount other than for rent due or rent to retain the tenancy, pay any amount more than statutory judgment limits, or waives any rights afforded to the tenant under the court exercise of judicial discretion in nonpayment of rent cases or under the RLTA is void and unenforceable.

Licensed assisted living facilities, nursing homes, adult family homes, and registered continuing care retirement communities are exempt from the provisions of the act.

Provisions relating to the right to counsel legal services for indigent tenants and the eviction summons form are applied to unlawful detainer actions for MHLTA tenancies.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 11, 2021.

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