
Civil Rights & Judiciary Committee

ESSB 5600

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).

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; and
 - authorizing the use of judicial discretion in unlawful detainer proceedings.
- Authorizes landlords in certain circumstances to seek payment from the Landlord Mitigation Program Account for an unpaid judgment.

Hearing Date: 3/19/19

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.

Unlawful Detainer.

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

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.

- 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.

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.

Landlord Mitigation Program.

In 2018 both the the Landlord Mitigation Program Account (Account), in the custody of the State Treasurer, and the Landlord Mitigation Program (Program), in the Department of Commerce (Commerce) were created. The \$10 affordable housing-for-all surcharge which is charged by county auditors for each document recorded was raised to \$13. Of the remaining funds after county administrative and distribution costs, 40 percent of the revenue generated through the surcharge must be transmitted to the State Treasurer for deposit as follows:

- The portion of the funds attributable to the original \$10 of the surcharge must continue to be deposited into the affordable housing-for-all account.

- The portion of the funds attributable to the additional \$3 of the surcharge must be deposited into the Account.

All of the remaining funds generated by the entire surcharge continued to be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities.

Subject to the availability of funds for this purpose, landlords of private market rental units rented to low-income tenants using a housing subsidy program may be reimbursed by the Program for certain types of claims:

1. up to \$1,000 for improvements identified as necessary in an inspection by the tenant's source of income. In order to be eligible, a landlord must pay the first \$500 for improvements and rent to the tenant whose source of income was conditioned on passing the inspection. Reimbursement may include up to 14 days of lost rental income;
2. reimbursement for damages as reflected in a court judgment against the tenant;
3. reimbursement for damages established by means of specified documentation presented to Commerce. The rental property must have been inspected by the tenant and the landlord or the landlord's agent at the commencement of the tenancy and a written move-in inspection report prepared and signed by both; the landlord must have made the repairs and must submit a claim on the Commerce-designated form, signed under penalty of perjury, together with before- and after-repair photographs, copies of repair receipts, and other documentation or information as Commerce may request; and
4. reimbursement for unpaid rent and utilities to the extent that Commerce is satisfied by the evidence.

In reviewing a claim, Commerce must confirm that the claim involves a private market rental unit rented to a low-income tenant using a housing subsidy program. Commerce may inspect the property and records related to a claim and may make use of a third-party inspector as needed to investigate fraud.

Claims must total at least \$500. Claims may exceed \$5,000, but reimbursement may not exceed that cap. Reimbursements are to be made on a first-come, first-served basis, to the extent of available funds. Commerce must make best efforts to notify a tenant of the amount and reason for reimbursement.

A landlord in receipt of reimbursement from the Program is prohibited from taking legal action against the tenant for damages attributable to the same tenancy, or from pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy. If a landlord is denied reimbursement from Commerce, he or she may seek a court judgment for the damages and, if successful, may resubmit a claim for damages supported by the judgment.

Summary of Bill:

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

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 Office of the Attorney General (AGO) 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 recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. These terms do not include nonrecurring 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 any payment toward late payments, damages, legal costs, or other fees, including attorneys' fees. Except as provided in the section governing unlawful detainer court proceedings, a tenant's right to possession of the premises 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 late payments, legal costs, or other fees, including attorneys' fees.

The required contents of an eviction summons 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 set forth.

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. "Due diligence" is met if 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. Before the entry of any judgment or issuance of a writ of restitution due to the tenant's failure to appear, the landlord shall provide the court with an affidavit from the person or persons attempting service that describes the service achieved, or if by alternative service, that describes the efforts at personal service before alternative service was used, together with an affidavit from the landlord, or his or her agent or attorney, stating a belief that the tenant cannot be found. The provision limiting the relief available in the event alternative service is used remains as is in current law.

The provision governing unlawful detainer proceedings, judgments, and execution of judgments is amended as follows to add numerous details and expressly allow for judicial discretion:

1. Upon a finding in favor of the landlord in an unlawful detainer action, judgment shall be entered for restitution, together with:
 - a. damages and rent due, if any;
 - b. late fees if due under the lease and the late fees do not exceed \$75;
 - c. statutory costs; and
 - d. reasonable attorneys' fees, subject to the following conditions:
 - i. No attorneys' fees may be awarded when the judgment is entered after a default for failure to appear if the total amount of rent awarded in the

judgment is equal to or less than two months of the tenant's monthly contract rent, or if less than \$1,200.

- ii. If the tenant files a motion seeking a stay pursuant to the provision allowing the court to exercise discretion, the court may award attorneys' fees only if the tenant prevails on the motion, in which case the attorneys' fees may be included as part of the tenant's right to reinstatement. No attorneys' fees may be awarded against the tenant if the landlord prevails.
2. Execution upon a judgment entered in an unlawful detainer action following a default in the payment of rent shall not be issued until the expiration of five court days (up from five days) after entry of the judgment. Before that time, the tenant, subtenant, mortgagee, or other interested party may pay into court or to the landlord the following amounts and the tenant shall be restored to the tenancy:
 - a. rent due;
 - b. any court costs incurred at the time of payment;
 - c. late fees if due under the lease and the late fees do not exceed \$75;
 - d. attorneys' fees if awarded; and
 - e. an additional \$50 for each time the tenant was reinstated by the court within the previous 12 months prior to payment.
3. Following entry but prior to execution of a judgment in favor of the landlord and against the tenant for restitution of the premises and forfeiture of the tenancy due to nonpayment of rent, the court has discretion to stay or vacate the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. (A tenant who has been served with three or more notices to pay or vacate within 12 months prior to the notice before the court may not seek such relief.)
 - a. The court must consider the following factors:
 - i. evidence or lack of evidence of the tenant's willful or intentional default or failure to pay;
 - ii. evidence that nonpayment was caused by exigent circumstances that were beyond the tenant's control and not likely to recur;
 - iii. the tenant's ability to timely pay the judgment;
 - iv. the tenant's payment history;
 - v. whether the tenant is otherwise in substantial compliance with the rental agreement;
 - vi. the relative burden on the the parties resulting from reinstatement or refusal to reinstate;
 - vii. conduct related to other notices; and
 - viii. whether the landlord can obtain disbursement from the landlord mitigation program (program).
 - b. The burden of proof is upon the tenant.
 - c. An order issued by the court 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 of the judgment.
 - d. With respect to any such discretionary order:
 - i. A court may not stay the writ more than three months from the date of judgment, but may order repayment of the balance within that time.
 - ii. 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. Before this

- time, the sheriff may serve the writ of restitution, but shall not execute upon the writ until after expiration of five court days in order to allow for payment to be made.
- iii. In the event payment is timely made, the writ shall be stayed without further order of the court in order for the tenant to make any remaining payment; in the event of default, the sheriff must serve the writ again or the landlord may serve a notice of default on the tenant informing the tenant that he or she has three calendar days to vacate the premises before the sheriff may execute the writ.
 - iv. If a tenant seeks to satisfy a condition by relying upon emergency rental assistance provided by a government or nonprofit entity the court may stay the writ upon sufficient documentation to readily pay any balance set forth in the order, and the court shall stay the writ so as to afford the tenant an opportunity to satisfy the condition.
 - v. If payment to the court is not possible due to the means of payment, the court may order payment be made directly to the landlord.
- e. If the landlord indicates that he or she will submit an application to the Landlord Mitigation Program (Program) in order to satisfy the outstanding judgment, the court shall restore the tenancy and render an order sustaining the judgment for the landlord, denying or vacating the writ of restitution, in order for the payment to be made from the Program, and indicating that the landlord is entitled to disbursement from the Program.
- i. In the event that payment from the Program is not disbursed, 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. Under these circumstances, the tenant may exercise the rights afforded tenants under this section.
 - ii. Upon payment from the Program to the landlord for the amount of the judgment, the judgement is satisfied.

Claims made to the Program under this section are not subject to existing Program requirements that claims must total at least \$500, and that claims may exceed \$5,000, but reimbursement may not exceed that cap. When a landlord has been reimbursed from the Program, the tenant has three months from the date that judgment is entered to reimburse the Department of Commerce (Commerce) by depositing the amount into the court registry. The court shall then forward such funds to Commerce.

Finally, RLTA terminology is amended to speak in terms of liability for, rather than guilty of, unlawful detainer. References in current law to "plaintiff" and "defendant" are changed to "landlord" and "tenant."

Appropriation: None.

Fiscal Note: Requested on March 11, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.