

HOUSE BILL REPORT

ESSB 6378

As Passed House:
March 3, 2020

Title: An act relating to residential tenant protections.

Brief Description: Concerning residential tenant protections.

Sponsors: Senate Committee on Housing Stability & Affordability (originally sponsored by Senators Kuderer, Darneille, Das and Lovelett).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/26/20, 2/28/20 [DP].

Floor Activity:

Passed House: 3/3/20, 54-42.

Brief Summary of Engrossed Substitute Bill

- Amends the Residential Landlord-Tenant Act to:
 - amend the notice to pay or vacate and summons forms;
 - prohibit a landlord from threatening eviction for failure to pay certain charges other than rent;
 - provide for use of emergency rental assistance;
 - revise a provision with respect to attorneys' fees;
 - expressly allow the landlord to refuse cash, and require a receipt if cash payments are allowed; and
 - add a requirement with respect to claims made to the Landlord Mitigation Program.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Kilduff, Chair; Thai, Vice Chair; Goodman, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Rude and Ybarra.

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.

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.

Pursuant to 2019 legislation, a number of changes to the RLTA were made related to rent and unlawful detainer actions for failure to pay rent. As a result of these changes:

Rent.

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. It is specified in the definition that these terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. An exception is included for nonrefundable fees or deposits which a landlord permits to be paid in installments.

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. Generally, 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.

Unlawful Detainer for Failure to Pay Rent.

A tenant is liable for unlawful detainer when he or she continues in possession after a default in rent, and after a 14-day notice to pay rent or vacate has been served, and has remained uncomplied with for the period of 14 days after service. A 14-day notice to pay or vacate form is codified in statute, and notices are required to be substantially in this form. The summons form is also codified.

When a tenant is liable for unlawful detainer after default in the payment of rent, execution upon the judgment shall not occur until the expiration of five court days after the entry of the judgment. Before that time, the tenant or others on his or her behalf may pay into court or to the landlord the amount of the rent due, any court costs incurred, late fees if the fees are due under the lease and do not exceed \$75 in total, and attorneys' fees if awarded, in which case any judgment entered shall be satisfied and the tenant restored to the tenancy. A tenant must pay an additional \$50 for each time the tenant was reinstated after judgment within the previous 12 months prior to payment. Once the judgment is satisfied, the landlord must file a satisfaction of judgment.

The RLTA allows for, and prescribes a process for, a tenant against whom a judgment has been entered for the restitution of the premises and forfeiture of the tenancy due to

nonpayment of rent to obtain a stay of the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. A number of conditions and requirements with respect to such a stay are specified, including:

- The court shall not stay the writ of restitution more than 90 days from the date of the stay order, but may order repayment of the judgment balance within that time.
- The court shall require the tenant to pay to the landlord or to the court one month's rent within five court days of issuance of the stay order.
- The sheriff may serve the writ of restitution before expiration of the five court days following issuance of the stay order; however, the sheriff shall not execute the writ of restitution until after expiration of the five court days in order for payment of one month's rent to be made by the tenant. In the event that the payment is made, the court shall stay the writ *ex parte* without prior notice to the landlord upon the tenant filing and presenting a motion to stay with a declaration of proof of payment.

If the tenant pays the one month's rent but subsequently defaults on the payment plan, the landlord may enforce the writ of restitution after serving a notice of default. The form of the notice of default is prescribed. Upon service of the notice of default, the tenant has three calendar days to vacate before the sheriff may execute the writ.

If a tenant seeks to satisfy a condition related to a stay by relying on an emergency rental assistance program provided by a government or nonprofit entity, the court shall stay the writ of restitution as necessary to afford the tenant an equal opportunity to comply.

Attorneys' Fees.

Under the RLTA, the court's authority to award reasonable attorneys' fees is limited in some cases. The court is not to award such fees if a judgment restoring possession of the property to the landlord is entered after the tenant has failed to appear in the proceedings or if 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 from execution, the court may only award attorneys' fees to the landlord if the tenant is permitted to be reinstated, and the fees are subject to repayment.

Landlord Mitigation Program.

In the context of an application for a stay, the court must issue a finding as to whether the tenant is low-income, of limited resources, or experiencing hardship in order to determine if the parties would be eligible for disbursement from the Landlord Mitigation Program (Program). If the court finds that the tenant is low-income, has limited resources, or is 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 Program; and
- directing the clerk to remit, without further order of the court, any future payments made by the tenant in order to reimburse the Department of Commerce.

Summary of Bill:

Residential Landlord-Tenant Act.

The Residential Landlord-Tenant Act (RLTA) is amended in several ways.

Notice to Pay or Vacate Form.

The language in the 14-day notice to pay or vacate form is amended to:

- provide that payment must be made, not by cash, but per the terms of the rental agreement or by nonelectronic means, including cashier's check, money order, or other certified funds; and,
- add referral information for the Northwest Justice Project's CLEAR hotlines and the Washington Law Help website.

Summons Form.

The summons form is also amended to add referral information for the Northwest Justice Project's CLEAR hotlines and the Washington Law Help website.

Use of Emergency Rental Assistance.

In an unlawful detainer action, if a tenant seeks to restore the tenancy and pay the amount of the judgment within five days of its entry with funds acquired through an emergency rental assistance program provided by a governmental or nonprofit entity, the tenant must provide a copy of the pledge of assistance and be allowed the opportunity to exercise the right. This may include a stay of the judgment as well as provision, by the landlord, of documentation necessary for processing the assistance.

The landlord must accept any pledge of emergency rental assistance funds provided to the tenant:

- before the expiration of any pay or vacate notice for the full amount of the rent owing under the rental agreement; and
- after the expiration of the pay or vacate notice if the pledge will contribute to the total payment of both the amount of rent due, including any current rent, and other amounts if required pursuant to the RLTA section governing unlawful detainer actions and the exercise of judicial discretion.

The landlord must suspend any court action for seven court days after providing necessary payment information to a nonprofit or governmental entity to allow for payment of the emergency funds. By accepting a pledge of emergency rental assistance, the landlord is not required to enter into any additional conditions not related to the provision of necessary payment information and documentation.

Cash Payments.

A landlord is expressly permitted to refuse to accept cash for any payment of rent made by a tenant. If, however, the landlord accepts cash, he or she must provide a receipt.

Threatening Eviction.

A landlord is prohibited from threatening a tenant with eviction for failure to pay nonpossessory charges.

Attorneys' Fees.

Rather than prohibit the award of attorneys' fees in instances in which the tenant fails to appear, an award of attorneys' fees is prohibited when the tenant fails to respond to a pleading or other notice requiring a response.

Landlord Mitigation Program.

Both the RLTA and the statute governing the Landlord Mitigation Program are amended to provide that any claim made to the Program for reimbursement for an unpaid judgment for rent, late fees, attorneys' fees, and costs after a court order finding that the landlord is eligible to apply for reimbursement from the Program must be accompanied by the court order staying the writ.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill contains two effective dates. Sections 1 through 4, relating to allowing landlords to refuse to accept cash for payment of rent and providing that a receipt must be provided when cash is accepted; and, amendments to the notice and summons forms, take effect 90 days after adjournment of the session in which the bill is passed. Sections 5 through 8, relating to providing for situations in which a tenant seeks to restore the tenancy and pay the amount through an emergency rental assistance program; prohibiting landlord threats to evict for nonpossessory charges; prohibiting attorneys' fees when the tenant fails to respond; and requiring that a Landlord Mitigation Program claim include the court order staying the writ of restitution, contain an emergency clause and take effect immediately.

Staff Summary of Public Testimony:

(In support) The passage of Engrossed Substitute Senate Bill 5600 (ESSB 5600) last year was historic insofar as it updated the Residential Landlord-Tenant Act for the first time in 40 years. That legislation is working as intended. Homebase reports that, with those changes, particularly the 14-day notice that is required, they have been able to save 1,000 people from falling into homelessness. The Housing Justice Project reports that they saw a 430 percent increase in positive outcomes. There has been no noticeable drop in housing inventory. The number of writs executed by the sheriff in King County decreased in 2019 when compared with 2018, even though the cost of rent has not decreased. Tenant advocates in Spokane have indicated that there have been improvements due to last year's eviction reform.

Last year's legislation has accomplished the dual goals of keeping people housed when appropriate and making sure that the landlords get paid. As with all good bills and good ideas, however, there can be problems with implementation and the stakeholders have indicated that there are a few things that need to be corrected. That is the purpose of this bill. This bill as it has come over to the House of Representatives from the Senate is all compromise, and it got out of the Senate with bipartisan support. The changes are mainly technical to make sure that things work smoothly and as intended. This bill offers improvements aimed at people living in rural areas, such as including the contact information for the CLEAR hotline and resources outside of King County. This bill clarifies certain parts of the statutory reinstatement process, which is when a tenant has defaulted with respect to rent. It does this by allowing the tenant to pay off the balance without being evicted, and by allowing rental assistance programs to intervene effectively. This bill will help people stay in their homes.

Evictions have been a leading cause of homelessness in Washington. There have been deep gender and racial disparities in evictions. For instance, before the passage of ESSB 5600, black adults were 5.5 times more likely to be evicted than white adults in King County, and 6.8 times more likely in Pierce County. Women are more likely to be evicted than men, and more likely to be evicted for smaller sums. One in five persons in Spokane live in poverty. The average cost of rent has skyrocketed over the last five years, and the vacancy rate for affordable housing is almost nonexistent. In addition, there is a huge racial divide with respect to homeownership rates. Black and brown renters are more likely to be evicted. The racial equity issues are beginning to be addressed. Because of last year's eviction reforms, renters are more likely to remain in their homes. It is important to keep the reforms strong and accessible to everyone in the state. It is hoped that this trailer bill will add to the improvements that are being seen as a result of ESSB 5600.

(Opposed) None.

Persons Testifying: Senator Kuderer, prime sponsor; Edmund Witter, King County Bar Association's Housing Justice Project; Michele Thomas, Washington Low Income Housing Alliance; Xochitl Maykovich, Washington Community Action Network; and Sarah Nagy, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.