

SENATE BILL REPORT

SB 5600

As Reported by Senate Committee On:
Housing Stability & Affordability, February 18, 2019

Title: An act relating to residential tenant protections.

Brief Description: Concerning residential tenant protections.

Sponsors: Senators Kuderer, Das, Nguyen, Frockt, Cleveland, Darneille, Saldaña, Hasegawa, Wilson, C., Conway, Randall, Wellman, Keiser, Hunt, Pedersen and Liias.

Brief History:

Committee Activity: Housing Stability & Affordability: 1/28/19, 2/18/19 [DPS, DNP].

Brief Summary of First Substitute 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 Department of Commerce to provide translated versions of the uniform 14-day notice on its website in at least the top 10 languages used in the state.
- Requires a landlord to first apply any tenant payment to rent before applying the payment toward other charges.
- Prohibits continued tenancy and relief from forfeiture to be conditioned upon tenant payment or satisfaction of any monetary amount other than rent.
- Provides the court with 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.
- Authorizes the court to consider the reasonableness of late fees and costs and attorneys' fees before awarding such fees.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

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.

Majority Report: That Substitute Senate Bill No. 5600 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Zeiger, Ranking Member; Fortunato and Warnick.

Staff: Brandon Popovac (786-7465)

Background: 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 owned to the landlord and remains uncompliant if after a notice period of three days and the resulting unlawful detainer court process;
- what living arrangements constitute a tenancy;
- how and when a tenancy terminates;
- landlord notice to the tenant of any rent change amount; and
- the monetary damages recovery by the tenant if a landlord knowingly and deliberately uses a rental agreement that contains prohibited provisions.

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 tenant damages to a dwelling unit are documented by the landlord.

Summary of Bill (First Substitute): 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 Department of Commerce (Commerce) 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 Commerce, 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. Commerce 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.

Landlords must first apply any payment by a tenant to the rent amount before applying it toward other charges. Continued tenancy and relief from forfeiture may not to 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, damages, costs, or other fees. "Rent" is defined to mean consideration for use and occupancy of premises, including any charges for utilities, and expressly excludes charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees such as attorneys' fees.

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: evidence or lack of evidence of willful or intentional default by the tenant, ability of the tenant to timely cure the violation, ability of the tenant to timely pay rent or other amounts owed, tenant history of comparable violations, likelihood of recurrence, and relative burden on parties and neighbors due to tenancy reinstatement or otherwise. The court may also consider the reasonableness of any late fees or costs accrued under the tenancy, and any attorneys' fees, before awarding such fees. The tenant has the burden of proof to be granted relief from forfeiture.

EFFECT OF CHANGES MADE BY HOUSING STABILITY & AFFORDABILITY COMMITTEE (First Substitute):

- Creates a uniform 14-day notice to pay and vacate, which includes information on how tenants can access legal and advocacy resources.
- Requires Commerce to provide translated versions of the uniform notice on its website in at least the top ten languages used in the state and in a printable form, along with information for tenants to access legal and advocacy resources and cultural organizations that may provide assistance in the tenant's primary language.
- Includes any charges for utilities in the definition of rent.
- Authorizes the court to award reasonable attorneys' fees after default in payment of rent or violation of a lease provision only if the tenant acted in bad faith, willfully performed an act prohibited by the lease, or willfully refrained from performing an act required by the lease.
- Provides the court with 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.
- Authorizes the court to consider the reasonableness of late fees and costs and attorneys' fees before awarding such fees.
- Modernizes guilty of unlawful detainer language.
- Removes the following provisions from the underlying bill:
 1. Makes the RLTA applicable to occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.
 2. Requires tenancies to continue on a month-to-month basis upon expiration of a lease rented for a specified time and without an agreement to renew the lease.
 3. Extends mandatory notice period from 30 to 60 days when landlords propose a change in the amount of rent.
 4. Removes the cap of \$500 on actual damages if a landlord deliberately and knowingly includes a statutorily prohibited provision in a rental agreement, and provides that a tenant is entitled to recover the greater of one month's rent or treble damages.
 5. Requires a landlord to provide a tenant with documentation regarding any damages for which the landlord intends to retain any of the deposit amount.

Appropriation: None.

Fiscal Note: Not requested.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a need to overhaul our statewide approach to housing and homelessness by focusing on prevention as opposed to being primarily reactive. Inflexible eviction policies are a major source of housing instability around our state. If we are serious about long-term prevention, we must address this primary driver of homelessness. Currently, 26 states and the District of Columbia have pay or vacate notice periods longer than three days, including some with a 14-day notice. Washington State is outside the norm and for individuals living paycheck to paycheck, which is now nearly half of all Americans, these extensions of notice matter. We should also offer resources, flexibility, and compassion to help since one unexpected medical bill or car accident or government shutdown can lead to an eviction.

The bill gives tenants more time to pay rent although 21 days would probably be best to deal with most medical emergencies since it can take several weeks or even months to heal and be able to deal with outside responsibilities, like paying rent. Housing stability is crucial for healing. Emergencies happen to everyone at all income levels and we all need flexibility to deal with emergencies.

Over three quarters of tenants in the city of Seattle who received notices to pay and vacate for failure to pay rent ended up vacating their apartments. The leading cause for eviction in a recent survey revealed tenants were behind a month or less on rent and most of those tenants were either in western Washington, but not Seattle, or in eastern Washington. The reforms in the bill are not going to increase housing costs. Some landlords will apply rent payments to overdue utilities instead of rent. The rental system is literally designed to kick people when they are down; in contrast, when a homeowner becomes delinquent on their mortgage payment, they have at least 90 days before issuance of a notice of default. Our eviction system is a complete mismatch with homelessness interventions. There is not nearly enough time for a tenant to get rental assistance to their landlord before the costs and the risks escalate. Attempting to get legal aid might eat up two days so the current time period is not long enough. Once the paperwork is filed, the tenant is almost always forced to pay extremely expensive attorneys' fees in court costs as well as late fees. Some tenants might be lucky enough to get homelessness assistance to help pay off these costs. Ohio and New York City allow judges to consider circumstances as to why a tenant fell behind on rent.

Seventy-one percent of the lowest-income households in Washington State are paying over 50 percent of their income towards rent, which means that one small household crisis can lead to the inability to pay rent on the first of the month. Judges have little discretion over the process and tenants often leave court owing much more in court costs and attorneys' fees than they ever owed. The Legislature must seriously consider the significant race and gender issues at stake - female headed households and people of color are much more likely to face

eviction in Washington State. Black women are four to five times more likely to face eviction. If we are going to get Washington State ahead of our homelessness crisis we must keep people in their homes and protect tenants. Over the past five years, 132,000 adults have had been formally evicted in Washington, which is 1.8 percent of the state's population. Informal evictions are even higher. Nine percent of the black adult population in King County has an eviction; in Pierce County, 17 percent of the black adult population has had an eviction. Across the state, women are evicted 50 percent more than men. Forty-six percent of renters are rent burdened. If we are going to get Washington State ahead of our homelessness crisis, we must keep people in their homes and protect tenants.

The number of individuals becoming homeless continues to outpace our efforts. Extending the current three-day notice to allow up to 14 days for rent to be paid would make a significant difference in preventing homelessness for these households. It is going to be adequate for the tenant to go to a program do the intake, verify the debt, contact the landlord, and make the payment. We also need to ensure all eviction notices have information about legal resources and we need to allow courts to come up with alternatives.

CON: The attrition rate of landlords show that they are getting out of the business because they can no longer afford it or handle the risk. Landlords are selling by the thousands in a market that is fairly high right now. This is going to devastate the amount of rental housing inventory. Landlords are also one medical trip to the hospital or one crisis away from having the same sort of issues as tenants. Many are struggling day to day as well.

Many landlord's profit-loss statement for one year does not show that they are making money. With property taxes and operating costs, landlords are just one late mortgage payment away from losing their building. By the time that tenant replies to a three-day notice, there is an additional ten days for them to come up with funds or work with the landlord, of which many do work with their tenants. Communication between the tenant and the landlord is critical. Many landlords do not want the vacant unit or have turnover costs, so landlords want to keep these tenants in the units and keep them maintained in a good working order. Some landlords offer payment plans or provide education information about the consequences of not paying rent.

There is concern that the remedies proposed in the bill may reduce a landlord's flexibility to work with tenants. Many of the remedies proposed may not actually address the true causes of homelessness or housing availability and affordability, which is more of a supply and demand issue. Landlords are not interested in arbitrarily terminating a tenancy since it costs money to do so. The Legislature should work with both landlords and tenants to create a regulatory environment that is fair and protective. The Legislature needs to put together a work group to look at all of the landlord-tenant bills and solve the issues before the end of this session. The plain language requirement for the 14-day notice should be written into statute. Lawyers should not have to argue in court as to whether or not a particular notice is in plain language.

Both the landlord and tenant lose if eviction notices have to be issued. Many landlords try to work with the tenant in multiple ways over an extended period of time and use eviction as a last case scenario. If the bill passes as is, all tenants will eventually absorb the resulting costs and unintended consequences. The bill would force landlords to stop working with tenants

and immediately start the eviction process as a result of the increase in timeframes and costs. The three-day notice is only a nuclear option for some landlords. Most tenants respond when they get a three-day notice on their door. Extending the notice to 14 days is going to cause landlords to be more aggressive with tenants.

One alternative is to only allow a longer notice period for first-time late rent or fees. Language regarding a term lease not coming to an end is concerning. A lot of landlords own one single rental property but because of a work reassignment they have to rent out their home but plan to move back into it. Also, having a month-to-month renewal on fixed-term leases is difficult for landlords of student housing since the transition of students year after year without automatic renewal allows students to know that housing will always be available. Language regarding the provision of written estimates for move-out costs is also concerning. Some repairs are custom jobs and not done through a vendor. There needs to be a distinction made between single family homes versus a one thousand unit apartment community. It is problematic to have the same rules apply to very different types of rental housing.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Gina Owens, citizen; Xochitl Maykovich, Political Director, Washington Community Action Network; Justin Gifford, Physician's Assistant; KeAndra Radchenko, citizen; Michele Thomas, Washington Low Income Housing Alliance; Colleen Mancino, citizen; Dinah Braccio, Tenant's Union; Edmund Witter, King County Bar Association; Tim Thomas, Moore-Sloan and WRF Data Science Fellow at University of Washington; Renee Kimball, citizen; Mark Chattin, CCS Tenant Law Center; Mary Jo Shannon, St. Vincent de Paul Society of King County; Keilani Luxmore, Washington Community Action Network; Kelly Rider, King County—Department of Community & Human Services.

CON: Chris Dobler, citizen; Jennifer Wamboldt, citizen; Kaitlyn Jackson, citizen; Rob Trickler, Washington Landlord Association; Errin Reynolds, Washington Landlord Association; Duncan Green, citizen; Joseph Fisher, citizen; Cory Brewer, citizen; Bryant Casal, citizen; David Nagel, citizen; Joseph Puckett, citizen; Melissa Koenig, citizen; Steve Williams, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Lindsey Grad, SEIU Healthcare 1199NW; Laura Downing, Parents Organizing for Welfare and Economic Rights; Sarah Nagy, Staff Attorney, Columbia Legal Services; Kim Thornton, citizen; Violeta Sialer, Washington Community Action Network; John Vanek, citizen; Melodie Clark, Real Change.

CON: Chrysztyna Rowek, Northwest Regional VP, National Association of Residential Property Managers; Dan White, Washington Landlord Association; Drew Mazzeo, citizen; Kristin Stewart, Windermere Property Management; Daren Rogers, D&L Properties; Cheryl Sesnon, Jubilee Women's Center.

OTHER: Lynn Kohner, citizen.