

FINAL BILL REPORT

ESHB 1865

PARTIAL VETO

C 43 L 08

Synopsis as Enacted

Brief Description: Limiting the obligations of landlords under writs of restitution.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Williams, O'Brien, Springer, Fromhold, Warnick and McCune).

House Committee on Judiciary

Senate Committee on Consumer Protection & Housing

Background:

The Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes the duties and liabilities of the parties, and provides procedures for each side to enforce its rights.

The RLTA provides a court process, called an unlawful detainer action, for a landlord to evict a tenant. The landlord must serve the tenant with a summons and complaint of the unlawful detainer action, which must designate a specific date by which the tenant must respond. The landlord may also request a show cause hearing directing the tenant to appear in court and show why a writ of restitution (an order directing the sheriff to physically evict the tenant) should not be issued.

If the court issues a writ of restitution, the sheriff must deliver a copy of the writ to the tenant, informing the tenant that he or she can be physically removed from the premises after a certain date. The sheriff must also give the tenant a written notice informing the tenant what can happen to the tenant's personal property if it is not removed by the date of the eviction.

When the sheriff executes the writ, the landlord may enter and take possession of the tenant's property left on the premises and store the property in any reasonably secure place. If the tenant objects to the storage of the property, the landlord must deposit the property onto the nearest public property. If the tenant is not present at the time of eviction, it is presumed that the tenant does not object to storage.

The tenant is liable for the actual or reasonable moving and storage costs, whichever is less. If the cumulative value of the property is over \$50, the landlord may sell or dispose of the property (including personal papers, family pictures, and keepsakes) after 45 days from the date the landlord mails or personally delivers notice of the sale or disposal to the tenant. If the cumulative value of the property is \$50 or less, the landlord may sell or dispose of the property (except for personal papers, family pictures, and keepsakes) after seven days following the notice to the tenant of the pending sale or disposal. The landlord may apply any income from

the sale to the costs of moving and storage, and then must hold any excess income from the sale for the tenant up to a year.

Recently, the Washington Court of Appeals interpreted the statute to mean that a landlord has an affirmative duty to store the tenant's property upon the execution of a writ of restitution unless the tenant objects to the storage. Up until this decision, the practice in some jurisdictions was to, at the landlord's discretion, either store the property (absent any objection from the tenant) or deposit the tenant's property onto public property.

Summary:

Upon the execution of a writ of restitution, the landlord must take possession of any property of the tenant found on the premises. The landlord may store the property in any reasonably secure place, including on the premises, unless: (a) the tenant has requested storage by serving the landlord with a written request within three days of service of the writ of restitution (in which case the landlord must store the property); or (b) the tenant has objected to storage (in which case the landlord must deposit the property upon the nearest public property). The presumption that the tenant does not object to storage if the tenant is not present during the eviction is removed.

If the landlord knows that the tenant is a person with a disability and the disability (as defined by the law against discrimination) impairs or prevents the tenant from making a written request for storage, it is presumed that the tenant has requested storage unless the tenant objects in writing.

The procedures for selling and disposing stored property are changed. The threshold cumulative value of property for when a landlord must provide more notice to the tenant before selling the property is changed from \$50 to \$100. For property with a cumulative value over \$100, the landlord may sell the property (but not dispose of it) after 30 days, rather than 45 days, from the date the landlord sent notice of the sale to the tenant. The landlord may dispose of any property not sold. The notice must be delivered to the tenant's last known address.

When serving the writ of restitution, the sheriff must also serve the tenant with a form provided by the landlord in which the tenant may request the landlord to store the tenant's property. The landlord's form must substantially comply with the form created in the act.

Votes on Final Passage:

House	97	0
House	96	0
Senate	48	0

Effective: June 12, 2008

Partial Veto Summary: The governor vetoed the emergency clause.