

HOUSE BILL REPORT

HB 2732

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to expanding the landlord mitigation program to alleviate the financial burden on victims attempting to flee domestic violence, sexual assault, unlawful harassment, or stalking.

Brief Description: Expanding the landlord mitigation program to alleviate the financial burden on victims attempting to flee domestic violence, sexual assault, unlawful harassment, or stalking.

Sponsors: Representatives Riccelli, Barkis, Orwall, Mosbrucker, Appleton, Davis, Leavitt, Valdez, Goodman and Pollet.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/28/20, 2/5/20 [DPS].

Brief Summary of Substitute Bill

- Expands the Landlord Mitigation Program to allow landlords' claims for damages to residential rental property when a tenant-victim of domestic violence, sexual assault, unlawful harassment, or stalking terminates the tenancy and certain other conditions are met.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kilduff, Chair; Thai, Vice Chair; Goodman, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Graham and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

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 landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and prohibited actions.

Damage Deposits.

Landlords often collect a damage or security deposit, the purpose of which is to cover any damage caused to the property by the tenant. The RLTA requires that the deposit be placed in a trust account. Any interest earned generally belongs to the landlord.

Within 21 days after the termination of the rental agreement and vacation of the premises, or after abandonment by the tenant, the landlord must give a full and specific statement of the basis for retaining any of the deposit and pay any refund due the tenant. No portion of any deposit may be withheld on account of normal wear and tear. A landlord complies with this requirement if the required statement or payment, or both, are delivered to the tenant personally or deposited in the mail within 21 days. If damages exceed the amount of the damage deposit, the landlord may proceed against the tenant to recover those sums.

Termination by Tenant.

A tenancy for a specified time, sometimes also called a lease, is deemed terminated at the end of the specified period. A tenant who terminates a lease prior to the end of the lease period is liable for rent until the end of the period, although the landlord is required to mitigate his or her damages by attempting to re-rent the unit at a fair rental price. Alternatively, premises may be rented for an indefinite time, from period to period or month to month. Such a tenancy is automatically renewed for another period until terminated by either the landlord or the tenant by giving at least 20 days' written notice prior to the end of any of the months or periods of tenancy.

A tenant may terminate a tenancy without further obligation under a rental agreement if the tenant notifies the landlord in writing that he or she or a household member is a victim of a crime of domestic violence, sexual assault, unlawful harassment, or stalking and if:

- the tenant or household member has a valid order of protection *or* has reported the domestic violence, sexual assault, or stalking to a "qualified third party" who has provided a written record of the report;
- the tenant makes the protection order or written record available to the landlord; and
- the request to terminate is made within 90 days of the reported act or event that led to the protection order or report.

"Qualified third party" means law enforcement, health professionals, court employees, licensed mental health professionals or counselors, trained advocates for crime victim/witness programs, or clergy. A written record that a report was made to a qualified third party is satisfied by a document signed by the third party that includes specified information or completion of a form that substantially complies with the form set out in the RLTA. The name of the alleged perpetrator must be provided to the qualified third party, but the

perpetrator's name may not be included on the record of the report that is provided to the tenant or household member. The qualified third party must retain a copy of the record of a report and must note the name of the alleged perpetrator on the retained copy.

A tenant who terminates a rental agreement under these circumstances is liable for payment of rent for the month in which he or she quits the premises but is not responsible for the payment of rent for any future months. In addition, the tenant is entitled to a full refund of the deposit notwithstanding any lease provision that allows for forfeiture of a deposit for early termination. However, the tenant remains responsible for any damage caused to the property in excess of normal wear and tear, and the landlord may retain some or all of the damage deposit to cover that damage as with any other tenancy.

Landlord Mitigation Program.

In 2018 both 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.

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. 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; and
4. reimbursement for unpaid rent and utilities to the extent that Commerce is satisfied by the evidence.

In 2019 the Program was expanded with respect to any application for a stay in the context of an unlawful detainer action for failure to pay rent, 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. 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.

Summary of Substitute Bill:

The Landlord Mitigation Program (Program) is expanded to allow landlords' claims up to \$5,000 for damages to rental property when:

- the tenant has terminated his or her tenancy pursuant to the provision in the Residential Landlord-Tenant Act (RLTA), which allows tenants who are victims of domestic violence, sexual assault, unlawful harassment, or stalking to terminate;
- the property has sustained damage beyond normal wear and tear;
- the landlord has, within 21 days of termination:
 - provided the tenant with a statement regarding the basis for retaining any of the damage deposit; and
 - rather than retaining any of the damage deposit for those damages, returned the full damage deposit to the tenant; and
- the landlord has agreed not to proceed against the tenant to recover sums exceeding the amount of the damage deposit.

The Department of Commerce (Commerce) is tasked with providing a form on its website for landlords to apply for reimbursement. In reviewing a claim and determining eligibility, Commerce must receive acceptable documentation that the claim involves a tenancy that was terminated pursuant to the RLTA section concerning victims of domestic violence, sexual assault, unlawful harassment, or stalking, and that all other Program requirements have been met.

Any claim for reimbursement is not an entitlement. If, at any time, funds do not exist in the Landlord Mitigation Program Account (Account) to reimburse claims that have been submitted under this new provision, Commerce must create a waitlist for claims and distribute funds in the order the claims are received. Payment of any claims on the waitlist must be made only from the Account. Commerce is not civilly or criminally liable, and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds 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 pursuing collection or authorizing another entity to pursue collection on the landlord's behalf.

The form set forth in the RLTA, and utilized by a qualified third party as the record of the report of domestic violence, sexual assault, unlawful harassment, or stalking, is amended to require the qualified third party to verify that he or she has informed the tenant about the Program and Commerce's form for reimbursement. The RLTA is also amended to prohibit a landlord who seeks reimbursement for damages from the Program under these circumstances from retaining any portion of the tenant's deposit or proceeding against the tenant to recover sums exceeding the amount of the tenant's deposit for damage to the property.

Substitute Bill Compared to Original Bill:

The substitute bill is in all material respects the same as the original bill. A reference to victims of unlawful harassment has been added in one place to make it consistent with other places in the bill, and a provision has been reworded to make a complete sentence.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill allows access to the Landlord Mitigation Program (Program) for the limited purpose of assisting survivors of domestic violence and other related crimes in finding alternative housing. The Program was originally in the capitol budget. It has been expanded since then, and the concerns about the need for additional funding are understood. This bill will help protect the most vulnerable. Victims face many challenges, including economic hardship, as the result of domestic violence. Most client-victims live at or near the poverty line and they do not have the money to access alternative housing. Because of this, they may stay in an unsafe situation.

(Opposed) None.

(Other) The intent behind this bill is admirable, but there are concerns with expanding the Program without providing additional funds. It may be the case that this particular expansion will not be a big cost driver, but the impact needs to be known. The Program serves a very important purpose. There are also questions about whether the Department of Commerce (Commerce) will be able to assure the privacy of victims.

Last year the allocation received was \$1 million. Commerce estimates the receipt of \$3 million from document recording over the biennium. To date, about \$2.3 million has been spent on landlord mitigation, not including the tenancy preservation program. Funding is a concern, because it looks like in June the Program will be out about 90 days on payments. It is preferable to maintain a 30- to 45-day timeline on payments. Commerce already has one program for victims of domestic violence who are receiving subsidies, and in order to cloak their identity Commerce uses the Homeless Management Information System (HMIS). Commerce requests that HMIS be required so that if victims wanted to receive information about whether a landlord received money from the Program, victims could call and use that HMIS number to request the information. It is not advisable to have victims' personal information in the database as it is subject to public record disclosure and Commerce would like to preserve victims' anonymity.

Persons Testifying: (In support) Representative Riccelli, prime sponsor; Brett Waller, Washington Multi-Family Housing Association; and Angela Dannenbring, Domestic Abuse Women's Network.

(Other) Michele Thomas, Washington Low Income Housing Alliance; and Nicholas Yuva, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.