

# SENATE BILL REPORT

## ESSB 6378

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As Passed Senate, February 19, 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:** Housing Stability & Affordability: 1/17/20, 1/27/20 [DPS, DNP].

**Floor Activity:**

Passed Senate: 2/19/20, 30-18.

### Brief Summary of Engrossed First Substitute Bill

- Modifies the uniform 14-day pay or vacate notice and unlawful detainer action summons.
- Authorizes stay of an unlawful detainer judgment if the tenant will be able to pay the judgment with emergency rental assistance funds.
- Requires the tenant to provide a copy of the pledge of emergency rental assistance to stay the judgment and for the landlord to provide documentation necessary to process such assistance.
- Requires a landlord to suspend any court action for seven court days to allow for payment of emergency rental assistance funds.
- Prohibits landlords from threatening eviction for the tenant's failure to pay nonpossessory fees.
- Authorizes landlords to refuse to accept cash for any payment of rent made by a tenant.

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### SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

**Majority Report:** That Substitute Senate Bill No. 6378 be substituted therefor, and the substitute bill do pass.

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

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*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.*

**Minority Report:** Do not pass.

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

**Staff:** Brandon Popovac (786-7465)

**Background:** Residential-Landlord Tenant Act. 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.

In 2019, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including:

- modifying how rent is defined and how and when landlords apply tenant payments to rent or other costs and nonpossessory fees;
- providing a uniform 14-day notice to pay or vacate with an updated summons form for landlords to use when a tenant fails to pay rent;
- modifying the tenancy reinstatement process, with limits on late fees, before a judgement is issued during an unlawful detainer action;
- clarifying when and the amount in which attorneys' fees are awarded to either party in an unlawful detainer action;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent;
- prohibiting access to such judicial discretion if a tenant is issued three 14-day notices to pay or vacate within the prior 12-month period; and
- expanding the landlord mitigation program within the Department of Commerce to include landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs, including any unpaid portion of the judgment after the tenant defaults on a court ordered payment plan.

**Summary of Engrossed First Substitute Bill:** The uniform 14-day pay or vacate notice is modified to include the tenant name and address, language clarifying appropriate method of payment for rent owed, and clarified legal resources available for tenants. Corresponding changes are applied to the unlawful detainer action summons, specifically the clarified legal resources available for tenants.

A landlord may refuse to accept cash for any payment of rent made by a tenant but remains statutorily required to provide a receipt for payment made by a tenant in the form of cash when the landlord accepts cash.

For a tenant to restore their tenancy after entry of a judgment under an unlawful detainer action, the tenant may tender the amount stated within the judgment as long as the amount does not exceed the statutory limits imposed. Any tenant that seeks to restore their tenancy and pay the judgment amount with funds acquired through an emergency rental assistance program provided by a governmental or nonprofit entity must provide a copy of the pledge of such assistance from the appropriate governmental or nonprofit entity. In doing so, the tenant

is entitled to an opportunity to exercise certain reinstatement rights, including a stay of the judgment and the landlord providing documentation necessary to process such assistance.

Landlords must accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the expiration of any notice to pay or vacate for nonpayment of rent for the full amount of the rent owing under the rental agreement. Landlords must also accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity after the expiration of any notice to pay or vacate for nonpayment of rent if the pledge will contribute to the total payment of both amount of rent due, including any current rent, and other amounts required under law. A landlord must suspend any court action for seven court days after providing necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds. By accepting such pledge, a landlord is not required to enter into any additional conditions unrelated to providing necessary payment information and documentation.

Any application seeking relief under the exercise of judicial discretion may be made by either the tenant or landlord. Any court order finding that the landlord may apply to the landlord mitigation program for reimbursement after the exercise of judicial discretion must also be accompanied by a copy of the order staying the writ of restitution.

A court must require that service of an ex parte order and motion staying the writ of restitution be made by personal delivery, mail, facsimile, or other means most likely to afford all parties notice of the court date.

Landlords may not threaten a tenant with eviction for failure to pay nonpossessory charges not related to rent owed.

A court may not award attorneys' fees to the landlord in any judgment that restores possession to the landlord if the judgment is entered after a tenant's failure to respond to a pleading or other notice requiring a response.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Tenants from all over the state, including seniors relying on social security payments, have been served pay or vacate notices for the first time despite being known to regularly pay their rent on the same day each month, sparking uncertainty and anxiety among tenants. Some property managers have begun serving tenants 20-day no cause eviction notices and indiscriminately serving pay or vacate notices throwing an unknown number of Washingtonians into homelessness. These tactics do not technically violate the law but violate the spirit of Engrossed Substitute Senate Bill

No. 5600, making it clear the need to close some loopholes to stem the flow of people into homelessness. A new rent due date requirement is introduced to avoid late penalties so that tenants will no longer be subject to a one-size fits all due date. Modifications to the uniform 14-day pay or vacate notice clarify language for claims under the tenancy preservation program, which was created to help landlords get paid. The bill has an emergency clause because homelessness is indeed an emergency.

The bill takes into account the waiting period if the tenant has access to emergency rental assistance. The removal of the three pay or vacate notices prohibition is not problematic since the landlord mitigation program serves as insurance for landlords even if the tenant ultimately defaults. There is little or minimal risk at this point for the landlord. But there is a lack of clarity in this prohibition and often the judges do not know how to apply this prohibition. ESSB 5600 has had a positive cultural impact with over 500 families saved from homelessness just in King County alone.

ESSB 5600 has provided more time for tenants to get resources to make sure that they do not fall into homelessness. 2-1-1 does not work that great throughout the state except for King County. In rural parts of the state, receiving a notice with 2-1-1 list will not connect tenants to housing resources. Putting limits on attorneys' fees does incentivize landlords to work with tenants before filing an unlawful detainer action.

Constantly receiving pay or vacate notices leads to a negative perception that tenants are bad. Late payments are now reported to the housing authority which can create a negative rental history and a risk of losing housing subsidies. Professional landlord groups were instructing their members how to circumvent ESSB 5600, including issuing a no-cause eviction notice, underscoring the need for strong just cause legislation. Pay or vacate notices are chilling examples of intimidation and fear mongering.

CON: The bill contains a number of changes that add confusion where confusion does not currently exist, especially language that addresses tenants' rights to a restored tenancy after a judgment has been entered. Language that addresses opportunities for tenants to gain additional time to pay their monthly rent is well written. Revisions to the pay or vacate notice and to the summons providing for access to tenant resources is a concern. The addition of 2-1-1 is an excellent addition to both forms, but adding additional resources outside of the control of state government brings concern, especially if management of those agencies change and the scope of services provided change as well.

Courts will not know what non-electronic means in the updated pay or vacate notice form. A cashier's check, money order, other certified funds can include cash. Having landlords accept cash on their property makes them a target for robberies. Language addressing emergency rental pledges is really ambiguous because there is no clarity involved with who qualifies as a charity or how much time or how much time is needed to receive a payment. Landlords do not use pay or vacate notices to build a case to prevent the tenant from reinstating the tenancy. Removing the three notices prohibition creates ambiguity for the court and creates more ambiguity for the courts. The prohibition was intended to address the habitual late payer of rent and who did not have a reason for being late. The current right to tenancy reinstatement is still an alternative. The change regarding attorneys' fees will allow the tenant to drag the landlord all the way to a show cause hearing without appearing and still

require the landlord to pay attorneys' fees and court costs. This change will have an unintended consequence of raising rents on tenants and tightening screening with a disproportionate impact on low-income tenants with blemishes on their record.

The three pay or vacate notice prohibition allows landlords to work with tenants that are taking advantage of late payments and not acting in good faith. It provides a little bit of leverage there.

**OTHER:** Housing authorities support the changes to the text of the uniform 14-day notice and the ability to access emergency rental assistance payments. Housing authorities are concerned with the provision that would allow a tenant receiving regular government assistance to select a due date at any point throughout the month depending on when they receive their assistance. Housing authorities could have various due dates to track throughout the month, creating an administrative and operational burden. An alternative is a mandatory grace period at the beginning of the month, but housing authorities already offer pretty long grace periods, some as long as eight days, to account for people receiving government assistance.

Some landlords in notices advised that the grace period would be eliminated and would rent would be due on the first of the month. Tenants were completely baffled by getting these notices on their doors since they had never received a notice on their door. There is a lack of resources to assist tenants to make requests for reasonable accommodations. There has also been an increase in the number of 20-day eviction notices that have been issued since ESSB 5600 took effect. Eastern Washington lacks the resources that western Washington has to assist tenants and provide resources.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Edmund Witter, Housing Justice Project; Mindy Woods, Resident Action Project; Xochitl ("so-che") Maykovich, Washington Community Action Network; Helena Benedict, Tenants Union of Washington State.

CON: Ryan Weatherstone, Washington Multi-Family Housing Association; Christopher Cutting, Rental Housing Association of Washington; Neil Wilson, citizen.

OTHER: Terri Anderson, citizen; Andrew Calkins, Association of Washington Housing Authorities.

**Persons Signed In To Testify But Not Testifying:** No one.