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**Housing, Human Services & Veterans  
Committee**

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**HB 1228**

**Brief Description:** Addressing residential landlord-tenant requirements in response to the COVID-19 public health emergency.

**Sponsors:** Representatives Barkis, Walen, Dent, Hoff, Jacobsen, Chambers, Ryu, Graham, Ybarra, Caldier, MacEwen, Walsh, Chapman, Boehnke, Dolan, Springer, Chandler, Eslick, Robertson and Gilday.

**Brief Summary of Bill**

- Suspends any eviction moratorium currently in effect.
- Requires landlords to provide tenants with unpaid rent an affidavit of COVID hardship, notice of early resolution program, and option of payment plan.
- Creates the Emergency Rental Assistance Grant Program to assist tenants and landlords with past due rental payments.
- Establishes the early resolution program to facilitate resolution of nonpayment of rent cases through Dispute Resolution Centers or third-party facilitators.
- Requires landlords to notify tenants of the early resolution program before filing any unlawful detainer action.

**Hearing Date:** 1/28/21

**Staff:** Lena Brodsky (786-7192).

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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 part of the legislation nor does it constitute a statement of legislative intent.*

## **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.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including requiring landlords to accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the notice to pay or vacate for nonpayment of rent expires, and to suspend any court action for seven court days after they provide necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds.

### Enforcement Remedies and Unlawful Detainer.

Landlord remedies for a tenant's failure to comply with his or her duties includes eviction of a tenant in unlawful detainer status. The definition of "unlawful detainer" applicable under the RLTA, as well as with respect to other tenancies not governed by the RLTA, is found in a chapter separate from the RLTA, chapter 59.12 RCW. A tenant is in unlawful detainer status when he or she:

- holds over after the expiration of the specified term for which it is let to him or her. When real property is leased for a specified term or period, the tenancy shall be terminated without notice at the expiration of the specified term or period.
- continues in possession of premises leased for an indefinite period, such as month to month, after the end of any month or period when the landlord, more than 20 days prior to the end of the month or period, served notice requiring the tenant to quit the premises at the end of the month or period.
- continues in possession after a default in rent, and after a three-day notice to pay rent or vacate has been served, without complying with the duty to pay.
- continues in possession after failing to comply with a duty of tenancy other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the duty.
- permits waste upon the premises, carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a three-day notice to quit the premises.
- enters upon the premises without permission and without having color of title and refuses to leave after a three-day notice. Such a person may also be subject to criminal laws.
- commits or permits any gang-related activity as prohibited by the RLTA.

### Eviction Moratoriums.

On March 18, 2020, Governor Inslee issued Proclamation 20-19 to prohibit a number of activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions of the eviction moratorium with the current variation, Proclamation 20-19.5, set to expire on March 31, 2021.

The eviction moratorium prohibits residential landlords, manufactured housing community landlords, property managers, and property owners from:

- serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate, as applied to tenancies or other housing arrangements, such as hotel/motel or camping area stays of more than 14 days, that have expired or that will expire during the moratorium's effective period; and
- seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless, as applied to both circumstances:
  - an affidavit to the eviction or termination of tenancy notice attests that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or
  - at least 60 days' written notice of the property owner's intent to personally occupy the premises as a primary residence or sell the property is provided to the tenant by affidavit signed under penalty of perjury.

The current moratorium also prohibits landlords from:

- assessing, or threatening to assess, late fees for the nonpayment or late payment of rent or other charges as of February 29, 2020;
- retaliating against individuals for invoking their rights or protections under the moratorium or any other state or federal law providing rights or protections for residential dwellings, with the exception for landlords to engage in reasonable communications with tenants to explore repayment plans;
- assessing, or threatening to assess, rent or other charges for any period during which the resident's access to, or occupancy of, the dwelling was prevented as a result of COVID-19; and
- treating any unpaid rent or other charges as an enforceable debt or obligation that is owing or collectable, when nonpayment of rent or other charges resulted from COVID-19 and occurred on or after February 29, 2020, including attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means, with the exception for landlords who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

In addition to the governor's moratorium, some local jurisdictions have also issued eviction moratoriums on both residential and commercial properties, such as Seattle, which currently has a moratorium on evictions in effect until March 31, 2021.

#### Dispute Resolution Centers.

The creation of Dispute Resolution Centers (DRCs) was first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily

participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation. Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee which is based upon the participant's ability to pay. DRCs handle numerous types of cases and disputes, including for landlords and tenants.

#### Eviction Resolution Pilot Program.

On September 9, 2020, the state supreme court issued an order authorizing superior courts to implement an Eviction Resolution Program (ERP). Six counties chose to participate in the pilot ERP. The ERP requires landlords to undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation provided by the participating DRCs.

#### State Rental Assistance Programs.

The Department of Commerce (Commerce) administers a number of rental assistance programs that serve a variety of populations depending on certain eligibility standards. Funds received from the federal CARES Act have allowed Commerce to set up an eviction rent assistance program to help qualifying households impacted by COVID-19. Funds are distributed to county grantees, such as county governments and nonprofit entities, which provide rent assistance to qualifying households.

#### **Summary of Bill:**

Any eviction moratorium currently in effect is suspended. A landlord may immediately initiate an unlawful detainer action upon acts in violation of a tenant's statutory duties, obligations, and restrictions by the tenant, guests of the tenant, and invitees of the tenant.

#### Required Notice for Unpaid Rent.

Beginning 30 days after the effective date, landlords must provide to tenants with unpaid rent a "notice packet" consisting of:

- an affidavit of COVID hardship;
- notice of early resolution program; and
- option of payment plan.

Tenants must respond to the landlord by returning the affidavit of COVID hardship, and either selecting notice of early resolution program, or entering into a payment plan. If a tenant does not respond within 30 days of receiving the landlord's notice, a landlord may serve the tenant with a 14-day notice to pay or vacate. A landlord may not serve the 14-day notice if a tenant has applied for a grant through the emergency rental assistance grant program and has not yet been approved or rejected.

When the landlord serves a 14-day notice, a landlord must include the following:

- 14-day notice on the statutorily-required notice form;

- affidavit of COVID hardship; and
- notice of early resolution program.

Landlords may not charge or impose late fees, interest, or other penalties on any rental arrears accrued from February 29, 2020, through June 30, 2021.

#### COVID Hardship.

Tenants must return affidavits of COVID hardship to the landlord personally, by first-class mail, or by providing an electronic copy or photograph. The tenant must include on the affidavit:

- date;
- tenant's name and address;
- landlord's name and address; and
- a statement identifying the source of the tenant's COVID hardship claim.

COVID-19 Hardship exists when a tenant has experienced at least one of the following since February 29, 2020:

- loss of income of more than 50 percent year-over-year;
- essential work-related extraordinary out-of-pocket expenses;
- extraordinary expenses directly related to COVID-19 health impacts;
- new child or family care responsibilities directly related to COVID-19 that limit the tenant's ability to earn income; or
- extraordinary costs directly related to COVID-19 for child care or attending to an elderly, disabled, or sick family member.

A tenant whose household income exceeds 130 percent of the area median income for the county where the tenant resides may be required to provide additional support for the tenant's claim of financial distress with the affidavit of COVID hardship. Beginning August 31, 2021, a tenant completing the affidavit of COVID hardship must provide proof of hardship.

#### Option of Payment Plan.

For any unpaid rent that accrued between February 29, 2020, and June 30, 2021, landlords must offer tenants an option of payment plan with a repayment schedule equal to or greater than payment of the outstanding debt in monthly payments of at least one-sixth of the outstanding debt owing, except where federal regulations require a different repayment schedule. A tenant's regular monthly rental payments must continue. If a tenant fails to comply with the payment plan, a landlord must serve the tenant with the "notice packet." Tenants are ineligible for the early resolution program after they have been served with two or more notice packets in six months after defaulting on two or more repayment agreements.

#### Early Resolution Program.

The Administrative Office of the Courts (AOC) will establish the early resolution program to facilitate resolution of nonpayment of rent cases through Dispute Resolution Centers (DRCs) or third-party facilitators before the landlord files an unlawful detainer action. In counties with populations less than 275,000 persons, the program must maintain a facilitator to resolve

disputes between landlords and tenants. In countries with populations greater than 275,000 persons, landlords and tenants must use the local DRC to facilitate cases.

Before filing any unlawful detainer action, landlords must provide notice to the tenant of the early resolution program consisting of the following:

- contact information for the local DRC;
- contact information for the county's housing justice project, or, where none, a statewide organization providing housing advocacy services for low-income residents;
- a statement informing tenants about the Washington state Office of the Attorney General and advocacy resources;
- the name and contact information of the landlord and tenant; and
- a statement that failure to respond to the notice within 14 days may result in an unlawful detainer action filing with the court.

Landlords must also provide a copy of the notice to the Office of Civil Legal Aid when the notice is provided to the tenant. Landlords are required to provide the notice of the early resolution program in substantially the same form, which includes contact information for the landlord and the landlord's attorney.

AOC will report on the effectiveness of the program by June 1, 2022. The report will discuss the effectiveness of the program, make recommendations to improve, and include:

- total number of cases received by the program in each county;
- total cost to administer the program in each county;
- summary of each county's program;
- any indices of fraud;
- an evaluation of the feasibility to expand the program; and
- any other modifications and recommendations made by stakeholders to improve the program.

#### Emergency Rental Assistance Program.

Commerce will establish the emergency rental assistance grant program to reimburse tenants and landlords for past due rental payments. Tenants or landlords may apply for grant assistance. Tenants applying for grants must self-certify that they have a COVID hardship as described in the act. Tenants are eligible for grants if they earn less than 80 percent of the area median income for county in which they live or have experienced or demonstrated a COVID hardship certified by an affidavit of COVID hardship.

Grant recipients will receive 80 percent of total amount of rental arrears at the time of anticipated payment date, which will be no later than 15 days from the date of application. After a landlord receives 80 percent of unpaid rent, the landlord must forgive the remainder of the tenant's past due rent.

Commerce must notify the landlord and the tenant when an application is rejected. Commerce must first prioritize tenants and landlords with largest arrears first. Commerce will report on the

effectiveness of the program by June 1, 2022. The report will discuss the effectiveness of the program, make recommendations to improve, and include:

- total number of claims and amount reimbursed by the program in each county;
- total cost to administer the program in each county;
- summary of each county's grants;
- any indices of fraud;
- an evaluation of the feasibility to expand the program; and
- any other modifications and recommendations made by stakeholders to improve the program.

\$600,000,000, or as much thereof as may be necessary, is appropriated from the budget stabilization account for the fiscal year ending June 30, 2021, and is provided into the Emergency Rental Assistance Grant Program.

The RLTA is amended so that landlords must provide tenants with at least 45 days notice, instead of 20 days notice, when terminating a month-to-month or periodic tenancy.

The act expires one year after the effective date.

**Appropriation:** The sum of \$600,000,000.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.