

FINAL BILL REPORT

E2SSB 5160

PARTIAL VETO C 115 L 21 Synopsis as Enacted

Brief Description: Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Lias, Conway, Das, Lovelett, Saldaña and Wilson, C.).

Senate Committee on Housing & Local Government
Senate Committee on Ways & Means
House Committee on Housing, Human Services & Veterans
House Committee on Appropriations

Background: Residential-Landlord Tenant Act—Generally. 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, how and when a tenancy expires or may be terminated, and remedies for violations of the RLTA.

In the 2019-2020 biennium, 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;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent;

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- 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
- 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.

Governor's Eviction Moratorium. 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 20-19.6, set to expire June 30, 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:
 1. 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
 2. 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 a landlord 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.

A failure to provide a reasonable repayment plan under the moratorium is a defense to any lawsuit or other attempts to collect. A landlord may engage in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. Within these communications, landlords may provide information to residents regarding financial resources, including coordinating with residents to apply for state or other rental assistance programs, and information on how to engage with them in discussions regarding reasonable repayment plans.

The moratorium also strongly encourages landlords and tenants to access services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

Eviction Resolution Pilot Program. On September 9, 2020, the Washington Supreme Court issued Order No. 25700-B-639 authorizing an eviction resolution program (ERP) in the superior courts.

Six counties were chosen to participate in the ERP pilot. Each ERP operates in accordance with the court enabling order and a standing order of the local superior court. These orders require 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 dispute resolution center (DRC). Eligible cases are those where non-payment of rent or non-compliance with previously agreed-upon payment plans are the primary reason for the decision to evict.

The stated objective of the ERP is to:

- bring all parties to the table with the assistance of qualified and trained eviction resolution specialists (specialists);
- explore the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance to cure or partially cure the arrearage; and
- discover a range of other terms that might resolve the matter in a way that allows the tenant to retain housing and avoid the need for filing an unlawful detainer action.

The ERP is a two-step process. Along with a rent due notice or letter, a landlord will send

notice number one, a request for a formal first meeting involving the two parties and DRC staff. Notice number one also includes contact information of the participating DRC, rental assistance resources, and the county tenant attorneys. Upon receipt of the rent due notice and notice number one, the tenant has 14 days to voluntarily engage in the process. If the tenant does not respond to the initial contact, the landlord sends the tenant notice number 2, which is another request to engage in the ERP program. The tenant has ten days to respond to this second contact and the landlord sends a copy of notice number 2 to the participating DRC.

Once a landlord and tenant voluntarily enter into the ERP process, specialists will work with both parties and external partners to resolve the issue of non-payment and future payments. If resolution cannot be achieved, formal mediation will be offered to the landlords and tenants at no cost.

The ERP process can be initiated by either the landlord or the tenant without service of a 14-day notice. If the tenant initiates or responds to a notice, the landlord is obligated to participate in the process. Once the Governor's eviction moratorium and any of its amendments or extensions expire, the ERP will require landlords to engage in pre-litigation conciliation efforts prior to filing an unlawful detainer action.

Legal Representation for Indigent Persons. Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. A determination of indigence is to be made for any person requesting the appointment of counsel in a criminal, juvenile, involuntary commitment, dependency, or other case in which the right to counsel attaches. The indigent defense services law defines an indigent person as one who:

- receives public assistance in one of several enumerated forms;
- has been involuntarily committed to a public mental health facility;
- has an income of 125 percent or less of the federal poverty level; or
- has insufficient available funds to retain counsel.

There is no federal or state guaranteed right to legal representation for indigent tenants in unlawful detainer eviction cases. A few cities in the country implement some form of right to legal representation services for tenants, including most recently in the city of Seattle.

Office of Civil Legal Aid. The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients

throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

Manufactured/Mobile Home Landlord-Tenant Act. The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property, or in the association that owns the property.

Payment of Rent Into Court Registry. The RLTA includes an additional, optional notice for landlords to use when the unlawful detainer action is based on a tenant's nonpayment of rent. If this form is also served, the tenant must either pay the amount of rent allegedly due and owing into the court registry, or file a sworn statement denying and setting forth the reasons the rent is owing. If the tenant fails to do one or the other, the landlord is entitled to obtain an immediate writ of restitution without further notice and without paying a bond. The tenant may seek a hearing on the merits and an immediate stay of the writ, but must prove to the court the landlord is not entitled to possession of the property based on certain legal or equitable defenses.

Dispute Resolution Centers. DRCs were first authorized in statute as part of the 1984 Court Improvement Act 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.

Landlord Mitigation Program. The Landlord Mitigation Program (LMP) allows landlords to seek reimbursement for claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program by submitting such claims to Commerce. The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days of lost rental income, and up to \$5,000 in any unpaid rent and utilities and qualifying damages caused by a tenant during the tenancy. Any landlord that has screened, approved, and offered rental housing to any applicant that will be using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities.

The LMP also includes 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. This additional use of the LMP is more commonly known and referred to as the tenancy preservation program (TPP).

Summary: Residential Landlord-Tenant Act—Generally. For rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium:

- a landlord may not report to a prospective landlord a tenant's nonpayment of such rent or an unlawful detainer action resulting from nonpayment of such rent; and
- a prospective landlord may not take an adverse action based on a prospective tenant's nonpayment of such rent.

A landlord may not impose late fees or other charges for a tenant's nonpayment of rent that became due between March 1, 2020, and six months following the Governor's eviction moratorium.

A landlord or prospective landlord may not deny, discourage application for, or otherwise make unavailable any rental dwelling unit based on a tenant's or prospective tenant's medical history, including any prior or current exposure or infection to the COVID-19 virus. A landlord or prospective landlord may not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request.

Any landlord or prospective landlord in violation of the aforementioned prohibitions and requirements is liable for two and one-half times the monthly rent, with court costs and attorneys' fees. The court must determine the penalty amount in order to deter future violations.

For one year following expiration of the Governor's eviction moratorium, if a tenant demonstrates an ability to pay to reinstate the tenancy through the TPP, the prohibition on a tenant from seeking relief to reinstate the tenancy if they have been provided three or more pay or vacate notices within 12 months does not apply, and any reimbursement to the landlord under the TPP may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

The Governor's eviction moratorium in Proclamation 20-19.6 is declared to end on June 30, 2021. "Public health emergency" is defined as Governor Proclamation 20-05 and its amendments. "Tenant" is defined to include persons residing in transient lodging, such as hotels or motels or camping areas as primary dwellings, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel or motel or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel or motel or camping area has provided the individual with a seven-day eviction notice, which must provide certain legal-aid resource information, and does not include occupants of homeless mitigation sites or persons entering onto land without the permission of the owner or lessor. Any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

Repayment Plans. If a tenant has remaining unpaid rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium or the end of the

public health emergency, whichever is greater, the landlord must offer tenants a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges owed. If the tenant fails to accept the terms of a reasonable repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action subject to any requirements under the ERP. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the LMP or proceed with an unlawful detainer action subject to any requirements under the ERP. During any unlawful detainer proceeding, the court must consider the tenant's circumstances, including any decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding. It is a defense to an unlawful detainer action if the landlord did not offer a repayment plan. The tenant and landlord may continue to seek rental assistance to reduce or eliminate any unpaid rent balance to the extent available funds exist from public, private, or nonprofit rental assistance programs.

Any repayment plan entered into by the landlord and tenant must:

- begin no sooner than 30 days after the plan is offered;
- cover rent only and not legal fees, late fees, or other charges;
- allow for payment from any source of income, including benefits, assistance or subsidy programs, or from pledges by non-profits, churches, religious institutions, or governmental entities; and
- not include provisions or be conditioned on:
 1. the tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the agreement;
 2. a requirement that the tenant apply for or provide proof of receipt of governmental benefits;
 3. the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

Landlord Mitigation Program. A landlord is eligible to file a reimbursement claim under the LMP up to \$15,000 for any unpaid rent that accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium, when the tenant being low-income or resource-limited or experiencing hardship has voluntarily vacated or abandoned the tenancy, but not if vacation is due to an unlawful detainer action based on nonpayment of such rent. A landlord is also eligible to file a reimbursement claim under the LMP up to \$15,000 for any remaining rent after the tenant defaults on a repayment plan as long as the tenancy has not been terminated at the time of reimbursement. After reimbursement under either type of claim, the landlord may not take legal action or pursue a collection action against the tenant for damages or to seek any remaining unpaid rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium.

For funds deposited into the LMP account, Commerce must prioritize allowable costs

related to claim reimbursements for landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program.

Eviction Resolution Pilot Program. The Administrative Office of the Courts (AOC), subject to the availability of amounts appropriated, must contract with DRCs within or serving each county to establish a two-year, statewide court-based ERP operated in accordance with Washington Supreme Court order 25700-B-639 and any standing judicial order of the individual superior court. The ERP must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action. Before filing an unlawful detainer action for nonpayment of rent, the landlord must provide a 14-day pay or vacate notice and an additional notice to the tenant informing them of the ERP. The landlord must retain proof of service or mailing of the additional notice. The additional notice to the tenant must provide at least the following information regarding the ERP:

- contact information for the local DRC;
- contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;
- the following statement: "The Washington State Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";
- the name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and
- the following statement: "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local DRC serving the area where the property is located.

The AOC may also establish and produce other notice forms and requirements necessary to implement the ERP. A landlord must secure a certification of participation with the ERP by the appropriate DRC before an unlawful detainer action for nonpayment of rent may be heard by the court.

Any superior court, in collaboration with the DRC located within or serving the same county, participating in the ERP must report annually to the AOC beginning January 1, 2022, until January 1, 2023, on the following:

- the number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;
- the number of referrals made to DRCs;
- the number of nonpayment of rent cases resolved by the ERP;

- how many instances the tenant had legal representation, either at the conciliation stage or formal mediation stage;
- the number of certifications issued by DRCs and filed by landlords with the court; and
- any other information that relates to the efficacy of the ERP.

By July 1, 2022, until July 1, 2023, the AOC must provide an annual report to the Legislature summarizing the ERP report data shared by the superior courts and DRCs.

Legal Representation of Indigent Tenants. The court must appoint an attorney for an indigent tenant in any unlawful detainer proceeding subject to the availability of amounts appropriated. Prioritization on the provision of legal representation services must be in those counties in which the most evictions occur and to indigent tenants who are disproportionately at risk of eviction. "Indigent" is defined as any person receiving assistance from certain public and medical benefits programs, or with an annual income, after taxes, at 200 percent or below of the federally established poverty level.

OCLA is responsible for implementation of the indigent tenant's right to legal representation services and for the administration of program funds, and the state must pay the costs of such legal representation services. OCLA must contract with attorneys and other agencies to implement legal representation services for indigent tenants within appropriated amounts. OCLA must submit a plan to the Legislature and the AOC within 90 days of enactment of the bill, which shows how and when the legal representation services program will be fully implemented within the 12 months after enactment of the bill.

The uniform 14-day pay or vacate notice for nonpayment of rent is updated to inform tenants of the legal representation mandate and related contact information for qualifying low-income renters, general information regarding DRC services, as well as state and local rental assistance programs listed on the Office of the Attorney General's website. Upon expiration of the ERP:

- a landlord must provide the 14-day notice to the DRC located within or serving the county of tenancy;
- DRCs are encouraged to notify the housing justice project or Northwest Justice Project located within or serving the county in which the DRC is located, as appropriate, once the 14-day notice is received from the landlord; and
- it is a defense to an unlawful detainer eviction if a landlord does not provide the notice to the appropriate DRC.

The eviction summons is also updated to inform tenants of the legal representation mandate for indigent tenants and to provide general information regarding DRC services.

Payment of Rent Into Court Registry. The additional, optional notice for landlords to use in nonpayment of rent cases, instructing tenants with unpaid rent to pay into the court registry the amount of rent allegedly owed or file a sworn statement denying that rent is owing, is

eliminated.

Residential-Landlord Tenant Act—Miscellaneous. Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer eviction action in which the tenant agrees to pay any amount other than for rent due or rent to retain the tenancy, pay any amount more than statutory judgment limits, or waives any rights afforded to the tenant under the court exercise of judicial discretion in nonpayment of rent cases or under the RLTA is void and unenforceable.

Licensed assisted living facilities, nursing homes, and adult family homes, and registered continuing care retirement communities are exempt from the provisions of the act.

Application to the Manufactured/Mobile Home Landlord-Tenant Act. Provisions relating to the legal representation services mandate for indigent tenants and the eviction summons form apply to unlawful detainer actions for MHLTA tenancies.

Votes on Final Passage:

Senate	29	20	
House	72	26	(House amended)
Senate	27	22	(Senate concurred)

Effective: April 22, 2021

Partial Veto Summary:

Provisions were removed requiring Commerce to authorize landlords an opportunity to apply to certain state rental assistance programs, if feasible, and to provide rental assistance until March 31, 2022, to a landlord on behalf of an indigent tenant who is unable to access eviction resolution program services or obtain state-funded legal representation in an unlawful detainer action.

An appropriation of \$7.5 million to Commerce for a landlord grant assistance program to provide grants to eligible landlords for unpaid rent due during the eviction moratorium was removed.