

SENATE BILL REPORT

SB 5576

As Reported by Senate Committee On:
Housing & Local Government, January 19, 2022

Title: An act relating to addressing landlord-tenant relations by providing technical changes to eviction notice and summons forms and modifying certain eviction processes and programs.

Brief Description: Addressing landlord-tenant relations by providing technical changes to eviction notice and summons forms and modifying certain eviction processes and programs.

Sponsors: Senators Kuderer, Trudeau, Das, Hasegawa, Lovelett, Nobles, Saldaña and Wilson, C..

Brief History:

Committee Activity: Housing & Local Government: 1/11/22, 1/19/22 [DP, DNP, w/oRec].

Brief Summary of Bill

- Updates the 14-day pay or vacate notice and eviction summons to improve readability.
- Clarifies that for rental arrears accrued through six months following the end of the Governor's state of emergency proclamation, a 14-day pay or vacate notice may not be issued until expiration of 14 days after a repayment plan is offered and the tenant fails to accept the offer.
- Requires courts to accommodate virtual representation by legal counsel appointed for indigent tenants, as well as virtual participation for tenants, upon request.
- Authorizes landlords to use an alternative form to satisfy the additional notice requirement under the eviction resolution pilot program.
- Removes the prohibition on judicial discretion in eviction proceedings if a tenant receives three or more pay or vacate notices within the previous 12 months.

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.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett, Salomon and Trudeau.

Minority Report: Do not pass.

Signed by Senator Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Sefzik and Wilson, J.

Staff: Brandon Popovac (786-7465)

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 ended, and remedies for violations of the RLTA.

Several recently enacted legislative reforms cover a wide variety of issues governing the landlord-tenant relationship, including:

- 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;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent; and
- 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.

For one year following expiration of the Governor's eviction moratorium 20-19.6 on June 30, 2021, if a tenant demonstrates an ability to pay to reinstate the tenancy through the tenancy preservation program, 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 tenancy preservation program may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

Repayment Plans. If a tenant has remaining unpaid rent accrued between March 1, 2020, and six months following either expiration of the Governor's eviction moratorium 20-19.6 on June 30, 2021, or the end of the public health emergency as stated in Governor Proclamation 20-05, whichever is greater, the landlord must offer the tenant 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 eviction resolution pilot program.

Eviction Resolution Pilot Program. On September 9, 2020, the Washington Supreme Court issued Order No. 25700-B-639 authorizing an eviction resolution program in the superior courts. Six counties were chosen to participate in this initial pilot. Each county eviction resolution pilot program (ERPP) operated in accordance with the court enabling order and a standing order of the local superior court.

In 2021, the Legislature instructed the Administrative Office of the Courts, subject to the availability of amounts appropriated, to contract with dispute resolution centers within or serving each county to establish a two-year, statewide court-based ERPP operated in accordance with Washington Supreme Court Order No. 25700-B-639 and any standing judicial order of the individual superior court. The ERPP is 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 ERPP. The additional notice to the tenant must provide at least the following information regarding the ERPP:

- contact information for the local dispute resolution center ;
- 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."

The Office of the Attorney General publishes and makes available to landlords on its website an ERPP notice and resource information document that includes rental assistance information.

Legal Representation of Indigent Tenants. Courts must appoint an attorney for an indigent tenant in any unlawful detainer proceeding subject to the availability of amounts appropriated. The provision of legal representation services must be prioritized 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 the federally established poverty level.

Summary of Bill: Repayment Plans. For unpaid rent between March 1, 2020, and six months following the end of the public health emergency as stated in Governor Proclamation 20-05, and subject to additional requirements under the ERPP, a landlord may proceed with an unlawful detainer action and issue a 14-day pay or vacate notice only upon expiration of 14 days after the repayment plan is offered and the tenant fails to accept the offer.

Eviction Resolution Pilot Program. Landlords may use an alternative notice form as produced by the Attorney General's Office and made available on its website to satisfy the additional notice requirement under the ERPP.

Legal Representation of Indigent Tenants. Courts with a pending unlawful detainer proceeding involving an indigent tenant defendant who is eligible for appointment of an attorney must, upon request, allow and facilitate virtual representation by the appointed attorney and virtual participation by the tenant.

Residential-Landlord Tenant Act—Generally. The uniform 14-day pay or vacate notice and eviction summons are updated with technical corrections and clarifying edits to improve accuracy and readability.

The prohibition on judicial discretion eligibility if a tenant receives three or more pay or vacate notices for failure to pay rent within the previous 12 months is eliminated. The moratorium on the judicial discretion prohibition and authorization for the court to award up to three months of prospective rent through the judicial discretion process until June 30, 2022, if the tenant demonstrates an ability to pay rental arrears to reinstate the tenancy through the tenancy preservation program, is eliminated.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Without the eviction moratorium, thousands of families would have entered into homelessness during pandemic. E2SSB 5160 provided an off-ramp from the moratorium and attempted to make landlords whole in expanding landlord mitigation program eligibility and clarifying processes for both tenants facing evictions and landlords. This trailer bill provides technical updates to the pay or vacate notice and evictions summons based on Office of Civil Legal Aid recommendations. The bill is designed to address court backlog through virtual representation of indigent tenants.

The judicial discretion prohibition has not been implemented as intended, with pay or vacate notices being issued indiscriminately to seniors causing undue stress. Persistent nonpayment behavior by tenants should be evaluated through use of judicial discretion. Before E2SSB 5160 only 8 percent of tenants were able to secure representation. Technical fixes in bill are appreciated and the removal of the judicial discretion prohibition is timely. Extremely high levels of renters still face arrears as of December 2021, including up to 12 percent of surveyed respondents. Numerous renters are selling assets or draining savings to pay rent. BIPOC individuals are disproportionately represented in eviction risk. The intent of E2SSB 5160 was to limit issuance of the pay or vacate notice until after repayment plan is offered and failed to be accepted. Removal of the judicial discretion prohibition gives discretion back to judges to evaluate why delayed or absent rent payments are willful or outside of control of the tenant. Payment plans can be rejected or not authorized by the court through use of judicial discretion. Seniors faced increased pay or vacate notices even when regular payments were made during previous grace periods. Grace periods were no longer provided after the pay or vacate notice increased to a 14-day period. Payment plans help buy time for tenants to receive rental assistance. November 2021 filings were at 400, which represents one-third of the usual rate of pre-pandemic eviction filings. The bill clarifies notices by pointing tenants in the right direction for resources. The bill helps attorneys assist indigent tenants in rural areas. An amendment should be considered to address tsunami of eviction cases and provide mediation at pre-trial in eviction cases. Housing courts currently provide such services, which may also provide resources to tenants at courts. To improve efficiency, landlords should send the additional ERPP notice to local right to counsel agency and provide the additional ERPP notice to dispute resolution centers electronically. Landlords and their attorneys need more education and information sharing around the ERPP and eviction process.

CON: Program changes in E2SSB 5160 require technical improvements, but this bill goes beyond such changes. Such programs are working as intended already and, as of November 2021, 92 percent of cases through dispute resolution centers are being settled prior to any eviction proceeding. Virtual representation and appearance by parties in evictions should be mutual—see Arizona State example. The additional ERPP notice should not be mandatory but perhaps authorized to be submitted electronically. The judicial discretion prohibition has not been adequately tested since passage of ESSB 5600. Separating issuance of the pay or vacate notice from the rental payment plan offer will not save tenants or landlords from payment resolution and ends up delaying services and resources. The uniform pay or vacate notice is already a resource for tenants to acquire assistance. The bill makes the repayment of rent more difficult and lengthy and forces landlords to avoid assuming risks on the front end and not otherwise considering or accepting certain tenants when evaluating rental criteria. Ready access to rental assistance is more important than imposing delay in the rental repayment process and tenants acquiring a mountain of debt. Clarifying that issuance of the pay or vacate notice after the repayment plan offer expiration will result in a lengthy resolution process. Mortgage forbearance for landlords is not forgiveness and landlords are still having to access savings to pay mortgages.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Jody Suhrbier, Resolution Washington; Alan Kirtley, No; Scott Crain, Northwest Justice Project; Michele Thomas, Washington Low Income Housing Alliance; Edmund Witter, King County Bar Association.

CON: Jeannette Gordon; Jim Henderson, Rental Housing Association of Washington; Gordon Haggerty; Brett Waller, Washington Multi Family Housing Association.

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