

HOUSE BILL REPORT

SHB 1074

As Passed House:

March 2, 2023

Title: An act relating to documentation and processes governing landlords' claims for damage to residential premises.

Brief Description: Addressing documentation and processes governing landlords' claims for damage to residential premises.

Sponsors: House Committee on Housing (originally sponsored by Representatives Thai, Macri, Simmons, Ryu, Ramel, Peterson, Lekanoff, Alvarado, Pollet, Cortes, Gregerson, Kloba, Davis and Ormsby).

Brief History:

Committee Activity:

Housing: 1/12/23, 1/26/23 [DPS].

Floor Activity:

Passed House: 3/2/23, 57-40.

Brief Summary of Substitute Bill

- Extends the timeline for a landlord to provide a statement and documentation for retaining any portion of a tenant deposit from 21 days to 30 days.
- Requires a landlord to substantiate the cost of any damages withheld from a tenant deposit with repair estimates, invoices, or other documentation.
- Prohibits a landlord from withholding any portion of a tenant deposit for certain items.
- Establishes a three-year statute of limitations for a landlord to file a lawsuit against a tenant to recover sums exceeding the amount of the damage deposit.

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.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Bateman, Chopp, Entenman, Reed and Taylor.

Minority Report: Do not pass. Signed by 3 members: Representatives Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Low.

Minority Report: Without recommendation. Signed by 2 members: Representatives Barkis and Hutchins.

Staff: Serena Dolly (786-7150).

Background:

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, including the duties of tenants and landlords and remedies for violations of those duties. Tenants must restore the premises to their initial condition except for normal wear and tear or conditions caused by failure of the landlord to comply with RLTA obligations.

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

To collect a deposit, the RLTA also requires that the rental agreement be in writing and a written checklist or statement specifically describing the condition, cleanliness of, or existing damages to the premises and furnishings, including walls, floors, counter tops, carpets, drapes, furniture, and appliances, be provided by the landlord to the tenant at the beginning of the tenancy. Both the landlord and the tenant must sign the written checklist, and the landlord must provide the tenant a copy. Failure to provide the written checklist subjects the landlord to liability for the amount of the deposit.

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 owed to the tenant. No portion of any deposit may be withheld on account of wear resulting from ordinary use of the premises. 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.

Failure to do so within the time specified subjects the landlord to liability to the tenant for the full amount of the deposit. The landlord is prohibited, in any action brought by the

tenant to recover the deposit, from asserting any claim or raising a defense for retaining any of the deposit unless the landlord shows that circumstances beyond control prevented compliance or that the tenant abandoned the premises. The court may award up to two times the amount of the deposit for intentional refusal by the landlord to provide the statement or refund due.

The RLTA expressly recognizes that landlords have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible, together with reasonable attorneys' fees.

Summary of Substitute Bill:

A landlord may not withhold a deposit on account of wear resulting from ordinary use of the premises. "Wear resulting from ordinary use of the premises" is defined as deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. Such wear does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, fixtures, equipment, appliances, or furnishings by the tenant, immediate family member, occupant, or guest.

The landlord must refund any deposit owed to the tenant, and provide documentation explaining the basis for retaining any of the deposit, within 30 days after the termination of the rental agreement or the landlord learns of the tenant's abandonment of the premises. The landlord must also include copies of estimates received or invoices paid to reasonably substantiate damage charges. If repairs are performed by the landlord or the landlord's employee, the landlord must provide a copy of the bill, invoice, or receipt and a statement of the time spent and the reasonable hourly rate charged.

A landlord may not withhold any portion of a tenant's deposit:

- for wear resulting from ordinary use;
- for carpet cleaning unless the landlord documents wear to the carpet that is beyond wear resulting from ordinary use of the premises;
- for the costs of repair and replacement of fixtures, equipment, appliances, and furnishings if their condition was not reasonably documented in the written checklist supplied at the commencement of the tenancy; or
- in excess of the cost of repair or replacement of the damaged portion in situations in which the premises are damaged in excess of wear resulting from ordinary use, but the damage does not encompass the entirety of the item.

Damages for wear resulting from ordinary use of the premises or not substantiated by documentation may not be:

- charged to the tenant;
- reported to any credit agency, tenant screening service, or prospective landlord; or
- submitted for collection by any third-party agency.

Any lawsuit by the landlord to recover sums exceeding the amount of the damage deposit must be commenced within three years of the termination of the rental agreement or the tenant's abandonment of the premises.

The requirements for checklists and documentation do not apply to situations in the landlord withholds any portion of the security deposit for reasons unrelated to damages, such as for rent or other charges owed.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Many landlords want to follow the law and do what is right by their tenants. Tenants should pay reasonable repair costs. The security deposit belongs to the tenant, but the landlord holds all of the information. Most landlords already provide documentation, but current invoices can be vague. Tenants continue to complain about being overcharged for unsubstantiated damage claims. These claims can be thousands of dollars, and tenants are sometimes threatened with collections if they ask for documentation. The sad reality is that nothing prevents a landlord from keeping every single deposit, and landlords know that a tenant's only recourse is small claims court. A landlord has nothing to lose because current law does not allow for damages or attorneys' fees. Sometimes advocates are able to get landlords and debt collectors to back off when claims are not substantiated, but the claims are difficult to dispute and take a lot of time. In the meantime, these inflated charges can impact a tenant's credit history and ability to find another rental. It can lead to homelessness, and public dollars to address homelessness are being used to pay damage claims so people can be housed again.

(Opposed) Landlords just want tenants to pay their rent on time and take care of the property. When this is not done, landlords need to be able to recoup their money. Recovering the cost of damages through collections is the only recourse a landlord has and is how other landlords become aware of bad tenants. The Residential Landlord-Tenant Act already requires a written move-out checklist with a breakdown of any charges. The definition of wear is problematic because the difference between wear and damage is a matter of opinion. Professional carpet cleaning is required between tenants. Dirty carpets may be ordinary wear, but tenants should be responsible. The timeframes in the bill are not reasonable. Sometimes damages are so excessive that it takes longer than 30 days to get estimates of the repairs. A one-year timeline to take action against a tenant is not enough time.

Persons Testifying: (In support) Representative My-Linh Thai, prime sponsor; Sarah Nagy, Columbia Legal Services; Devin Glaser and Kasey Burton, Tenant Law Center; Terri Anderson, Tenants Union of Washington State; Michele Thomas, Washington Low Income Housing Alliance; Christopher Brunetti, Northwest Justice Project; Fonci Richardson; and Christopher Hale.

(Opposed) Marie Petite; Dezda Finn; Patricia Hoendermis, Yakima Valley Landlords Association; and MariLyn Yim.

Persons Signed In To Testify But Not Testifying: Seth Lockheart; Lyle Crews; Elisa Lyles; Erik Brand; Kevin Glenn; and Richard Hoy.