

SENATE BILL REPORT

ESHB 1236

As Reported by Senate Committee On:
Housing & Local Government, March 18, 2021

Title: An act relating to protecting residential tenants from the beginning to end of their tenancies by penalizing the inclusion of unlawful lease provisions and limiting the reasons for eviction, refusal to continue, and termination.

Brief Description: Protecting residential tenants from the beginning to end of their tenancies by penalizing the inclusion of unlawful lease provisions and limiting the reasons for eviction, refusal to continue, and termination.

Sponsors: House Committee on Housing, Human Services & Veterans (originally sponsored by Representatives Macri, Taylor, Dolan, Gregerson, Berry, Fitzgibbon, Frame, Simmons, Ramel, Bateman, Johnson, J., Hackney, Chopp, Thai, Peterson, Santos, Orwall, Ortiz-Self, Ryu, Wicks, Lekanoff, Slatter, Berg, Senn, Harris-Talley, Ormsby and Pollet).

Brief History: Passed House: 3/7/21, 54-44.

Committee Activity: Housing & Local Government: 3/11/21, 3/18/21 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Specifies exclusive causes for eviction, refusal to renew a tenancy, and termination of a tenancy under the Residential Landlord-Tenant Act.
- Clarifies penalties for inclusion of unlawful provisions in rental agreements.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass as amended.

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

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.

Minority Report: Do not pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Gildon, Assistant Ranking Member.

Staff: Brandon Popovac (786-7465)

Background: Residential Landlord-Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the relationship between residential landlords and tenants, and includes provisions regarding the duties of tenants and landlords and remedies for violations of those duties. With some statutory exceptions, the rental of a dwelling unit for living purposes is generally covered under the RLTA.

Duration and Termination of Tenancy. Under the RLTA, a tenancy for a specified time terminates at the end of the specified lease period. A tenant who terminates a lease prior to the end of the specified period is liable for rent until the end of the period, although the landlord must mitigate their damages by attempting to re-rent the unit at a fair rental price. Alternatively, premises may be rented for an indefinite time, from period to period, or month to month. Such a tenancy is automatically renewed for another period until terminated by either the landlord or the tenant by giving at least a 20- day written notice prior to the end of any of the months or periods of tenancy. Landlords planning a change of use or demolition or substantial renovation must provide a 120- day notice to the tenant.

Enforcement Remedies. The RLTA specifies the remedies available to a tenant for a landlord's violation of their duties. The tenant must provide the landlord with written notice and a reasonable opportunity to fix or comply with the duty, the timeframe for which varies depending upon the type of problem. Rental agreements may not include provisions in which the tenant agrees to certain actions, including waiving rights and remedies under the RLTA, limiting liability of the landlord, and paying late fees within five days following the rent due date. If a landlord deliberately includes prohibited provisions in a rental agreement, the tenant may recover statutory damages up to \$500 with the costs of suit and reasonable attorneys' fees.

Unlawful Detainer. If a tenant is liable for unlawful detainer, a landlord may bring a court action to evict the tenant. A tenant is liable for unlawful detainer when the tenant:

- holds over or continues in possession after the expiration of the specified lease term—the tenancy is terminated without notice at the expiration of the specified lease 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 serves at least a 20-day notice prior to the end of the month or period requiring the tenant to quit the premises at the end of the month or period;

- continues in possession after a default in the payment of rent, and after a 14-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 condition or covenant of the tenancy, other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the condition or covenant;
- permits waste upon the premises, carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a 3-day notice to quit the premises;
- enters upon the premises without permission and without having color of title and refuses to leave after a 3-day notice—such a person may also be subject to criminal laws; or
- commits or permits any gang-related activity as prohibited under the RLTA.

Summary of Amended Bill: Cause Required for Eviction, Refusal to Renew, and Termination of Tenancy. A landlord may terminate a tenancy without cause at the end of an initial lease term between three and 12 months upon a 60- day written notice. If the landlord does not provide a 60- day notice, the tenancy becomes a month-to-month tenancy, which may only be terminated for one of the specified causes. For any other tenancies with a specified period, and for tenancies on a month-to-month or periodic basis, a landlord may not terminate the tenancy except for one of the enumerated causes. At the end of a tenancy of a specified period, it becomes a month-to-month tenancy. A landlord and tenant may enter into subsequent lease agreements that are in compliance with the provided termination requirements. A tenant may terminate a tenancy for a specified period by providing at least a 20- day written notice before the end date of the specified tenancy.

Otherwise, a landlord may not evict, refuse to continue a tenancy, or terminate a periodic tenancy, except for the following causes and after the applicable notice periods:

- failure to pay rent—14-day notice —that did not accrue between March 1, 2020, and the end of a declared federal or state public health emergency related to the COVID-19 pandemic.
 1. If there is unpaid rent accrued during this time period, the landlord must offer a reasonable repayment plan of monthly payments not more than one-third of the tenant's monthly rent, and if the tenant fails to accept the repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action.
 2. A court must consider the tenant circumstances, including decreased income or increase expenses due to COVID-19, and repayment plan terms during the unlawful detainer proceeding;
- substantial breach of a material program requirement of subsidized housing, a material term in the rental agreement, or a tenant obligation imposed by law—10-day notice;
- committing or permitting waste or nuisance, an unlawful activity that affects the use and enjoyment of the premises, or other substantial or repeated interference with the use and enjoyment of the premises by the landlord or tenant neighbors—3-day notice;

- the landlord, in good faith, seeks possession so that the owner or their immediate family may occupy the unit as their principal residence and no substantially equivalent unit is vacant and available in the same building—90-day notice.
 1. Acting in good faith is not presumed if the owner or immediate family fails to occupy the unit for at least 60 consecutive days during the 90-day period after the tenant vacates.
 2. Immediate family includes state registered domestic partners, spouses, parents, grandparents, children, siblings, and in-laws;
- the owner elects to sell the premises if it is a single-family residence—90-day notice.
 1. An election to sell occurs when the owner makes a reasonable attempt to sell the premises within 30 days after the tenant has vacated, including listing the premises for sale with a realty agency or on the real estate multiple listing service.
 2. An intent to sell is not presumed if the premises are not listed for sale within the 30-day period or the owner withdraws the premises from the rental market or the landlord rents the premises to a new tenant within 90 days after the tenant vacates or the date the premises are listed for sale, whichever is later;
- the landlord plans to demolish, substantially rehabilitate, or change the use of the premises—120-day notice;
- the owner elects to withdraw the premises from the rental market to pursue a conversion—120-day notice;
- the premises are condemned as uninhabitable by a local agency—30-day notice, or less if continued habitation would subject the landlord to criminal or civil penalties;
- the owner or lessor with whom the tenant shares the dwelling unit or access to a common kitchen or bathroom area—20-day notice;
- upon expiration of a transitional housing program, when the tenant ages out of a transitional housing program, or when the tenant has completed an educational or training program and is no longer eligible to participate in the transitional housing program—30-day notice.
 1. Transitional housing is defined as housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to formerly homeless individuals and families, with the intent to move them to permanent housing within a period of not more than 24 months, or longer if certain conditions are met;
- upon expiration of a subsidized housing rental agreement, and the landlord proffers a new rental agreement at least 30 days and no more than 90 days prior to the expiration, and the tenant does not sign.
 1. Subsidized housing includes rental housing for very low or low-income households operated directly by a public housing authority or its affiliate, or is insured, financed, or assisted by certain federal or state housing programs;
- intentional and knowing misrepresentation or omission of material information on the tenant's application that, had the misrepresentations or omissions not been made, would have caused the landlord to request additional information or take adverse action—30-day notice;

- other good cause exists constituting a legitimate economic or business reason—60-day notice.
 1. In such instances, the court may stay a writ of restitution for up to an additional 60 days for good cause shown, including difficulty obtaining alternative housing, but must condition the stay on continued payment of rent during the stay period;
- four or more violations of a substantial breach of a material program requirement of subsidized housing, a material term in the rental agreement, or a tenant obligation imposed by law that were cured by the tenant within the previous 12-month period and the landlord has provided a written warning notice for each violation—60-day notice;
- required to register as a sex offender during the tenancy, or before the tenancy if not disclosed when required in the rental application or otherwise known to the property owner at the beginning of the tenancy—60-day notice; and
- made unwanted sexual advances or other acts of sexual harassment to the property owner, manager, employee, or other tenant based on race, gender, or protected status in violation of a lease term or covenant—20-day notice.

Notices must identify the facts and circumstances known and available to the landlord at the time the notice is issued that support the cause or causes with enough specificity to enable the tenant to respond and prepare a defense. The landlord may present other evidence regarding the allegations within the notice when the evidence was unknown or unavailable at the time the notice was issued.

Other Occupants. If a tenant has permanently vacated for reasons other than termination by the landlord, and occupants co-resided with the tenant prior to and up to the tenant's vacation, the occupant must apply or reapply as a prospective tenant within 90 days of when the primary tenant vacates and meet the same screening, background, and financial criteria as any other prospective tenant. If the occupant fails to apply within 90 days or the application is denied, the landlord may commence an unlawful detainer action. This new provision regarding occupants is not applicable to subsidized housing.

Enforcement Remedies. A landlord who removes a tenant or causes a tenant to be removed from a dwelling in violation of the provisions specifying enumerated causes for eviction or refusal to renew or terminate a tenancy is liable to the tenant for wrongful eviction and the greater of:

- the tenant's economic and noneconomic damages; or
- three times the monthly rent, as well as reasonable attorneys' fees and costs.

The existing statutory damages available for inclusion of prohibited provisions in the rental agreement are increased from \$500 to two times the monthly rent, and the landlord must have knowingly, instead of deliberately, included such provisions.

Miscellaneous. Other technical revisions are made to reflect the new enumerated causes for

eviction and refusal to renew or terminate a tenancy under the RLTA, including removing provisions allowing a landlord to terminate a periodic or monthly tenancy with a 20-day notice and provisions that provide when premises are rented for a specified time the tenancy is terminated at the end of the specified time.

EFFECT OF HOUSING & LOCAL GOVERNMENT COMMITTEE AMENDMENT(S):

- Clarifies that a landlord must provide a 60-day notice prior to the termination of the rental period or agreement if the tenant was required to register as a sex offender during the tenancy or before the tenancy if not disclosed when required in the rental application.
- Clarifies that a landlord must provide a 20-day notice prior to the termination of the rental period or agreement if the tenant made unwanted sexual advances or other acts of sexual harassment to the property owner, employee, or other tenant in violation of a lease term or covenant.
- Makes technical corrections and clarifying amendments throughout to achieve internal consistency and ensure implementation of the bill's policies.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: State law allows landlords to evict tenants without providing a notice or reason. The bill simply asks landlords to supply a reason for evicting their tenants. Nearly 500,000 renters are trying to make ends meet and are using credit cards or borrowing from friends to stay current on rent. A majority of families of color depend on rental housing, and the status quo has left them vulnerable. No-fault evictions can lead to homelessness. The bill will limit and prevent homelessness, especially for BIPOC communities. Stable homes create stable communities which lead to stable economies. The bill proposal is already implemented and working in multiple cities in the state. Federal Way and Auburn have local ordinances in place to address fixed-term leases. The bill works in coordination with other current legislation, and includes several negotiated amendments between stakeholders. Landlord expenses when turning over tenants are too high, and the proposed just causes are very comprehensive, especially with the inclusion of other good cause, such as a legitimate business or economic reason. Allowing fixed-term leases would nullify all of the other 16 proposed just causes. Seattle has the second-highest number of no-cause evictions in the state, despite having a just cause ordinance, because of the use of fixed-term leases. Fewer

than 30 percent of black communities own homes as opposed to 50 percent previously in 1970. Black renters are falling behind on rent at higher rates than other renters. Washingtonians deserve a right to a fair process while enduring dueling pandemics of COVID-19 and racism. Poll numbers support that landlords should give a reason in order to evict. The probationary period for no-cause evictions is a fair and balanced compromise. The bill also serves housing equity goals. If landlords are allowed to discriminate against tenants for no reason, the receipt of any rental assistance becomes ineffective. Generational wealth has not been evenly distributed or made available to BIPOC communities. The black community has been forced into rental housing market due to past practices of redlining. Certain local affordable housing task forces support just cause evictions in their housing strategies. Some tenants are confused if no-cause evictions must be reported on other housing applications, and 20 days is not long enough to find housing. Tenants are afraid to ask for repairs to be done in fear of retaliation and receipt of a 20-day eviction notice. The bill does nothing to prevent landlords from removing problematic tenants. The argument that the bill violates contract rights would also apply to the entire RLTA. Protections in the bill are similar to those implemented in other states on the west coast and nationally. The bill will prevent tenants from being discriminated and retaliated against by landlords. Landlords have used a 20-day eviction notice when other methods to evict were inaccessible. One landlord still evicted a tenant despite receiving rental assistance for the tenant to remain in the unit. While rental housing might be a business for landlords, it can be life and death for tenants. Tenants do not have the power to influence lease terms, including the option to terminate a lease at the end of the term. No-cause evictions for long-tenured tenants displace them from their communities. Fixed-term leases do not provide tenants with a defense in court. Periodic tenancies of month-to-month offer more protections, and fixed-term leases can be as short as a few weeks. Black women are seven times more likely to be evicted than white men. The bill provides tenants a meaningful period of time to respond to any reasons for evictions, and represents principles of due process.

CON: Evictions are a lose-lose outcome for both parties, except for attorneys involved in such actions. A fixed-term lease is not an eviction but a contract between two parties with an expected end date. A 20-day notice is too short for month-to-month tenancies. Evictions are not the problem when there is a massive state housing supply shortage. Small landlords will be more likely to sell, resulting in permanent lost housing stock. The bill overreaches into private contracts and makes it a one-way contract. The bill limits landlords when addressing behavior issues with tenants by linking evictions to four other notices. Penalizing landlords for converting a unit might be more appropriate. The bill will negatively impact landlords. Allowing leases to expire is another effective method to remove problematic tenants and avoid costly eviction cases. Problematic tenants may persist or arise even after any probationary lease period. Notice provisions in the bill do not provide enough time for landlords to make repairs or renovations. The court process is too slow to evict tenants. Landlords will be forced to renew tenancies in perpetuity and create hostile living environments for other tenants. Student housing providers need to rely on fixed-term leases to ensure a smooth transition between student populations. Evictions are

too costly and time consuming and decreases property values. The bill will result in increased attorney costs for landlords that will be passed on to the tenant, creating more costs overall for both parties. Landlords will no longer risk a larger pool of eligible tenants, and the bill does nothing to help mitigate risks of renting to any tenants. The bill ties the hands of property managers to address issues, and should only extend the current 20-day eviction period. Landlords need to be able to manage out bad actors, and those tenants that cannot comply with basic lease rules.

Persons Testifying: PRO: Representative Nicole Macri, Prime Sponsor; Tara Villalba, Bellingham Tenants Union; Sakara Remmu, The Washington Black Lives Matter Alliance; Andrew Villeneuve, Northwest Progressive Institute; Violet Lavatai, Tenants Union of Washington; Chris Heer; Sarah Nagy, Columbia Legal Services; Amber Pepka; Jessica Harbacheck; Dominique Horn; Emily Murphy, Washington Community Action Network; Breanne Schuster, ACLU of Washington; Leah Collmer; Breean Beggs, Spokane City Council President; Amy Falcone, Kirkland City Council & Eastside Human Services Forum; Barb De Michele, Issaquah City Council; Ty Stober, Vancouver City Council; Lindsey Schromen-Wawrin, Port Angeles City Council; Celina Espinoza; Edmund Witter, King County Bar Association; Joy Hollingsworth, Washington Build Back Black Alliance.

CON: Cory Brewer; Saint Newton; Chelsy Parrish; Frances Erhardt; Gordon Haggerty; Clyde Priddy; Jennifer Lekisch; Elisa Lyles, Washington Landlord Association; Leeann Ghiglione, NARPM John L Scott Seattle NW; Osho Berman, Berman 2 LLC.

Persons Signed In To Testify But Not Testifying: PRO: Cynthia Stewart, League of Women Voters of Washington; Fadi Assaf, Northwest Justice Project; Ren Autrey; Terri Anderson, Tenants Union of Washington State; Ashley Lommers-Johnson, Everett Housing Authority; Melanie Smith, NAMI Washington and the Seattle / King County Coalition on Homelessness; Patience Malaba, Housing Development Consortium of Seattle-King County; Ashok Chandwaney; Michele Thomas, Washington Low Income Housing Alliance; Alicia Glenwell; Noemi Cagatin-Porter, CJK Community Homes; Christopher Lovings, Eastside Legal Assistance Program; Matthew Lang, Seattle Transit Riders Union and Washington Low Income Housing Alliance; Stephanie Angelis; Tracy Turner; Kimberlee Thornton.

CON: Manjoyt Randhawa; Rick Glenn, Yakima Valley Landlords Association; Gloria Isaac, Century 21 North Homes Realty; Todd Monohon, Olympic Rentals; Mark Isozaki, MME Property Mgmt; David Nagel; Jim Henderson, Rental Housing Association of Washington; Chantell Arnold, AP Rental Properties; Sherry Riesner, Real Estate Investment Services; John Barrett; Bruce Becker; Jennifer Noland, Spartan Agency; Terry Greve; Richard Hoy, Carleton Apartments; Saint Elmo Newton; Susan Gonzales.