

taxpayer may intervene in such action and be represented therein by his own attorney.

Passed the Senate April 23, 1983.

Passed the House April 20, 1983.

Approved by the Governor May 17, 1983.

Filed in Office of Secretary of State May 17, 1983.

CHAPTER 264

[Substitute Senate Bill No. 3640]

LANDLORD-TENANT—UNLAWFUL DETAINER—PROPERTY DESTRUCTION—DAMAGES—RENTAL AGREEMENTS—RENT PROCEDURES—DEPOSITS—EVICTIONS—ADDITIONAL REMEDIES

AN ACT Relating to residential landlord-tenant relationships; amending section 1, chapter 106, Laws of 1953 and RCW 59.12.030; amending section 5, chapter 96, Laws of 1891 as last amended by section 1, chapter 26, Laws of 1911 and RCW 59.12.040; amending section 13, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.130; amending section 23, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.230; amending section 26, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.260; amending section 28, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.280; amending section 31, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.310; amending section 24, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.240; amending section 25, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.250; amending section 34, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.340; and adding new sections to chapter 59.18 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 106, Laws of 1953 and RCW 59.12.030 are each amended to read as follows:

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him to quit the premises at the expiration of such month or period;

(3) When he continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplished with

for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he commits or permits waste upon the demised premises, or when he sets up or carries on thereon any unlawful business, or when he erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him of three days' notice to quit; or

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing ~~(, -is)~~ and served upon him in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW.

Sec. 2. Section 5, chapter 96, Laws of 1891 as last amended by section 1, chapter 26, Laws of 1911 and RCW 59.12.040 are each amended to read as follows:

Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders

or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. Section 13 of this 1983 act may also apply to notice given under this chapter.

Sec. 3. Section 13, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.130 are each amended to read as follows:

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A-.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste; and

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: PROVIDED, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee.

Sec. 4. Section 23, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.230 are each amended to read as follows:

(1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter;
or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific consent of the tenant to such incident of taking or detention, unless the property has been abandoned as described in RCW 59.18.310, and who, after written demand by the tenant for the return of his personal property, refuses ~~((or neglects))~~ to return the same promptly shall be liable to the tenant for the value of the property retained, ~~((and))~~ actual damages, and if the refusal is intentional, may also be liable for damages of up to fifty dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his property. The prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

NEW SECTION. Sec. 5. There is added to chapter 59.18 RCW a new section to read as follows:

No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable.

Sec. 6. Section 26, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.260 are each amended to read as follows:

If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, ~~((such))~~ the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, ((or if all or part thereof may be retained by the landlord as a nonreturnable cleaning fee;)) the rental agreement shall be in writing and shall so specify. No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises.

Sec. 7. Section 28, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.280 are each amended to read as follows:

Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within fourteen days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.

No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the full amount of ~~((refund due))~~ the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall 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 attorney's fees.

Sec. 8. Section 31, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.310 are each amended to read as follows:

If the tenant defaults in the payment of rent and reasonably indicates by words or actions his intention not to resume tenancy, he shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in ~~((a))~~ any reasonably secure place. A notice

containing the name and address of the landlord and the place where the property is stored (~~(must)~~) shall be mailed promptly by the landlord to the last known address of the tenant. After sixty days from the date of default in rent, and after prior notice of such sale is mailed to the last known address of the tenant, the landlord may sell such property, including personal papers, family pictures, and keepsakes, and may apply any income derived therefrom against moneys due the landlord, including actual costs of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell the property, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale is mailed to the tenant at the tenant's last known address. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income.

Sec. 9. Section 24, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.240 are each amended to read as follows:

So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

~~((1))~~ (a) Eviction of the tenant (~~((other than giving a notice to terminate tenancy as provided in RCW 59.18.200))~~);

~~((2))~~ (b) Increasing the rent required of the tenant;

~~((3))~~ (c) Reduction of services to the tenant; and

~~((4))~~ (d) Increasing the obligations of the tenant.

Sec. 10. Section 25, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.250 are each amended to read as follows:

Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable

presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

NEW SECTION. Sec. 11. There is added to chapter 59.18 RCW a new section to read as follows:

The landlord and tenant may agree in writing to submit any dispute arising under the provisions of this chapter or under the terms, conditions, or performance of the rental agreement, to mediation by an independent third party. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.18.320.

Sec. 12. Section 34, chapter 207, Laws of 1973 1st ex. sess. and RCW 59.18.340 are each amended to read as follows:

The administrative fee for this arbitration procedure shall be ~~((seventy dollars;))~~ established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: PROVIDED, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred.

NEW SECTION. Sec. 13. There is added to chapter 59.18 RCW a new section to read as follows:

(1) The remedies provided by this section are in addition to other remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the complaint and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. If the defendant submits to the court a written statement signed and sworn under penalty of perjury denying that the rent alleged due in the complaint is owing based upon a legal or equitable defense or set-off arising out of the tenancy, such payment shall not be required.

(3) A defendant must comply with subsection (2) of this section within seven days after completed service of a filed summons and complaint or, in the case of service of an unfiled summons and complaint, seven days after delivering written notice to the defendant, in the manner provided in RCW 59.12.040, advising the defendant of the date of filing, the cause number for the action, and the date by which the defendant must comply with this section to avoid the immediate issuance of a writ of restitution. Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to a hearing to contest the amount of rent alleged to be due.

(4) The defendant shall send written notice that the rent has been paid into the court registry or send a copy of the sworn statement referred to in subsection (2) of this section to the address of the person whose name is signed on the unlawful detainer summons.

(5) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(6) If the plaintiff intends to use the procedures in this section, the summons must contain notice to the defendant of the payment requirements of this section and be substantially in the following form:

NOTICE

This unlawful detainer action is based upon nonpayment of rent in an amount alleged to be \$..... The plaintiff is entitled to an order from the court directing the sheriff to evict you without a hearing unless you pay into the court registry the amount of delinquent rent alleged to be due in the complaint and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending. If you deny that you owe the rent claimed to be due and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a

written statement signed and sworn under penalty of perjury setting forth why you do not owe the amount claimed in the complaint to be due. The sworn statement must be filed **IN ADDITION TO** your written answer to the complaint.

Payment of the sworn statement must be submitted to the clerk of the superior court within seven days after you have been served with this summons or, if the summons has not yet been filed, within seven days after service of written notice that the lawsuit has been filed.

This complaint:

- () is filed with the superior court;
- () is not filed. The plaintiff must notify you in writing when it is filed.

IMPORTANT

If you intend to contest this action, you must also file a written answer as indicated above on this summons.

Passed the Senate April 24, 1983.

Passed the House April 24, 1983.

Approved by the Governor May 17, 1983.

Filed in Office of Secretary of State May 17, 1983.

CHAPTER 265

[Substitute Senate Bill No. 3642]

CHARITABLE ORGANIZATIONS AND SOLICITATIONS—REGISTRATION AND DISCLOSURE—EXEMPTIONS

AN ACT Relating to charitable solicitations; amending section 2, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 80, chapter 158, Laws of 1979 and RCW 19.09.020; amending section 3, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 222, Laws of 1977 ex. sess. and RCW 19.09.030; amending section 10, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 7, chapter 227, Laws of 1982 and RCW 19.09.100; amending section 21, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 10, chapter 227, Laws of 1982 and RCW 19.09.210; amending section 14, chapter 222, Laws of 1977 ex. sess. as amended by section 12, chapter 227, Laws of 1982 and RCW 19.09.275; amending section 34, chapter 13, Laws of 1973 1st ex. sess. as amended by section 13, chapter 227, Laws of 1982 and RCW 19.09.340; amending section 5, chapter 13, Laws of 1973 1st ex. sess. and RCW 19.09.050; amending section 19, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 8, chapter 227, Laws of 1982 and RCW 19.09.190; adding new sections to chapter 19.09 RCW; making appropriations; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 13, Laws of 1973 1st ex. sess. as last amended by section 80, chapter 158, Laws of 1979 and RCW 19.09.020 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one whose conduct is subject to direct control by such organization and who