

Update as of 03/14/18 - The Landlord Mitigation Program and
Source Of Income Discrimination E2SHB 2578

The Engrossed Second Substitute House Bill 2578 has now passed both the House and the Senate and is now on the Governor's desk awaiting his signature. This legislation makes denial of tenancy due to source of income (housing assistance) unlawful throughout the State of Washington. The full text of the Bill can be found here:

<http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/House%20Passed%20Legislature/2578-S2.PL.pdf#page=1>

An intrinsic element of this legislation is the reassurance that landlords who are adversely affected as a direct result of housing assisted tenancies may seek financial compensation from the Landlord Mitigation Fund. Since its inception in 04/16, this fund has been widely (and falsely) presented to landlords as a genuine solution to unrecoverable losses. In reality, it isn't now, and never was a solution! For a detailed explanation as to why, see the essay below, but for now and looking ahead, we can only hope the legislature allocates sufficient funding to make the program a genuine means of mitigation. Events are still unfolding, and there are already signs of positive changes regarding the LMP. For example, E2SHB 2578 would allow a landlord to self-certify damage and losses without the need to obtain a court judgement against a former tenant (as was previously the case).

As things develop in this area, the LLA will try, via email bulletins and our website, to update our members accordingly. In the meantime, it's advisable that all landlords and property managers fully read and understand E2SHB 2578. To not do so could become very costly.

The Landlord Mitigation Program – Real Solution Or Pleasant Fiction?

The following observations are my own, for which I alone take responsibility - Ron Devonport

02/22/18

Among other things, Title 18 (enacted on 03/27/17) makes denial of housing to tenants due to their source of income (within the City of Spokane) unlawful. Its passage also makes Spokane an eligible jurisdiction for applications to the Washington State Landlord Mitigation Program.

<http://www.commerce.wa.gov/building-infrastructure/housing/landlord-mitigation-program/>

City officials, tenant advocates, and non-profits have been vocal in promoting the Landlord Mitigation Program as a viable remedy for private landlords within the city who are faced with unrecoverable losses of between \$500 and \$5,000 (damage, legal fees, unpaid rent or utilities) due to Housing Choice (Section 8) or Veterans Affairs Supportive Housing (VASH) voucher-holder tenants. The following is not intended to be a critique of Title 18 or of housing assistance programs, but rather of the Landlord Mitigation Program and what I regard as its misleading portrayal and promotion.

I should mention that several times in the last year, I've inquired at the Washington State Department of Commerce as to how many landlords had in fact applied for, and received compensation from the LMP since it became active on 04/16/16. The results are not encouraging. As of 12/01/17, there have been 11 total applications - 9 in King County and 1 each in Tumwater and Everett (Everett is not an eligible jurisdiction). Of those eleven applications, four have been successful receiving a sum total of \$16,000 in mitigation.

Let me make that point again, in the 19 months after the program became active in Washington State, just 4 landlords have been compensated for unrecoverable losses caused by voucher-holder tenants. To put that in context, the Center on Budget and Policy Priorities reports that as of 08/09/17, the number of Housing Choice vouchers issued to recipient households with private sector landlords in Washington State was 52,000. If 52,000 vouchers per month has been a reliable average, each month, for that 19 month period, that would amount to 988,000 monthly vouchers issued. However, to reiterate., there have only been 10 eligible landlord claims filed with 4 of those being successful. In light of those figures, any suggestion that mitigation is a realistic expectation is frankly absurd.

<http://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-WA.pdf>

There are two key factors which convince me the program, in its present form, is a facade. Firstly, to be eligible (assuming the rental property is located in an eligible jurisdiction) a landlord must go to court and win a judgement against a former tenant who likely has no assets or attachable income, and who is therefore not in a position to make payments on a judgement if awarded. Secondly, the program's budget for the entire State of Washington is \$125,000. That amount would probably not even mitigate actual landlord losses in Hillyard, or in West Central, let alone Spokane, let alone the whole State of Washington. The program's low budget suggests to me that its designers accurately foresaw that obstacles would sufficiently deter any meaningful number of landlord applicants. However, this widely touted program does give a false sense of security to unsuspecting landlords. That, I believe, is its true purpose.

I should clarify that I make no criticism of Sean Harrington at the Washington State Department of Commerce who merely administers the program and who has been very helpful and forthcoming with information. I suspect, however, that the program was devised by unknown bureaucrats to mollify private landlords, who understandably worry about taking on the extra financial burden and risks associated with voucher-holder tenants, by creating the illusion of tangible compensation.

In my estimation, the Landlord Mitigation Program can best be described as a lottery with only token funding that is open to those landlords who choose to take time away from repairing their properties, accepting their losses, and running their businesses to engage in Small Claims Court proceedings against defendants without the means to pay, and in the event of a successful judgement, follow that up with a potentially lengthy (and by no means guaranteed) application process.

There are also unintended consequences for tenants. I overheard one tenant advocate comment that for a landlord to monetarily pursue someone who is unable to pay would be vindictive. I can understand that perception, but the LMP judgement requirement incentivises landlords to do just that, which would further harm the tenant's rental history and future housing prospects. Hardly the intended result, I'm sure.

Losses are an inherent risk with any business, and that's equally true for housing providers. Unrecoverable losses are a greater risk with Housing Choice tenancies, but regardless of that, voucher-holders are now a protected class in Spokane. We have to accept that and get used to it. However, the next time you hear City of Spokane officials or tenant/non-profit advocates present the LMP in reassuring terms as a realistic solution to landlord losses, you should challenge them on it. They either don't know the reality of that which they promote, or they do know the reality, in which case they are misleading you.