

RCW 43.31.605 Landlord mitigation program—Department to administer and have rule-making authority—Claims—Eligibility for reimbursement—Review—Damages—Inspection—Landlords prohibited from certain acts—Denial of reimbursement—Department to establish website—Liability—Report, recommendations. (1) Subject to the availability of funds for this purpose, the landlord mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

The following types of claims related to landlord mitigation are eligible for reimbursement from the landlord mitigation program account:

(a) Claims relating to renting private market rental units to low-income tenants using a housing subsidy program for:

(i) Up to one thousand dollars for improvements identified in RCW 59.18.255(1)(a). In order to be eligible for reimbursement under this subsection (1)(a)(i), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)(a)(i) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(ii) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(iii) Reimbursement for damages established pursuant to subsection (2) of this section; and

(iv) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

(b) Claims related to landlord mitigation for an unpaid judgment for rent, unpaid judgments resulting from the tenant's failure to comply with an installment payment agreement identified in RCW 59.18.610, late fees, attorneys' fees, and costs after a court order pursuant to RCW 59.18.410(3), including any unpaid portion of the judgment after the tenant defaults on the payment plan pursuant to RCW 59.18.410(3)(c), are eligible for reimbursement from the landlord mitigation program account and are exempt from any postjudgment interest required under RCW 4.56.110. Any claim for reimbursement made pursuant to RCW 59.18.410(3)(e)(ii) must be accompanied by a court order staying the writ of restitution pursuant to RCW 59.18.410(3). Any claim for reimbursement under this subsection (1)(b) is not an entitlement.

(i) The department shall provide for a form on its website for tenants and landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(b).

(ii) The form must include: (A) Space for the landlord and tenant to provide names, mailing addresses, phone numbers, date of birth for the tenant, and any other identifying information necessary for the department to process payment; (B) the landlord's statewide vendor identification number and how to obtain one; (C) name and address to whom payment must be made; (D) the amount of the judgment with instructions to include any other supporting documentation the department may need to process payment; (E) instructions for how the tenant is to reimburse the department under (b)(iii) of this

subsection; (F) a description of the consequences if the tenant does not reimburse the department as provided in this subsection (1)(b); (G) a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and program; and (H) any other information necessary for the operation of the program. If the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, the landlord may solely submit the form but must attest to the amount of money owed and sign the form under penalty of perjury.

(iii) When a landlord has been reimbursed pursuant to this subsection (1)(b), the tenant for whom payment was made shall reimburse the department by depositing the amount disbursed from the landlord mitigation program account into the court registry of the superior court in which the judgment was entered. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds to be disbursed by the court. Upon entry of the order, the court clerk shall disburse the funds and include a case number with any payment issued to the department. If directed by the court, a clerk shall issue any payments made by a tenant to the department without further court order.

(iv) The department may deny an application made by a tenant who has failed to reimburse the department for prior payments issued pursuant to this subsection (1)(b).

(v) With any disbursement from the account to the landlord, the department shall notify the tenant at the address provided within the application that a disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the account for the payment through the court registry may result in a denial of a future application to the account pursuant to this subsection (1)(b). The department may include any other additional information about how to reimburse the account it deems necessary to fully inform the tenant.

(vi) The department's duties with respect to obtaining reimbursement from the tenant to the account are limited to those specified within this subsection (1)(b).

(vii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(b), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(c)(i) Claims related to unpaid rent for:

(A) Up to \$15,000 in unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium and the tenant being low-income, limited resourced or experiencing hardship, voluntarily vacated or abandoned the tenancy; or

(B) Up to \$15,000 in remaining unpaid rent if a tenant defaults on a repayment plan entered into under RCW 59.18.630 are eligible for reimbursement from the landlord mitigation program account subject to the program requirements under this section, provided the tenancy has not been terminated at the time of reimbursement.

(ii) A landlord is ineligible for reimbursement under this subsection (1)(c) where the tenant vacated the tenancy because of an unlawful detainer action under RCW 59.12.030(3).

(iii) A landlord in receipt of reimbursement from the program pursuant to this subsection (1)(c) is prohibited from:

(A) Taking legal action against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy; or

(B) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy.

(d)(i) Claims, up to \$5,000, related to landlord mitigation for damages to rental property when:

(A) A tenant has terminated a rental agreement pursuant to RCW 59.18.575;

(B) The property has sustained damage beyond wear resulting from ordinary use of the premises;

(C) The landlord has, within the time limits specified in RCW 59.18.280, provided the tenant with a full and specific statement;

(D) The landlord has, rather than retaining any of the damage deposit, returned the full damage deposit to the tenant; and

(E) The landlord has agreed not to proceed against the tenant to recover the balance owed.

(ii) Any claim for reimbursement under this subsection (1)(d) is not an entitlement.

(iii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(d), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department is not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(iv) The department shall provide for a form on its website for landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(d).

(v) The department shall provide for the confidentiality of tenants' personal information and shall have such rule-making authority as is necessary to protect the personal information of tenants under this subsection (1)(d).

(2) In order for a claim under subsection (1)(a)(iii) or (d) of this section to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(a) Have ensured that the rental property was inspected at the commencement of the tenancy by both the tenant and the landlord or landlord's agent and that a detailed written move-in property inspection report, as required in RCW 59.18.260, was prepared and signed by both the tenant and the landlord or landlord's agent;

(b) Make repairs and then apply for reimbursement to the department;

(c) Submit a claim on a form to be determined by the department, signed under penalty of perjury; and

(d) Submit to the department copies of the move-in property inspection report specified in (a) of this subsection and supporting materials including, but not limited to, before repair and after repair photographs, videos, copies of repair receipts for labor and materials, and such other documentation or information as the department may request.

(3) (a) The department shall make reasonable efforts to review a claim within ten business days from the date it received properly submitted and complete claims to the satisfaction of the department.

(b) In reviewing a claim pursuant to subsection (1)(a) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a private market rental unit rented to a low-income tenant who is using a housing subsidy program.

(c) In reviewing a claim pursuant to subsection (1)(d)(i) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a tenancy that was terminated pursuant to RCW 59.18.575 and that all of the requirements of subsection (1)(d)(i) of this section have been met.

(4) Claims pursuant to subsection (1)(a) of this section related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy. For the 2021-2023 fiscal biennium, while claims or damages may exceed \$10,000, total reimbursement from the program may not exceed \$10,000 per tenancy.

(5) Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

(6) All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best efforts to notify the tenant of the amount and the reasons for any reimbursements made.

(7) The department, in its sole discretion, may inspect the property and the landlord's records related to a claim, including the use of a third-party inspector as needed to investigate fraud, to assist in making its claim review and determination of eligibility.

(8) A landlord in receipt of reimbursement from the program pursuant to subsection (1)(a) or (d) of this section is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy.

(9) A landlord denied reimbursement under subsection (1)(a)(iii) of this section may seek to obtain a judgment from a court of competent jurisdiction and, if successful, may resubmit a claim for damages supported by the judgment, along with a certified copy of the judgment. The department may reimburse the landlord for that portion

of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations set forth in this section.

(10) Determinations regarding reimbursements shall be made by the department in its sole discretion.

(11) The department must establish a website that advertises the landlord mitigation program, the availability of reimbursement from the landlord mitigation program account, and maintains or links to the agency rules and policies established pursuant to this section.

(12) Neither the state, the department, or persons acting on behalf of the department, while acting within the scope of their employment or agency, is liable to any person for any loss, damage, harm, or other consequence resulting directly or indirectly from the department's administration of the landlord mitigation program or determinations under this section.

(13)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and recommended modifications shall be submitted to the governor and the appropriate committees of the legislature by January 1, 2021. In preparing the report, the department shall convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities.

(b) The report shall include discussion of the effectiveness of the program as well as the department's recommendations to improve the program, and shall include the following:

(i) The number of total claims and total amount reimbursed to landlords by the fund;

(ii) Any indices of fraud identified by the department;

(iii) Any reports by the department regarding inspections authorized by and conducted on behalf of the department;

(iv) An outline of the process to obtain reimbursement for improvements and for damages from the fund;

(v) An outline of the process to obtain reimbursement for lost rent due to the rental inspection and tenant screening process, together with the total amount reimbursed for such damages;

(vi) An evaluation of the feasibility for expanding the use of the mitigation fund to provide up to ninety-day no interest loans to landlords who have not received timely rental payments from a housing authority that is administering section 8 rental assistance; and

(vii) Any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the program.

(14) As used in this section:

(a) "Housing subsidy program" means a housing voucher as established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord;

(b) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the rental unit is located; and

(c) "Private market rental unit" means any unit available for rent that is owned by an individual, corporation, limited liability

company, nonprofit housing provider, or other entity structure, but does not include housing acquired, or constructed by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018. This definition only applies to claims for mitigation under subsection (1)(a) of this section and does not exclude public housing agencies from making claims under subsection (1)(b), (c), or (d) of this section. [2022 c 297 § 952; 2022 c 196 § 2; 2021 c 115 § 5. Prior: 2020 c 315 § 8; 2020 c 169 § 2; 2019 c 356 § 12; 2018 c 66 § 2.]

Reviser's note: This section was amended by 2022 c 196 § 2 and by 2022 c 297 § 952, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2022 c 297: See note following RCW 43.79.565.

Finding—Intent—2022 c 196: "The legislature finds that domestic violence, sexual assault, unlawful harassment, and stalking are acts of violence that have devastating effects upon individual victims, their children, their communities, and the state as a whole. These acts of violence threaten the housing stability of many residents of this state. Victims of these violent acts may be forced to remain in unsafe and abusive situations because they do not have the financial wherewithal to obtain alternate housing. It is the long-standing practice of the state to provide rental assistance to its residents in a variety of urgent situations. By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, unlawful harassment, and stalking by removing some of the financial barriers to safely obtaining alternate housing and thereby contribute to the general welfare of the state." [2022 c 196 § 1.]

Finding—Intent—Application—Effective date—2021 c 115: See notes following RCW 59.18.620.

Effective date—2020 c 315 §§ 5-8: See note following RCW 59.18.410.

Findings—Intent—2020 c 315: See note following RCW 59.18.057.

Intent—2019 c 356: See note following RCW 59.12.030.