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Washington's right-to-counsel law alters the eviction process

Shawn Vestal; The Spokesman-Review, Spokane, Wash.

Jan. 6—It's a Tuesday morning, and the eviction docket is full in Judge Michelle Szambelan's courtroom.

The seats are packed with attorneys and defendants. Szambelan hears requests for continuances, and reports from attorneys that cases have been settled. When tenants appear on their own — as several did on this December morning — Szambelan asks them if they are represented by an attorney or want to be.

If renters tell the judge they want an attorney, she points out Delaney Jacobson.

"There's a lady right behind you who can help," she says.

And then, usually, the hearing is pushed back a couple of weeks, to give Jacobson — the community resource manager for a state-funded project to provide attorneys for tenants — time to connect the tenant with an attorney and prepare to represent them.

This is the state's new right-to-counsel law in practice. The law, which took effect in 2021, was the first statewide measure in the country to guarantee a right to an attorney to a tenant facing eviction, if their income falls below 200% of the federal poverty line. That law has since provided hundreds of tenants with legal counsel, which has profoundly altered the process.

"Before, it was often just a landlord's attorney, a judge and an unrepresented tenant," said Renee Ballou, the Spokane County managing attorney for the King County Bar Association's Housing Justice Project. "I think a lot of tenants were just kind of getting railroaded, to be honest."

The KCBA project helps provide attorneys for tenants under a contract with the state Office for Civil Legal Aid. Jacobson also works for the program.

In 2022, OCLA provided attorneys for 455 tenants in Spokane County; through the end of September 2023, it provided 567 tenants with counsel — and they're struggling to keep up in the face of skyrocketing eviction filings. The OCLA is asking the Legislature to increase its funding to hire an additional 10 attorneys.

An August report found that the program served more than 8,100 clients statewide during its first two years, and that it prevented final eviction orders in a majority of cases. Only 15% of the cases taken on by the program resulted in an eviction judgment.

More than 26% of cases were dismissed, 27% ended with a negotiated agreement for the tenant to move and 15% ended with a deal allowing the tenant to stay.

Ali Kingston, the eviction defense program counsel in Spokane for the OCLA, said the number of evictions is stretching the program's attorneys to the limit.

"These are numbers we haven't seen before," she said. "It strains the system everywhere."

Landlords' attorneys complain that the right-to-counsel law has made it too difficult and time-consuming to evict tenants. Eric Steven, an attorney who represents many landlords in Spokane, including those who provide federally subsidized housing for low-income people, said that the tenants' attorneys often seek to drag cases out rather than reach an accommodation with the landlord to resolve the matter more quickly or to find services for the tenant.

One of his clients is Catholic Charities, which operates permanent supportive housing projects for people downtown. Rob McCann, the nonprofit's CEO, said that while his organization supports protections for tenants against unscrupulous landlords, the changes in the eviction process — and specifically the longer time frame for evicting a tenant who is committing crimes or creating a danger to themselves or others — has been driving up its legal costs significantly and made it hard to protect the majority of tenants when a bad one presents an ongoing danger.

"This is probably the top issue in our organization in the past year and a half," he said.

Jacobson said it's true that giving tenants "meaningful representation" may make the cases take longer. But without a lawyer, tenants face a distinct disadvantage in the legal system.

The tensions over the pace of the process were evident in Szambelan's courtroom, as cases were postponed repeatedly in order for Jacobson to screen clients for the possible assignment of an attorney.

"I get it — I get the frustration," Szambelan said as she granted another continuance. "But he is entitled to a lawyer."