

HOUSE BILL 1222

N1
HB 610/12 – ENV

3lr3058

By: **Delegate Weir**

Introduced and read first time: February 8, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Landlord Defenses in Nuisance Actions**

3 FOR the purpose of establishing a complete defense to any nuisance action brought
4 under State or local law against a landlord if the tenant's actions are the basis
5 for the action and certain actions have been taken by the landlord or the
6 District Court in a suit to repossess the premises based on a breach of the lease;
7 and generally relating to landlord defenses in nuisance actions.

8 BY repealing and reenacting, with amendments,
9 Article – Real Property
10 Section 8–402.1
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2012 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Real Property**

16 8–402.1.

17 (a) (1) (i) Where an unexpired lease for a stated term provides that
18 the landlord may repossess the premises prior to the expiration of the stated term if
19 the tenant breaches the lease, the landlord may make complaint in writing to the
20 District Court of the county where the premises is located if:

21 1. The tenant breaches the lease;

22 2. A. The landlord has given the tenant 30 days'
23 written notice that the tenant is in violation of the lease and the landlord desires to
24 repossess the leased premises; or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 B. The breach of the lease involves behavior by a tenant
2 or a person who is on the property with the tenant's consent, which demonstrates a
3 clear and imminent danger of the tenant or person doing serious harm to themselves,
4 other tenants, the landlord, the landlord's property or representatives, or any other
5 person on the property and the landlord has given the tenant or person in possession
6 14 days' written notice that the tenant or person in possession is in violation of the
7 lease and the landlord desires to repossess the leased premises; and

8 3. The tenant or person in actual possession of the
9 premises refuses to comply.

10 (ii) The court shall summons immediately the tenant or person
11 in possession to appear before the court on a day stated in the summons to show cause,
12 if any, why restitution of the possession of the leased premises should not be made to
13 the landlord.

14 (2) (i) If, for any reason, the tenant or person in actual possession
15 cannot be found, the constable or sheriff shall affix an attested copy of the summons
16 conspicuously on the property.

17 (ii) After notice is sent to the tenant or person in possession by
18 first-class mail, the affixing of the summons on the property shall be conclusively
19 presumed to be a sufficient service to support restitution.

20 (3) If either of the parties fails to appear before the court on the day
21 stated in the summons, the court may continue the case for not less than six nor more
22 than 10 days and notify the parties of the continuance.

23 (b) (1) If the court determines that the tenant breached the terms of the
24 lease and that the breach was substantial and warrants an eviction, the court shall
25 give judgment for the restitution of the possession of the premises and issue its
26 warrant to the sheriff or a constable commanding the tenant to deliver possession to
27 the landlord in as full and ample manner as the landlord was possessed of the same at
28 the time when the lease was entered into. The court shall give judgment for costs
29 against the tenant or person in possession.

30 (2) Either party may appeal to the circuit court for the county, within
31 ten days from entry of the judgment. If the tenant (i) files with the District Court an
32 affidavit that the appeal is not taken for delay; (ii) files sufficient bond with one or
33 more securities conditioned upon diligent prosecution of the appeal; (iii) pays all rent
34 in arrears, all court costs in the case; and (iv) pays all losses or damages which the
35 landlord may suffer by reason of the tenant's holding over, the tenant or person in
36 possession of the premises may retain possession until the determination of the
37 appeal. Upon application of either party, the court shall set a day for the hearing of
38 the appeal not less than five nor more than 15 days after the application, and notice of
39 the order for a hearing shall be served on the other party or that party's counsel at

1 least five days before the hearing. If the judgment of the District Court is in favor of
2 the landlord, a warrant shall be issued by the court which hears the appeal to the
3 sheriff, who shall execute the warrant.

4 (c) (1) Acceptance of any payment after notice but before eviction shall
5 not operate as a waiver of any notice of breach of lease or any judgment for possession
6 unless the parties specifically otherwise agree in writing.

7 (2) Any payment accepted shall be first applied to the rent or the
8 equivalent of rent apportioned to the date that the landlord actually recovers
9 possession of the premises, then to court costs, including court awarded damages and
10 legal fees and then to any loss of rent caused by the breach of lease.

11 (3) Any payment which is accepted in excess of the rent referred to in
12 paragraph (2) of this subsection shall not bear interest but will be returned to the
13 tenant in the same manner as security deposits as defined under § 8-203 of this title
14 but shall not be subject to the penalties of that section.

15 **(D) IT IS A COMPLETE DEFENSE TO ANY NUISANCE ACTION BROUGHT**
16 **UNDER STATE OR LOCAL LAW AGAINST A LANDLORD IF:**

17 **(1) THE TENANT'S ACTIONS ARE THE BASIS FOR THE NUISANCE**
18 **ACTION; AND**

19 **(2) (I) THE LANDLORD HAS PROVIDED NOTICE THAT THE**
20 **LANDLORD DESIRES TO REPOSSESS THE LEASED PREMISES AS REQUIRED**
21 **UNDER SUBSECTION (A) OF THIS SECTION;**

22 **(II) THE LANDLORD HAS FILED A COMPLAINT IN THE**
23 **DISTRICT COURT TO REPOSSESS THE LEASED PREMISES UNDER SUBSECTION**
24 **(A) OF THIS SECTION; OR**

25 **(III) THE DISTRICT COURT HAS ORDERED OR DENIED**
26 **RESTITUTION OF THE POSSESSION OF THE PREMISES.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2013.