

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1372 (Delegate Wells, *et al.*)
Environment and Transportation

Real Property - Residential Leases - Repair of Dangerous Defects and Failure to Pay Rent

This bill makes multiple changes to statute related to the repair of dangerous defects in residential dwelling units and failure to pay actions. It establishes that, by offering a residential dwelling unit for rent, the landlord is deemed to warrant that the unit is fit for human habitation and holds the obligation to repair and eliminate conditions and defects, as specified. The bill expands the remedies available to a tenant based on the failure of a landlord to make specified repairs or corrections by authorizing a tenant to bring an action for money damages for breach of the warranty of habitability. Among other items, the bill also (1) establishes a method for calculating damages; (2) authorizes a court to award a tenant reasonable attorney's fees and costs under specified circumstances; (3) alters procedures in a failure to pay rent action; (4) establishes that a related public local law or ordinance may supersede State law only if it provides more protection or relief to a tenant; and (5) makes numerous technical and stylistic changes.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Warrant of Habitability

By offering a residential dwelling unit for rent, whether by written or oral lease or agreement, the landlord is deemed to warrant that the unit is fit for human habitation and holds the obligation to repair and eliminate conditions and defects that constitute, or will constitute if not properly addressed, a fire hazard or a serious and substantial threat to the life, health, or safety of occupants.

The bill authorizes a tenant to bring an action for money damages against a landlord for breach of the warranty of habitability if the landlord refuses to make repairs or correct conditions, or has failed to do so after a reasonable time. Damages must be calculated retroactively by the court, starting on the date on which the landlord actually knew or should have known of the breach of warranty. Damages are the total of (1) the rent paid by the tenant during the time the dangerous conditions or defects continued, less the reasonable rental value of the unit in its deteriorated condition, and (2) the costs, if any, incurred and demonstrated by the tenant for repairs, relocation expenses, and other economic losses, as specified.

Rent Escrow and Residential Rental Defects

The bill specifies that relief by rent escrow is generally conditioned upon the tenant's payment of periodic rent required by the lease *for the period of tenancy occurring concurrently with the tenant's assertion of the claim*, as specified. Relief for breach of the warranty of habitability is not conditioned on the tenant's payment of periodic rent into court.

The bill repeals provisions that prohibit a court from ordering relief based on a landlord's failure to repair serious and dangerous defects if a court has entered prior judgments against the tenant for failure to pay rent, as specified. When the assertion of rent escrow is made defensively, the allegation of past-due rent owing from periods of tenancy prior to the tenant's assertion of claims (1) may not be grounds to deny relief through escrow and (2) must be heard by the court after the final adjudication of the tenant's rent escrow defense and together with any additional defense or claims by the tenant.

If a court orders any relief in favor of the tenant under specified provisions, the court may also award reasonable attorney's fees and costs.

The bill also (1) clarifies that statutory provisions regarding the repair of residential rental defects do not provide a remedy for the landlord's failure to repair and eliminate defects that merely impair the aesthetic value of the premises and (2) specifies that related statutory provisions are not intended to limit any other remedy available to a tenant at law or in equity.

Failure to Pay Rent

The bill alters procedures in a failure to pay rent action by establishing that if, at a trial held following a complaint from a landlord, the tenant appears and the court is satisfied that the tenant may have a defense or a counterclaim, either party is entitled to an adjournment for up to 14 days (or longer with the consent of all parties) to file a pleading, procure necessary witnesses or evidence, or prepare for a trial on the merits.

Current Law:

Rent Escrow and Residential Rental Defects

In order to use specified remedies available when serious and dangerous defects are present in residential dwelling units, a tenant must notify the landlord of the existence of the defects or conditions using specified methods.

If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions or (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

The court must make appropriate findings of fact and make any order that the justice of the case may require, including an order (1) terminating the lease and returning the leased premises to the landlord, subject to the tenant's right of redemption; (2) that the action for rent escrow be dismissed; (3) that the amount of rent required by the lease, whether paid into court or to the landlord, be abated and reduced in an amount determined by the court to be fair and equitable to represent the existence of the conditions or defects found by the court to exist; or (4) that the landlord make the repairs or correct the conditions complained of by the tenant and found by the court to exist.

After rent escrow has been established, the court must, after a hearing (if ordered by the court or requested by the landlord), order that the money in the escrow account be disbursed to the landlord after the necessary repairs have been made. Other permissible actions by the court are also specified in statute.

Failure to Pay Rent

Generally, whenever the tenant fails to pay the rent when due and payable, the landlord may repossess the leased premises. Statute contains specific requirements related to filing a complaint, issuing a summons, adjourning the proceedings to procure a witness, executing judgment in favor of the landlord, surrendering the premises by the tenant, and the effect of tender of rent by the tenant. For example, if, at the specified trial date for the repossession of property, the court is satisfied that the interests of justice will be better served by adjournment to enable either party to procure their necessary witnesses, the court may adjourn the trial for up to one day, unless all parties consent to a longer adjournment.

Background: According to the Judiciary, in fiscal 2019, there were of 2,602 rent escrow filings in the District Court.

Small Business Effect: Among other effects, landlords that qualify as small businesses may be subject to awards for attorney's fees and costs and required to reimburse tenants for repairs performed by the tenant, relocation expenses, and other economic losses.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Montgomery and Worcester counties; Maryland Association of Counties; cities of Salisbury and Westminster; Maryland Municipal League; Town of Leonardtown; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Legislative Services

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