



January 18, 2022

## **House Bill 0174**

Landlord and Tenant - Repossession for Failure to Pay Rent - Registration and License Information

Environment and Transportation

### **Position: Favorable**

Thank you for the opportunity to provide testimony in support of **House Bill 0174, legislation that would codify current Maryland case law regarding the requirement for rental licensing and clarify the proof required of a landlord's compliance with Maryland's lead laws in connection with Failure to Pay Rent cases.**

Arundel Community Development Services, Inc. (ACDS) serves as Anne Arundel County's nonprofit housing and community development agency, helping Anne Arundel County residents and communities thrive through the provision of safe and affordable housing opportunities, programs to prevent and end homelessness, and community development initiatives. In fulfilling this role, ACDS administers grants to nonprofit partners, directly develops and implements programming, and advises the County on housing and community development policy initiatives.

### **Background.**

**If a local jurisdiction requires that a residential rental property have a rental license, then that property must in fact be licensed in order for a landlord to make use of the summary ejectment (Failure to Pay Rent) court process.** This requirement is a result of a 2011 Court of Appeals decision called *McDaniel v. Baranowski*. (419 Md. 560, 19 A.3d 927). In that case, the Court held that if a landlord lacks a rental license for a property that is required by law to be licensed, then that landlord does not have "claimant status" for bringing a Failure to Pay Rent action in court. In other words, **if a landlord lacks a license when one is required by local law, the landlord does not have standing to file a summary ejectment Failure to Pay Rent case.**

Immediately after the Court of Appeals decided *McDaniel*, **the Court's standard form Complaint for Failure to Pay Rent was modified** to include a section in the Complaint where **the landlord must indicate whether the property is required to be licensed, and if so, the landlord must provide a rental license number as a required element of the Complaint.** However, *courts have grappled with exactly what proof of*

*licensing is required, and when.* By adding just a few paragraphs to the existing Failure to Pay Rent statute, this bill clears up any confusion and provides clear standards related to required proof related to rental licensing and longstanding requirements related to lead law compliance.

### **The Bill.**

The additions to the Failure to Pay Rent statute contemplated in HB 0174 would result in three specific clarifications/codifications of current case law:

1. **Proof of Rental License and Compliance with Lead Laws is Required Upon Filing:** The Court's current Failure to Pay Rent Complaint form requires the landlord to provide a yes or no answer, under penalty of perjury, to the question "Is the Landlord currently licensed/registered?" Under this bill, in addition to answering the question, **if the landlord indicates in the body of the complaint that they do have a license and they are in compliance with the State's lead laws, then they simply have to add a copy of the rental license and documentation that they are in compliance with lead laws to the complaint.**

Currently, if a landlord files a lawsuit without actually having a rental license or lead registration (if required), the case proceeds to a hearing by the Court, at which point cases are frequently dismissed or postponed because the landlord lacks standing to sue. This bill would eliminate those cases from getting to the hearing stage until they are actually eligible for hearing, thus freeing up the Court's time for cases that are actually ready to go. ***This does not create a new requirement for licensing of properties that are not already required to be licensed pursuant to local law nor additional actions related to lead laws – if applies only if a property is already required by local law to have a residential rental license or is a property affected by Maryland's lead laws.***

2. **Current Rental License is a Prerequisite to Filing:** Again, this just clarifies **current case law.** By definition, neither a "provisional" nor a "temporary" license is a *current* license as required by Maryland law. Rather, they are simply a stepping stone to getting a license. Similarly, an expired license, by definition, is not a current license. The rationale behind the *McDaniel* requirement that a rental property be licensed in accordance with local laws is that **the licensing process provides some level of assurance the rental property is safe and habitable. A temporary or provisional license - which could be issued before an inspection has even taken place and which may never result in an inspection or the issuance of an actual rental license – provides no such assurance** because it does not establish that the property meets the health and safety standards of a fully licensed property.
3. **Burden of Proof at Trial:** Finally, HB 0174 codifies case law that **the landlord has the burden of proving by a preponderance of the evidence that the property is**

**licensed in accordance with all applicable local rental property licensing laws and is in compliance with Maryland's lead laws.** Again, this is not a change to existing case law, but rather codification of current case law. As the plaintiff, the landlord already has the burden of proving all elements of his or her case.

**The minor adjustments to the FTPR statute contained in this bill would provide clear direction to court clerks, courts, tenants and landlords regarding the interpretation and implementation of current case law,** and would result in better use of the Court's time and consistency in the evaluation and hearing of Failure to Pay Rent cases going forward.

**For the reasons noted above, we urge a FAVORABLE report on HB 0174.**