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SB 100 - Real Property – Actions to Repossess – Proof of Rental Licensure

Hearing before the Senate Judicial Proceedings Committee on January 25, 2023

Position: SUPPORT (FAV)

Public Justice Center (PJC) is a nonprofit public interest law firm that assists over 800 renters each year. We stand with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. PJC seeks a favorable report on SB 100. SB 100 is identical to SB 563, which passed the Senate (47-0) in 2022 but was vetoed by Gov. Hogan. In jurisdictions that have a landlord licensing law, SB 100 would stop landlords who do not have an operating license from using streamlined court processes (Failure To Pay Rent, Tenant Holding Over, and Breach of Lease) to evict tenants. Licensing laws protect public health and safety through periodic inspections. **Like any other business, if a landlord wants to file suit in Maryland courts, they must be licensed in any jurisdiction that requires licensure.**

Licensing laws in six (6) counties and other municipalities require landlords to pass a periodic a health and safety inspection. **The vast majority of landlords comply with these laws and should have no concern with this bill.** However, we have witnessed many clients or constituents whose predatory landlords refuse to make repairs, fail to obtain a license, extract as much rent as possible, and when the tenant complains, move to evict them through one of Maryland's streamlined eviction processes. **When unlicensed landlords successfully use eviction court, it encourages all landlords to ignore licensing laws and increases the risk of tenants being subjected to health and safety hazards.**

While current law stops illegally operating landlords from obtaining a judgment for eviction for failure to pay rent, the Court created a loophole in *Velicky v. CopyCat* by allowing illegally operating landlords to obtain an eviction in Tenant Holding Over cases. 476 Md. 435 (2021). On Jan. 17, 2023, The *Baltimore Banner* reported in the attached article that **"Tenant Holding Over filings are now about three times higher than they were before the pandemic."** **Under current law, landlords in these cases may ignore basic health and safety laws and still use the taxpayer-funded court system to evict tenants.**

Judge Shirley Watts understood this dynamic, and wrote in dissent in *Velicky*: “Allowing [the landlord] to evict [tenants] in a tenant holding over action under RP § 8-402 without a license essentially renders the licensing requirement of Baltimore City Code ... meaningless and defeats its purpose of ensuring that rental properties are fit to live in. As a result of the majority opinion, Copycat and other landlords will have very little incentive to get licenses, which would require bringing rental properties up to code.”

Renters United Maryland made significant compromises in 2022 and had reached agreement with the Maryland Multi-Housing Association (MMHA) on the amended bill, which is being reintroduced as it passed the House and Senate in 2022. These compromises include:

- Striking the requirement that the landlord show a license when filing a complaint;
- Allowing unlicensed landlords to proceed to a Tenant Holding Over or Breach of Lease trial if they show that the tenant’s act caused the landlord not to have a rental license;
- Allowing landlords to submit an electronic record or provisional license.

Additionally SB 100 does not require proof of licensure if the landlord is proceeding on a breach of lease case alleging that the tenant’s behavior constitutes an imminent danger.

MMHA is now asking for three (3) additional amendments that only further weaken the bill and which Public Justice Center and Renters United Maryland strongly oppose:

1. MMHA’s first amendment states that the landlord must only produce evidence of licensure at trial, not at the filing of the complaint. This is unnecessary because SB 100 does not require the landlord to produce the actual license until trial. SB 100’s operative language is that the landlord must “plead and demonstrate” licensure. This phrase is borrowed from *McDaniel v. Baranowski*, 419 Md. 560 (2011) and means that the landlord must affirm upon filing the complaint that they are licensed and provide a license number— as they’re required to do right now in rent cases under *McDaniel*.
2. **MMHA’s second amendment would allow the landlord to challenge the County’s licensing determination in Court while the County is not present. This is not feasible.** How will the Court make such a determination without the local licensing agency present? Will these eviction cases now include mini-trials about the status of a County’s licensing determination? If the landlord believes that a County’s administrative error led to the licensing failure, the landlord can obtain a postponement, straighten out the error, and return to Court with a license. We see this happen frequently now in rent court. MMHA’s use of the *Assanah Carroll*, 480 Md. 394 (2022) is misguided. In *Assanah Carroll*, the Maryland Supreme Court found that that an unlicensed landlord cannot use the court system to collect rent due for the rental period (month) in which the landlord was unlicensed. It doesn’t have anything to do with SB 100, which says only that the landlord can’t use the court for eviction when they are unlicensed. If anything

Assanah-Carroll should reinforce the importance of landlords resolving any issues they have with their local jurisdiction's licensing process in order to obtain and stay licensed.

3. **MMHA third amendment is unworkable – licenses are issued to buildings, not units in many jurisdictions.** MMHA poses a hypothetical in a multi-unit building where Tenant A is holding up licensure while the landlord is trying to evict the tenant in Unit C. So MMHA proposes to redefine licensing to be done according to unit, not building – yet this is fundamentally incompatible with many local licensing schemes.
 - a. **MMHA's hypotheticals focus on aspects of their local licensing laws that they would like to change. MMHA should fix those aspects of the local licensing laws** (they had 9 months to do so since this bill passed the General Assembly in 2022), **not advocate for a landlord to be able to evict a tenant while the landlord is operating illegally.**
 - b. **MMHA's proposed amendment is unworkable. Licensure in many jurisdictions is done by building – not by unit.** Baltimore City's Department of Housing and Community Development has stated that it would be impossible to say which units are licensed and which ones are not because that is inconsistent with its licensing scheme that is by building, not unit. What if the landlord fails inspection due to issues in multiple units? What if not every unit was inspected? What if there are building-wide issues like rodents or an elevator outage? Or problems with not having the appropriate lead certificate for multiple units? Who will judge whether a license applies to one unit and not another when licensure is only done by building by a local agency?
 - c. **There are already exceptions in the bill to allow the landlord to evict any tenant who holds up the licensure process.** The landlord can move forward under current exceptions to evict any tenant who is causing the failure to obtain a license regardless of the landlord's licensure status. And a landlord may move forward with eviction regardless of licensure for tenants whose conduct constitutes an imminent risk of harm to person or property (page 4, lines 10-32)
 - d. **Landlords also have lease provisions and code enforcement tools to remove problematic tenants who may be holding up licensure.** Landlords have exceptions in their leases to make repairs or obtain inspections in certain cases regardless of the tenant's consent. And code inspectors may enter properties without consent in the case of an emergency or violation of the law.

Landlords should seek a postponement in the eviction case and address any problem with their licensure through local agencies rather than trying to move forward with the eviction in court when they are not operating legally in their jurisdiction.

Public Justice Center is a member of the Renters United Maryland, a statewide coalition of renters, organizers, and advocates, and **we urge the Committee's report of Favorable on SB 100.**

Community issues > Housing

Eviction numbers are climbing back toward pre-pandemic highs in parts of Maryland

By [Ryan Little](#) and [Sophie Kasakove](#)

Published on: January 17, 2023 6:00 AM EST | **Updated on:** January 17, 2023 9:48 AM EST



Tenants, advocates and lawmakers gathered outside the Maryland State House on Thursday Jan. 12, 2023 to call on lawmakers to pass several policies that would protect tenants from eviction or poor living conditions (Callan Tansill-Suddath)

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After falling to an unprecedented low during the pandemic, eviction numbers are creeping back toward 2019 rates in Maryland, according to data from the Maryland Judiciary and the Baltimore City Sheriff's Office.

Over the course of nearly three years, thousands of evictions were prevented across Maryland by a combination of federal and local eviction moratoriums put in place during the pandemic, federal rental assistance funds, and court backlogs.

With eviction bans having long expired, [rental assistance running low](#), courts back up and running at full speed, and [rents sky-high](#), 2022 saw a rapid uptick in evictions statewide — especially in the summer.

Between August and September 2022, 13 jurisdictions, including Baltimore, recorded an eviction tally in at least one month that exceeded the number of evictions for that month in 2019, the last year before the COVID-19 pandemic was declared.

Maryland evictions drastically increased during the summer months, moving closer to pre-pandemic levels

Evictions in the third quarter of 2022 were about 30% lower than during the same period in 2019, but about two and three times higher than during the third quarter in 2021 and 2020, respectively.

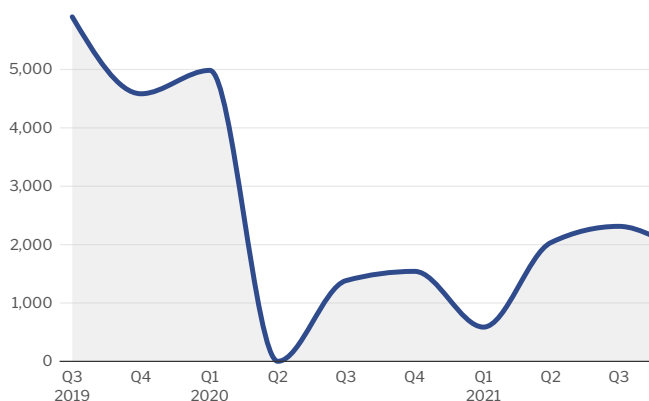


Chart: Ryan Little • Source: Maryland Judiciary Case Activity Reports

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There remain minimal guardrails to protect against a continued return to a pre-pandemic “normal” that advocates, officials and tenants across the state have long argued shouldn’t be treated as normal at all. In the last six months of 2019, 10,486 people were evicted in Maryland, including 2,920 in Baltimore City.

The latest numbers “just confirm what we’ve been seeing on the ground,” said Matt Hill, an attorney with the Public Justice Center who represents tenants facing eviction. “Courts are packed and people are desperate to hold onto their homes and experiencing continuing instability in the economy from the pandemic and skyrocketing rent increases.”

In the city of Baltimore, evictions this past September and November surpassed the 2019 tallies in those months, according to data provided by the Baltimore City Sheriff’s Office. The number was far lower in December 2022 because many evictions were postponed that month as sheriff’s deputies were retrained on new eviction policies

implemented by newly installed Baltimore Sheriff Sam Cogen. The Democrat [ran on a platform](#) to “humanize” the city’s eviction process by providing tenants with adequate notice of court and removal dates and confirming that a building was licensed as a rental property before enforcing an eviction there, among other changes.

Aaron Greenfield, director of government affairs for the Maryland Multi-Housing Association, argued that evictions remained significantly below 2019 numbers for much of 2022.

“We’ll judge the data objectively, but I’m not sure that there’s a story here that evictions are increasing. In fact, the data suggests just the opposite,” said Greenfield. “Should there be an increase in evictions, then I think we all need to sit down and figure that out, but that’s not what the data suggests to me.”

Eviction numbers overall statewide still lag behind 2019 numbers, but quarterly counts have tripled since 2020: 4,107 people were evicted during the summer of 2022, 30% less than for that period in 2019, but about three times more than in the same three-month period in 2020 and about double the amount of summer 2021.

“We are starting to get concerned that while the case filings remain low, the number of evictions is approaching pre-pandemic levels,” Reena Shah, executive director for Maryland Access to Justice Commission, wrote in an email. “That trend is likely to continue, especially as we anticipate that all rental assistance funding will be depleted in a couple of months and people’s ability to access rental assistance to pay the rent and keep themselves housed will be threatened.”



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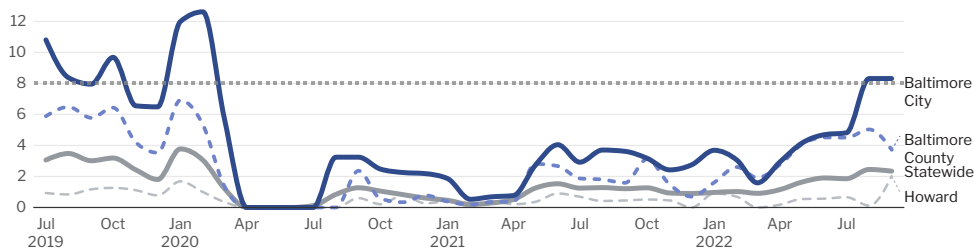
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Evictions have increased rapidly in Baltimore City, where rates once closely mirrored Baltimore County’s. In August and September, about eight people were evicted each month for every 10,000 residents. The statewide rate was a little more than two people, and Baltimore County’s was around four.

Once closely mirroring per-person rates in Baltimore County, Baltimore City evictions have incr

More than twice the rate of people were forcibly removed in the city compared to the county in August and September 2022. About 8 people were compared to 4 in Baltimore and 3 statewide.



Forcible removals are visualized per 10,000 residents.

Chart: Ryan Little • Source: Maryland Judiciary Case Activity Reports

Housing groups call on legislators to protect tenants

As state legislators enter the second week of the Maryland General Assembly session, housing groups are calling on them to put in place measures to keep those numbers from rising even higher.

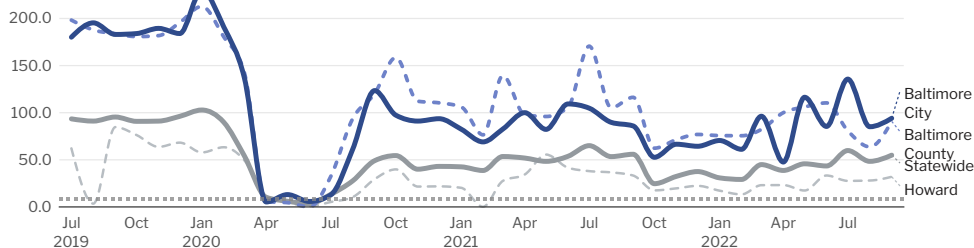
Outside the State House on Thursday, tenants and advocates gathered to call on lawmakers to vote in favor of a handful of bills that would protect renters from eviction. One bill to be introduced would enable localities to pass laws requiring landlords to have just cause not to renew a lease. Another would stop landlords who don't have an operating license from evicting tenants in jurisdictions that have a licensing law.

And the group called on Gov.-elect Wes Moore to invest \$175 million in the fiscal year 2024 budget to sustain emergency rental assistance as federal funds run out. In December, a coalition of dozens of advocacy groups and local officials — including Baltimore Mayor Brandon Scott, and the county executives of Anne Arundel, Howard, Montgomery and Baltimore counties — [made the request](#) in a letter to outgoing Gov. Larry Hogan. As emergency rental assistance funds have dried up in recent months, many jurisdictions across the state have paused intake or limited assistance only to tenants facing imminent eviction.

The most recent eviction numbers show that while they've increased, filings remain below pre-pandemic rates, reflecting both the availability of rental assistance and a reform adopted statewide in 2021 that requires landlords to provide tenants with 10 days' notice before they file for an eviction with the courts.

Failure to Pay Rent filings are still about half of their pre-pandemic highs

The decreased filings likely reflect the availability of rental assistance and a 2021 law that forced landlords to provide tenants 10 days notice before



Failure to Pay Rent filings are visualized per 10,000 residents.

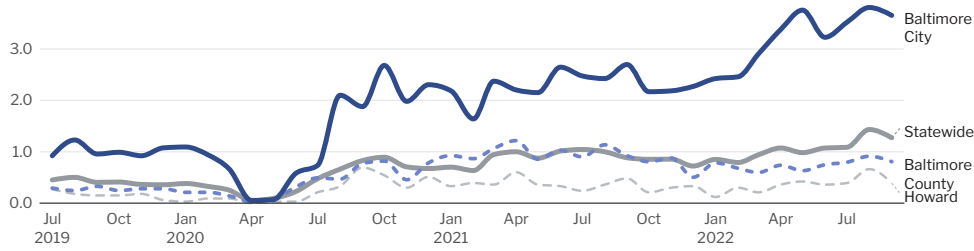
Chart: Ryan Little • Source: Maryland Judiciary Case Activity Reports

Filings were higher throughout 2022 for tenant-holding-over cases — which a landlord can file when a tenant stays in their unit beyond the terms of their lease — than in 2019.

The filing rate for these cases has steadily increased since 2020, when failure-to-pay rent cases were restricted by federal and state eviction moratoriums. By the time the courts began processing failure-to-pay cases again, some landlords realized that pursuing a tenant-holding-over case was a quicker legal process. In September, there were 786 of these cases filed in Baltimore city.

Tenant Holding Over filings are now about three times higher than they were before the pandemic

When courts began processing failure-to-pay cases again, some landlords realized that pursuing a tenant-holding-over case — which a landlord can file when a tenant stays in their unit beyond the terms of their lease — was a quicker legal process.



Tenant Holding Over filings are visualized per 10,000 residents.

Chart: Ryan Little • Source: Maryland Judiciary Case Activity Reports

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Advocates are hopeful that a statewide “access to counsel” provision will help more renters gain legal representation to fight evictions. While the law passed and took effect in 2021, funding was not released until this past summer.

General Assembly reporter Callan Tansill-Suddath contributed reporting to this article.

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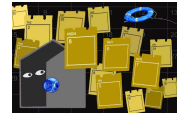
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