Bill Title: **House Bill 1117, Landlord and Tenant - Failure to Repair Serious and Dangerous Defects - Tenant Remedies (Tenant Safety Act of 2024)**

Committee: **Environment and Transportation Committee**

Date: **February 27, 2024**

Position: **Unfavorable**

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose membership consists of owners and managers of more than 207,246 rental housing homes in more than 937 apartment communities. Our members house over 667,000 residents of the State of Maryland throughout the entire State of Maryland. MMHA membership also includes more than 216 associate members that supply goods and services to the multi-housing industry. More information is available at https://www.mmhaonline.org/

House Bill 1117 establishes that a landlord who offers a residential dwelling unit for rent is deemed to warrant the dwelling fit for human habitation. The bill adds to the list of what constitutes dangerous conditions and defects for which a tenant may obtain relief under the rent escrow statute by including "the existence of mold hazards". House Bill 1117 purports to follow the Maryland Rules on Joinder in order to allow multiple tenants to "join" as Plaintiffs in a rent escrow or breach of warranty of habitability claim. The court may order a tenant with remedies relating to the breach of warranty of habitability, including actual damages, abatement of rent, and lease termination.

MMHA opposes this bill because it seeks to dismantle Maryland's long standing rent escrow procedure which balances the rights of tenants to live in housing free of serious and substantial defects with the responsibilities of landlords to supply such housing. This bill further establishes a specialized type of multi-plaintiff litigation which circumvents Maryland's current stringent judicial process to certify class actions, usurping judicial discretion and upending the protections provided by current rent escrow proceedings.

I. Rent Escrow

Maryland Real Property Code, Rent Escrow Code Section 8-211: This Legislature passed Maryland's Rent Escrow statute for the specific purpose of "providing tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit or on property used in common of which the dwelling unit is a part".

The statute has very specific requirements. For example:

- applies only to "serious and substantial defects and conditions" defined by the statute
- requires a tenant to provide notice of the defect to the landlord
- requires a tenant to escrow their rent while repairs are being made
- allows the landlord to have a "reasonable time" to address defects
- and most importantly, allows the Court to determine appropriate remedies based upon the situation. These include rent abatement and credits, entering injunctions allowing 3rd parties to make needed repairs and even termination of the lease.

This legislature intended that the rent escrow statute would require housing providers to swiftly cure a defect in rented property and provide tenants with a simple and timely remedy to keep their rented homes safe. While the Bill retains the tenant's ability to pay rent into escrow while the defect issue is resolved; it now inexplicably broadens the current statute's Affirmative Defense" regarding defects or conditions by also allowing a Tenant to bring "ANY OTHER DEFENSE" regardless of whether it has anything to do with property defects., see page 4, line 23 Furthermore the creation of an entirely new multiple plaintiff cause of action under the rent escrow statute is not only complicated, it will destroy the rapid response mechanism devised by this legislature to assure that defective conditions in rental property are timely repaired and tenants are protected.

II. **Concerns with House Bill 1117**

- Adding mold hazards to rent escrow: The bill adds the existence of mold that presents a serious and substantial threat to the health of the occupants (page 3, lines 17-18). Passed by this Committee, Chapter 347 of 2023 established the Workgroup on Mold Standards and Remediation to study information on mold assessment and remediation to determine the best practices for identifying mold. That Workgroup continues to meet and is due to submit a report to the General Assembly in October of 2024. Until the Workgroup concludes its work, adding mold hazards at this time is premature. Thus, MMHA urges that Committee to strike this language.

- Maryland Rules on Joinder: This bill allows multiple tenants to join as plaintiffs in a rent escrow action (page 4, lines 26-27) or breach of the warrant of habitability (page 8, lines 23-25) in accordance with the Maryland Rules on Joinder. Joinder of plaintiffs in an action under RP § 8-211 would likely subvert that purpose of the joinder rules by increasing complexity, time, and expense of highly individualized proceedings. Joinder in an action under RP § 8-211 would fall under the purview of Rule 3-212. Under that rule, all persons may join in one action as plaintiff if: (1) they assert a right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and (2) if any question of law or fact common to all these persons will arise in the action. The purpose of Maryland Rules on the joinder of parties is "to simplify and expedite proceedings and to avoid the useless publication, expense, and possible uncertainty of more than one trial." Allen Whalen v. Crimberg Co., 229 Md. 585 (1962). The typical rent escrow case involves the need to

address a particularized problem or problems in a specific tenant's rental unit. Even in multifamily buildings, a tenant's repair issues are generally unique to their living situation and are easily identifiable through tenant complaints and inspections by the landlord or Code Officials. Housing providers must repair and eliminate conditions that are a serious threat to the life, health, or safety of occupants. If a housing provider fails to repair serious or dangerous problems in a rental unit, a resident has the right to pay rent into an escrow account established at the local District Court. In many cases, a rent escrow action can result in multiple hearings tracking the progress of abatement on a specific issue in a tenant's rental unit. The Court will hold the rent until a Judge hears the case and decides what, **if any,** rent should be returned to the tenant or to the housing provider which under Williams v. Authority of Baltimore City, 361 Md. 143 (2000) "[is] *emphasis added*… limited to the difference between the amount of rent paid or owed and the reasonable rental value of the dwelling in its deteriorated condition commencing from the time that the landlord acquired actual knowledge of the breach [of warranty]". The Court also has the power to terminate the lease, issue an injunction to have repairs made by someone other than the housing provider, appoint a special administrator to assure that repairs are made and to use escrowed funds to avoid foreclosure on the property if the housing provider fails to pay the mortgage. For the vast majority of escrow cases, there will be no commonality between any questions of law or fact. An escrow account would still be required for each individual plaintiff, a finding of fact would still be required on the specific conditions alleged in each unit, and an order of relief would still be required based on the specific situation and reasonable rental value of each unit. Even if common questions of fact or law exist between plaintiffs, the highly individualized relief required by the statute would likely subvert the purpose of joinder by prolonging proceedings and increasing the amount of trial and hearing dates until all issues are addressed and/or corrected for each plaintiff.

- Rebuttable Presumptions: HB 1117 initiates a new and heretofore unprecedented "rebuttable presumption" that essentially upends the long-held balance of this statute. By establishing that in a rent escrow action, there is a rebuttable presumption that a tenant is entitled to adjudication of a request for rent abatement, abatement of prospective rent and may not be required to pay into escrow more than 50% of the amount of rent required by the lease. What if the rent escrow matter is frivolous? What if the rent escrow action is a delay tactic by the tenant to pay rent? MMHA believes that the tenant(s) should be penalized for such actions and the housing provider entitled to reasonable attorneys' fees and costs related to the litigation. Furthermore, it is not unusual for a claim of "rent escrow" to first be brought at the trial of the Failure to Pay Rent case, without any notice from the tenant. In such cases it would be unjustifiable for the provisions on page 5 lines1-15 to be exercised by the tenant or the Court without providing the landlord with the possibility of a postponement to determine the veracity of the allegations being made and to respond to them. As such ADD the following language at page 5, line 8 after (II) 1. WHERE THE TENANT FIRST BRINGS AN ALLEGATION OF DEFECT AT THE TRIAL OF A FAILURE TO PAY RENT CASE THE LANDLORD WILL, UPON REQUEST, BE GRANTED A POSTPONMENT OF THE CASE IN ORDER TO

PROVIDE EVIDENCE AND ADDITIONAL INFORMATION TO THE COURT REGARDING THE ALLEGATIONS OF DEFECTS IN THE RENTAL PROPERTY.

- Tenant Recovery: The bill permits the court to order any relief including reasonable attorney's fees and costs and reasonable expenses related to litigation in a rent escrow action or breach of the warrant of habitability. Again, if the tenant(s) claim is frivolous, the prevailing party, not only the tenant, should be entitled to reasonable attorney's fees and costs related to the case.

For these reasons, we respectfully request an unfavorable report on House Bill 1117.

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