MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	House Environment and Transportation Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	House Bill 1117 Landlord and Tenant – Failure to Repair Serious and Dangerous Defects – Tenant Remedies (Tenant Safety Act)
DATE:	February 21, 2024 (2/27)
POSITION:	Oppose

The Maryland Judiciary opposes House Bill 1117. House Bill 1117 amends Real Property § 8–211 to state that a landlord that offers a residential dwelling unit for rent, whether by written or oral lease or agreement, shall be deemed to warrant that the dwelling is fit for human habitation and the landlord is obligated to repair and eliminate conditions and effects that constitute a fire hazard or serious and substantial threat to life, health or safety of occupants. It adds the existence of mold in a dwelling unit that presents a serious or substantial health threat to the occupants as one of the conditions or defects for which a tenant can seek legal remedies.

The Judiciary recognizes that the legislature is the policy-making branch and defers to its authority on the public policy matters within the bill. The Judiciary's opposition is limited to two operational concerns with the bill. First, the District Court is not structurally equipped to handle the new complex, multi-party type of action the bill would create. The bill allows for joinder of potentially hundreds of plaintiffs in one case. Evidence would need to be presented as to the claims of each individual plaintiff and their claims would need to be individually determined. Any decisions regarding rent abatement, the determination of attorneys' fees due or the award of costs associated with a mold assessment would need to be made for each individual plaintiff. Those individualized determinations within the broader scope of a multi-party action would be challenging given the high-volume nature of a District Court docket. Circuit courts, by contrast, already handle similar types of matters and would seem to be the more appropriate forum given their docket structure and exclusive jurisdiction over class action suits.

Second, HB 1117 seeks to create a separate cause of action in § 8–212 for breach of the warranty of habitability. The Judiciary recognizes that the overall fitness for habitability is important and does not oppose creation of a separate cause of action for breach of that

warranty. However, by incorporating the very same action into the rent escrow section of Real Property § 8–211 (D) (at page 3 lines 1-7), the bill conflates the two causes of action (rent escrow and breach of warranty of habitability) and could raise questions as to the application of either of them independently. Furthermore, the bill appears to simultaneously allow an individual to bring an action for rent escrow while also refusing to pay rent and asserting an affirmative defense of rent escrow. It is unclear what purpose the rent escrow action would serve in that instance, and it would leave the court in the position of adjudicating a rent escrow action while no rent is actually being paid into escrow.

By way of example, Baltimore City PLL § 9-14.1 governs this type of implied warranty of fitness. The warranty of habitability is a continuing warranty and allows the tenant to pursue legal action, *separate from an escrow action*, for breach of this warranty at any time during the tenancy if the dwelling becomes unfit for human habitation.

cc. Hon. Vaughn Stewart
Judicial Council
Legislative Committee