



Bill No: House Bill 477 – Landlord and Tenant – Residential Leases and Holdover Tenancies – Local Good Cause Termination Provisions

Committee: Judicial Proceedings

Date: April 2, 2024

Position: Unfavorable

The Apartment and Office Building Association of Metropolitan Washington (AOBA) submits this testimony in opposition to House Bill 477. AOBA represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George’s counties.

HB 477 allows a county to enact a local law that prohibits a housing provider from deciding not to renew a lease or terminate a holdover tenancy without “good cause.” In practice, good cause laws require housing providers to renew a tenant’s lease in perpetuity unless the provider can prove in court the existence of one of the good causes for non-renewal. While the legislation is presented as a tenant’s rights bill, good residents will suffer if apartment owners cannot remove problem residents. AOBA opposes this bill for the following reasons:

- **It will be more difficult to remove nuisance tenants.** This bill requires a housing provider to prove in court one of ten listed good cause reasons for not renewing a lease. Good tenants expect their housing provider to provide them with the quiet enjoyment of their premises, and do not want to be dragged into court to testify against a problematic neighbor. Neighboring tenants will often not testify against the problem tenant for fear of retribution. If the housing provider cannot document and prove the offending behavior, the nuisance tenant will never be removed, and the good tenants will ultimately leave.
 - **The bill does not define what constitutes a “substantial breach of lease.”** Attached to this testimony is a recent article in the Washington Post detailing how tenants in Washington, DC, often have to live with second smoke from neighboring apartments. The article highlights how difficult it is to evict these problem tenants in DC, which is caused, in part, by the City’s good cause law.
 - **The bill does not define how many repeated minor violations are necessary to non-renew.** The bill attempts to resolve the substantial breach of lease problem by adding repeated minor violations as good cause. However, it does not define

how many repeated violations would be necessary to not renew a tenant. Without a clear number of repeated violations, a judge would have to decide whether minor violations are frequent enough to disrupt the livability, interfere with the management, or have an adverse financial impact on the property. In practice, this would likely drag out evictions as noted in the Post article.

- **Non-renewals are infrequent.** Most tenants abide by the community rules and pay their rent on time. Housing providers have every incentive to keep such tenants in place as long as possible. However, each year about one percent of tenants are the subject of repeated neighbor complaints due to their conduct, threatening behavior, noise, illegal activity, or other lease violations.
- **The bill allows permanent month-to-month tenancy.** One of the good causes in the bill is a tenant's failure to accept a landlord's offer of a new lease agreement. However, the landlord must use this cause within 1 month after the tenant refuses the new lease agreement. Otherwise, the landlord would lose the ability to use this refusal as cause, which would create a permanent month-to-month tenancy absent some other cause.
- **Litigation costs will increase.** Proving good cause will require considerable documentation and proof that lease violations are occurring. This will compound legal costs and raise operating expenses for housing providers that are already operating on tight margins.
- **Housing providers have a built-in financial disincentive to pursue evictions.** Turning over units and evicting tenants is costly. On average, it can cost 2.5 months of rent or more than \$5,000 to turnover a unit. That does not include income lost from the unit being off the market. If a landlord must evict a tenant, those costs can multiply due to additional rent lost during the legal process.

For these reasons AOBA urges an unfavorable report on HB 477. For more information contact Brian Anleu, Vice President of Government Affairs, at banleu@aoba-metro.org

SOCIAL ISSUES

Apartment dwellers plagued by secondhand smoke have little recourse

Lackluster enforcement and barriers to eviction can leave tenants stranded in hazardous, smoky buildings



By [Danny Nguyen](#)

March 15, 2024 at 7:00 a.m. EDT

It was a snowy day in January, and Armande Gil’s apartment windows were open. A frigid draft swept through her home; warmth came at a cost. If she closed her windows, she wouldn’t have enough ventilation to get rid of the odor of tobacco and marijuana smoke that seemed to envelop her building.

Gil doesn’t smoke. And smoking isn’t allowed in the eight-story Northwest Washington apartment building she calls home. But smoke seeps in — through electrical sockets, air conditioning systems, crevices between floorboards and gaps in insulation.

“I had to transfer all my belongings in my bathroom to my kitchen to [brush] my teeth, to wash myself, because it was so full of smoke,” she said.

For Gil, who has a history of pulmonary embolisms, chronic secondhand smoke exposure could put her at greater risk of another clot.

Yet in the District, there are no laws that protect tenants against secondary exposure to smoke in their apartments. Landlords can prohibit smoking in their leases, and many do, said Joel Cohn, legislative director at the D.C. Office of the Tenant Advocate. At the Parkwest, where Gil lives, all leases issued since late 2016 have no-smoking clauses.

But residents of several D.C. apartment buildings told The Washington Post their landlords weren’t enforcing these rules. When they do, court records show landlords can get stuck in years-long court eviction battles with residents while their neighbors continue breathing secondhand smoke.

So in May 2022, Gil filed a lawsuit against her landlord, Daro Realty.

“My clothes were smelling like cigarettes all the time,” she said, and the rest of the building wasn’t much better. “The stairs, the elevator — everything is full of smoke.”

Daro Realty could not be reached for comment. Its parent company, Infinity Collective, did not respond to requests for comment. Borger Management, which took over building operations last year after Daro Management was forced to dissolve in 2022, declined to comment because the case is still pending.

J.P. Szymkowicz, an attorney who has represented nonsmokers in more than 30 housing cases, said the process can be so slow that he often recommends that tenants move out.

Gil said Daro made the same suggestion. It’s not a realistic option for her, she said, because she relies on rent control to afford housing in the District, and the suggestion has left her feeling pushed out of her home even though she said she has done nothing wrong.

‘It looked like a fog’

Outside the Parkwest, a sign reads: “No smoking within 25 feet of entryways, doors and windows. Thank you for respecting our smoke-free community.”

But at many points, “you could actually see [the smoke],” said Timothy Washington, a Marine Corps veteran who has lived in the building since 2017. “It looked like a fog, like a smoke machine. My eyes burned.”

In 2021, Daro offered to move Washington to an apartment on another floor. He said he has experienced less secondhand smoke since he switched units, though the problem hasn’t been eliminated.

Washington, who has first-stage renal failure that can be exacerbated by chronic secondhand smoke exposure, said he has looked for another place to live but hasn’t found anything in his price range that’s more appealing than his \$2,405-a-month one-bedroom residence, even if it’s compromising his health.

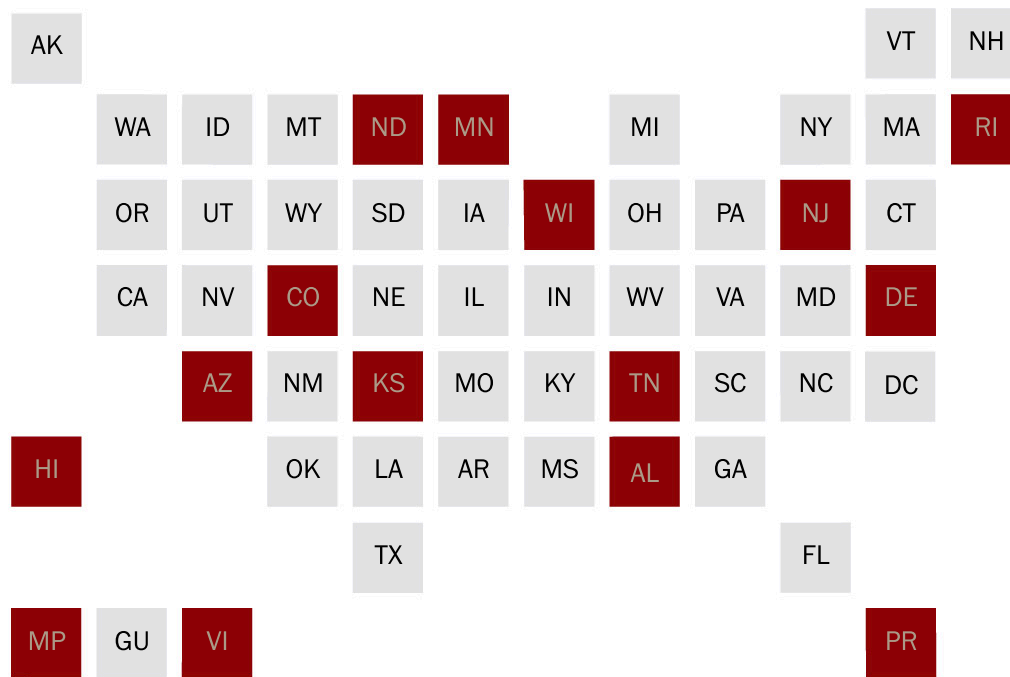
Some states have passed laws to regulate smoking in apartment buildings, noted Cynthia Hallett, president and CEO of the American Nonsmokers’ Rights Foundation. Utah law declares secondhand tobacco smoke in residential units a nuisance, establishing a basis for lawsuits. Maine and Oregon require landlords to disclose a building’s smoking policy to prospective tenants. And the U.S. Department of Housing and Urban Development requires all public housing in the country to be smoke-free.

Sixteen states and U.S. territories have restricted smoking in common areas of private housing, according to the Centers for Disease Control and Prevention, but none have restricted smoking in residences there.

Sixteen states and territories have restricted smoking in common areas of private housing, according to CDC data

■ Restricted ■ Not restricted

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Palau and Marshall Islands are not included.

These regions do not have smoking bans in private housing.

Source: Centers for Disease Control and Prevention DANNY NGUYEN AND CHIQUI ESTEBAN/THE WASHINGTON POST

Marijuana advocates are wary of efforts to crack down on smoking in people’s homes, because [D.C. law](#) prohibits smoking marijuana in public spaces. People who smoke medical marijuana need safe spaces to do so, said Morgan Fox, political director of the National Organization for the Reform of Marijuana Laws, a marijuana advocacy group. A designated outdoor smoking area, Fox said, “would provide a legal space to consume cannabis that is away from the general public and is also not in danger of encroaching upon quality-of-life concerns for neighbors.”

‘How much more do I have to take?’

Gil and her neighbors feel helpless as cigarette butts accumulate on their balconies and windowsills, dropped by smokers from the roof deck and windows on upper floors. Several have also had to contend with rent increases as they’ve battled management over the smoke.

Daro raised Gil’s monthly rent from \$2,035 to \$2,161 in 2022. Because the building’s apartments are rent-controlled, the landlord can raise the rent only if the units are in “substantial compliance with the housing regulations,” according to [D.C. law](#). Marc Borbely, Gil’s attorney and the founder of the [D.C. Tenants’ Rights Center](#), said the chronic secondhand smoke exposure could violate the housing code, because the smoke has impaired the health of the building’s tenants.

“Just like a landlord is required to prohibit roach infestations or mold or asbestos or other toxins from entering units and causing harms, similarly, every tenant in the District has a right to live in a unit that is free of secondhand smoke,” Borbely said.

A spokesperson for the D.C. Department of Buildings, which enforces the housing code, said in a statement that secondhand smoke and odors “are not considered code violations under District housing or property maintenance law” and that “DOB has no regulatory authority over residents who smoke in apartment buildings.”

In June, Gil paid about \$650 to hire a secondhand smoke consultant to assess nicotine levels in her home. The consultant found relatively high concentrations of nicotine and estimated the smoke particulate concentration to be 339 micrograms per cubic meter, according to a report shared with The Post. The U.S. Environmental Protection Agency defines hazardous outdoor air quality as anything above 225 micrograms per cubic meter of smoke particles. The consultant wrote in the report that the degree of secondhand smoke exposure in Gil’s apartment “pose[d] a grave risk” of cardiovascular and respiratory disease and cancer.

Suzaynn Schick, who studies secondhand smoke exposure at the University of California at San Francisco, said the results suggested the unit was “smoky.”

“No one in the District should have to live in unsafe and unhealthy conditions,” Robert C. White Jr. (D-At Large), the chair of the D.C. Council’s housing committee, told The Post. He added, “If someone is smoking inside of a building in violation of their lease and harming other tenants’ health, a landlord has to be able to evict them.”

Last year, D.C. Superior Court Judge Ebony Scott ruled that secondhand smoke in Josefa Ippolito-Shepherd’s Cleveland Park duplex caused her significant harm and infringed on her right to fully use and enjoy her property. Her neighbor, who used marijuana for medicinal purposes, was ordered to stop smoking. (Schick said the compounds in cannabis and tobacco smoke are “more similar than they are different” and have comparable health consequences when breathed secondhand.)

But decisions in lower courts such as D.C. Superior Court don’t set a binding precedent; another lower-court judge, including in the Office of Administrative Hearings, can rule differently, noted Steve Hessler, an attorney who has worked on dozens of cases involving enforcement of smoking bans.

As Gil’s case drags on, the battle in the Parkwest has gotten ugly. Tenants whom she has pointed out to management as suspected smokers have blocked her path in the hallway, she said. Last summer, she found a menacing note on her door, a collage of cut-out newspaper letters that she shared with The Post, which read, “you have 30 days to move ... before you get kill[ed],” followed by an expletive. She believes it was connected to her fight against smokers.

Gil said she has spent more than \$20,000 on legal fees and evidence-gathering for her lawsuit. Her health and well-being have declined, she said, and her nausea is often unbearable until she opens her windows. In the winter, she sometimes wore mittens in her apartment and tried to spend as much time outside as she could, she said.

It’s been nearly two years since she filed her lawsuit, and she still has nothing to show for it.

“How much more do I have to take?” she said.