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## HB 1117 - Landlord and Tenant – Failure to Repair Serious and Dangerous Defects - Tenant Remedies (Tenant Safety Act)

Hearing of the Senate Judicial Proceedings Committee, April 2, 2024

Position: SUPPORT (FAV)

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Public Justice Center (PJC) is a nonprofit public interest law firm that assists over 800 renters and their families each year. As part of Renters United Maryland, we stand with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. We support HB 1117, the Tenant Safety Act, to help tenants hold landlords accountable for refusing to fix severe conditions of disrepair that threaten their life, health, or safety. This bill was significantly amended in the House to address concerns from the Maryland Judiciary and the landlord industry, including allowing the court to separate joined cases to avoid delay, removing mold from the bill, separating the warrant of habitability from the rent escrow section, and providing landlords with an opportunity to seek a postponement if requested. The Maryland Judiciary has withdrawn their opposition.

We have represented tenants in countless rent escrow proceedings over the last 20 years, and too often we have seen that the system is broken: Some bad actors know that they can refuse to make repairs and get away with it. The Court lets cases drag on for months with no repairs because a bad actor landlord does not have a sufficient financial incentive to make costly repairs. The Court rarely abates or reduces the rent. Landlords normally have attorneys; tenants rarely do. Tenants cannot join together with their neighbors to reinforce each other's case. Often tenants don't make it past the first hearing because the Court requires them to pay every cent of back-rent the landlord claims is due to even have their case heard. **In no other type of case in the country is a debtor required to put into escrow every cent the creditor claims is due to even have their defense to those amounts heard.**

This was not the intent of the rent escrow law, but because of the structural imbalance of power at court, this is how it plays out. Some tenants do not file a rent escrow complaint by themselves out of fear of landlord retaliation or because they have no legal counsel to guide them through the process. Some do not have all of the rent that the landlord claims is past-due. Others have no confidence in getting any relief or requiring the landlords to make repairs.

Tenants are not wrong in these assessments. A [2016 investigative report by the Baltimore Sun found that the rent escrow system is broken](#): Even when renting families do overcome the initial obstacles to filing for rent escrow, **the Court reduces the rent and provides immediate relief to renters in only 6% of cases.**

As a result, Maryland is on pace to see only 1,959 “rent escrow” complaints filed by tenants against landlords in 2023, yet there are over 66,500 severely or moderately inadequate rental housing units in Maryland.<sup>1</sup> Over 15% of Maryland residents live with “Severe Housing Problems” defined as having one or more of the following problems: lack of complete kitchen facilities, lack of plumbing facilities, overcrowding or severely cost-burdened occupants.<sup>2</sup> **Many landlords are not being held accountable for repairing major conditions of disrepair that impact not only renting families but entire communities that suffer from the resulting blight.**

The Tenant Safety Act will do 3 things to make rent escrow work:

1. **Join Similar Rent Escrow Cases Together.** Make it easier for tenants with the same repair issues and same landlord to join in a single rent escrow case under the Court’s existing rules on “joinder.” There is strength in numbers when neighbors can work together to hold their landlord accountable.
2. **Reset Expectations.** If a landlord refuses to make repairs, then normally a tenant should pay into escrow a reduced rent (by 50% in most cases) going forward until repairs are made. This will help tenants who do not have the full amount that the landlord claims is past-due to still hold the landlord accountable. This will also incentivize landlords to quickly make repairs to avoid losing rent. At the end of the case, the Court will decide how much is due to each party. Many states like Michigan, Minnesota, Colorado, New York, Massachusetts, and New Mexico have similar provisions that lower the barriers to rent escrow for tenants after they have shown that their landlords have been notified of the need for urgent repairs but refused to make them. For claims of past-due rent, clarify that tenants should *not* have to pay the *full* amount of rent if the landlord refused to make repairs by codifying the “warranty of habitability” that already exists in MD law.
3. **Level the Playing Field with Attorney’s Fees.** Allow a tenant to recover attorney’s fees and costs if they win the case. Most landlords already have a lease provision for attorney’s fees if they win. With this addition to rent escrow law, more attorneys will take rent escrow cases for tenants and help level the playing field.

### ***Frequently Asked Questions on Attorney’s Fees***

#### ***1) Why does the Tenant Safety Act include attorney fee-shifting to a prevailing tenant?***

Landlords often have an attorney already in habitability cases, while tenants do not. Landlords also have a standard lease provision requiring the tenant to pay the landlord’s fees when the landlord is enforcing the lease. HB 1117’s fee-shifting provision helps level the playing field for tenants by encouraging more attorneys to take meritorious cases. The Maryland Access to Justice Commission has endorsed fee-shifting statutes to prevailing plaintiffs as a critical component of addressing the imbalance of power in court actions especially for “individuals

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<sup>1</sup> U.S. Census Bureau, American Housing Survey for the United States: 2021, Table Creator (Select area: Maryland, Select a table: Housing Quality); Judiciary statistics, <https://mdcourts.gov/district/about#stats>.

<sup>2</sup> [https://www.americashealthrankings.org/explore/measures/severe\\_housing\\_problems/MD](https://www.americashealthrankings.org/explore/measures/severe_housing_problems/MD)

with small claims an opportunity to enforce those claims, even when the returns might be too small for them to engage an attorney on a contingency or hourly fee basis.”

(<https://www.mdcourts.gov/sites/default/files/import/mdatjc/pdfs/interimreport111009.pdf>

p.25). Maryland has over 45 statutes that provide for attorney’s fees to prevailing plaintiffs. These include laws pertaining to:

1. Wages and hours of employment;
2. Wage payment and collection;
3. Worker's compensation;
4. Consumer protection;
5. Discrimination and civil rights;
6. Email fraud;
7. Whistleblowers;
8. Tenant protections including illegal eviction claims, unenforceable lease provisions, security deposit claims, and anti-retaliation.

*2) Why not fee-shifting for the prevailing party, instead of just tenants?*

The above-referenced 50+ statutes all provide for fee shifting if the protected worker/consumer/tenant/whistleblower prevails – *not* the prevailing party. The intent of fee-shifting is to help level the imbalance of power so that consumer/tenants can enforce remedial legislation. Creating a fee-shifting provision in favor of landlords would only reinforce the imbalance of power and dissuade working families from enforcing housing laws that protect life, health, and safety.

*3) How are attorney’s fees calculated in this context?*

The Court uses a multi-factor test pursuant to Rules 3-741 and 2-703(f)(3) to ensure that any fee award is reasonable and geared toward the results obtained in the case. This ensures that attorneys focus on taking meritorious cases. These factors are:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client; and
- (L) awards in similar cases.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a report of FAVORABLE on HB 1117.**