MARYLAND MULTI-HOUSING ASSOCIATION, INC.

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

**Committee:** **Judicial Proceedings Committee**

**Date:** **April 2, 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. 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.

## 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 incentivize housing providers to swiftly cure a defect in rented property and provide tenants a simple and timely remedy to keep their rented homes safe, as well as giving them the choice to raise the issue either affirmatively or defensively. 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 to allow a Tenant to include "any other defense" regardless of whether it has anything to do with property defects. 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

- 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 the 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 repairs performed related to 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 held accountable for such actions and that the housing provider in such circumstances should be entitled to reasonable attorneys' fees and costs related to the litigation.

- Tenant Recovery: If the tenant prevails in their escrow case the bill permits the court to order types of relief never contemplated by the rent escrow Statute including relocation in a rent escrow action or breach of the warrant of habitability. If the balance of the Rent Escrow statute is to be preserved where a 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.

**For additional information, please contact Aaron J. Greenfield, 410.446.1992**