
By: **Delegate Krysiak**
Introduced and read first time: February 9, 2001
Assigned to: Economic Matters

Committee Report: Favorable
House action: Adopted
Read second time: March 13, 2001

CHAPTER _____

1 AN ACT concerning

2 **Landlord Tenant - Tenant Holding Over**

3 FOR the purpose of clarifying that provisions of law relating to a tenant holding over
4 apply to certain tenancies; making technical corrections; and generally relating
5 to landlord tenant laws relating to a tenant holding over.

6 BY repealing and reenacting, with amendments,
7 Article - Real Property
8 Section 8-402
9 Annotated Code of Maryland
10 (1996 Replacement Volume and 2000 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Real Property**

14 8-402.

15 (a) (1) A tenant under any [lease] PERIODIC TENANCY, OR AT THE
16 EXPIRATION OF A LEASE [or], AND someone holding under the tenant, who shall
17 unlawfully hold over beyond the EXPIRATION OF THE LEASE OR termination of the
18 [lease] TENANCY, shall be liable to the landlord for the actual damages caused by the
19 holding over.

20 (2) The damages awarded to a landlord against the tenant or someone
21 holding under the tenant, may not be less than the apportioned rent for the period of
22 holdover at the rate under the lease.

1 (3) (i) Any action to recover damages under this section may be
2 brought by suit separate from the eviction or removal proceeding or in the same
3 action and in any court having jurisdiction over the amount in issue.

4 (ii) The court may also give judgment in favor of the landlord for
5 the damages determined to be due together with costs of the suit if the court finds
6 that the residential tenant was personally served with a summons, or, in the case of a
7 nonresidential tenancy, there was such service of process or submission to the
8 jurisdiction of the court as would support a judgment in contract or tort.

9 (iii) A nonresidential tenant who was not personally served with a
10 summons shall not be subject to personal jurisdiction of the court if that tenant
11 asserts that the appearance is for the purpose of defending an in rem action prior to
12 the time that evidence is taken by the court.

13 (4) Nothing contained herein is intended to limit any other remedies
14 which a landlord may have against a holdover tenant under the lease or under
15 applicable law.

16 (b) (1) (i) Where any [interest in property shall be leased] TENANCY IS
17 for any definite term or at will, and the landlord shall desire to repossess the property
18 after the expiration of the term for which it was leased and shall give notice in writing
19 one month before the expiration of the term or determination of the will to the tenant
20 or to the person actually in possession of the property to remove from the property at
21 the end of the term, and if the tenant or person in actual possession shall refuse to
22 comply, the landlord may make complaint in writing to the District Court of the
23 county where the property is located.

24 (ii) 1. The court shall issue a summons directed to any constable
25 or sheriff of the county entitled to serve process, ordering the constable or sheriff to
26 notify the tenant, assignee, or subtenant to appear on a day stated in the summons
27 before the court to show cause why restitution should not be made to the landlord.

28 2. The constable or sheriff shall serve the summons on the
29 tenant, assignee, or subtenant on the property, or on the known or authorized agent of
30 the tenant, assignee, or subtenant.

31 3. If, for any reason those persons cannot be found, the
32 constable or sheriff shall affix an attested copy of the summons conspicuously on the
33 property.

34 4. After notice to the tenant, assignee, or subtenant by
35 first-class mail, the affixing of the summons on the property shall be conclusively
36 presumed to be a sufficient service to support restitution.

37 (iii) Upon the failure of either of the parties to appear before the
38 court on the day stated in the summons, the court may continue the case to a day not
39 less than six nor more than ten days after the day first stated and notify the parties
40 of the continuance.

1 (2) (i) If upon hearing the parties, or in case the tenant or person in
2 possession shall neglect to appear after the summons and continuance the court shall
3 find that the landlord had been in possession of the leased property, that the said
4 [lease or estate] TENANCY is fully ended and expired, that due notice to quit as
5 aforesaid had been given to the tenant or person in possession and that the tenant or
6 person in possession had refused so to do, the court shall thereupon give judgment for
7 the restitution of the possession of said premises and shall forthwith issue its warrant
8 to the sheriff or a constable in the respective counties commanding the tenant or
9 person in possession forthwith to deliver to the landlord possession thereof in as full
10 and ample manner as the landlord was possessed of the same at the time when the
11 [leasing] TENANCY was made, and shall give judgment for costs against the tenant or
12 person in possession so holding over.

13 (ii) Either party shall have the right to appeal therefrom to the
14 circuit court for the county within ten days from the judgment.

15 (iii) If the tenant appeals and files with the District Court an
16 affidavit that the appeal is not taken for delay, and also a good and sufficient bond
17 with one or more securities conditioned that the tenant will prosecute the appeal with
18 effect and well and truly pay all rent in arrears and all costs in the case before the
19 District Court and in the appellate court and all loss or damage which the landlord
20 may suffer by reason of the tenant's holding over, including the value of the premises
21 during the time the tenant shall so hold over, then the tenant or person in possession
22 of said premises may retain possession thereof until the determination of said appeal.

23 (iv) The appellate court shall, upon application of either party, set a
24 day for the hearing of the appeal, not less than five nor more than 15 days after the
25 application, and notice for the order for a hearing shall be served on the opposite
26 party or that party's counsel at least 5 days before the hearing.

27 (v) If the judgment of the District Court shall be in favor of the
28 landlord, a warrant shall be issued by the appellate court to the sheriff, who shall
29 proceed forthwith to execute the warrant.

30 (3) (i) The provisions of this subsection shall apply to all cases of
31 tenancies AT THE EXPIRATION OF A STATED TERM, TENANCIES from year to year,
32 tenancies of the month and by the week. In case of tenancies from year to year
33 (including tobacco farm tenancies), notice in writing shall be given three months
34 before the expiration of the current year of the tenancy, except that in case of all other
35 farm tenancies, the notice shall be given six months before the expiration of the
36 current year of the tenancy; and in monthly or weekly tenancies, a notice in writing of
37 one month or one week, as the case may be, shall be so given.

38 (ii) This paragraph (3), so far as it relates to notices, does not apply
39 in Baltimore City.

40 (iii) In Montgomery County, except in the case of single family
41 dwellings, the notice by the landlord shall be two months in the case of residential
42 tenancies with a term of at least month to month but less than from year to year.

1 (4) When the tenant shall give notice by parol to the landlord or to the
2 landlord's agent or representatives, at least one month before the expiration of the
3 lease or tenancy in all cases except in cases of tenancies from year to year, and at
4 least three months' notice in all cases of tenancy from year to year (except in all cases
5 of farm tenancy, the notice shall be six months), of the intention of the tenant to
6 remove at the end of that year and to surrender possession of the property at that
7 time, and the landlord, the landlord's agent, or representative shall prove the notice
8 from the tenant by competent testimony, it shall not be necessary for the landlord, the
9 landlord's agent or representative to provide a written notice to the tenant, but the
10 proof of such notice from the tenant as aforesaid shall entitle the landlord to recover
11 possession of the property hereunder. This paragraph shall not apply in Baltimore
12 City.

13 (5) Acceptance of any payment after notice but before eviction shall not
14 operate as a waiver of any notice to quit, notice of intent to vacate or any judgment for
15 possession unless the parties specifically otherwise agree in writing. Any payment
16 accepted shall be first applied to the rent or the equivalent of rent apportioned to the
17 date that the landlord actually recovers possession of the premises, then to court
18 costs, including court awarded damages and legal fees and then to any loss of rent
19 caused by the holdover. Any payment which is accepted in excess of the foregoing
20 shall not bear interest but will be returned to the tenant in the same manner as
21 security deposits as defined under § 8-203 of this title but shall not be subject to the
22 penalties of that section.

23 (c) Unless stated otherwise in the written lease and initialed by the tenant,
24 when a landlord consents to a holdover tenant remaining on the premises, the
25 holdover tenant becomes a periodic week-to-week tenant if the tenant was a
26 week-to-week tenant before the tenant's holding over, and a periodic
27 month-to-month tenant in all other cases.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2001.