

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 406

(Delegate Weir, *et al.*)

Judiciary

Real Property - Landlord Liability for Injury or Damage - Requirements

This bill provides that a “landlord” is not liable for injury or damage caused by a condition in a residential rental unit that is a violation of State or local law unless the landlord (1) knew or had reason to know of the condition that caused the tortious injury; and (2) had a reasonable opportunity to correct the condition. The bill does not (1) apply to matters or activities regulated under the State’s lead paint laws; (2) alter or otherwise diminish the rights and remedies afforded tenants and landlords under the State’s rent escrow provisions; or (3) prohibit a tenant from reporting code violations existing in or on rental property.

Fiscal Summary

State Effect: The bill would not materially affect the finances or operations of the Judiciary.

Local Effect: None – see above.

Small Business Effect: Potential meaningful.

Analysis

Current Law: In *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70 (2003), the Court of Appeals adopted a new rule for a landlord’s tort liability when a statute has been violated. Under *Brooks*, a *prima facie* case for liability has been established when (1) there is a violation of a statute designed to protect a class of persons that includes the plaintiff; and (2) the violation proximately causes the plaintiff’s injury. *Id.* at 79 and 85. The *Brooks*

court was interpreting liability for a violation of a provision of Baltimore City's code governing lead paint mitigation.

In *Polakoff v. Turner*, 385 Md. 467 (2005), the court reaffirmed its holding in *Brooks* and held that the *Brooks* holding applies to cases in which the facts predate that holding. *Brooks* and *Polakoff* impose a continuing duty on the landlord to monitor compliance with a statutory requirement. In *Polakoff*, the court stated that “[l]iability will depend on the reasonableness of the landlord’s efforts to remain in compliance with the statute; therefore, it is incumbent upon the landlord to take such reasonable steps as may be necessary.” *Id.* at 480-81. The *Polakoff* court stated that *Brooks* recognized Maryland’s common law rule that a violation of a statute or ordinance is evidence of negligence. *Id.* at 478.

At common law and in the absence of a statute, a landlord ordinarily has no duty to keep rental premises in repair, or to inspect the rental premises either at the inception of the lease or during the lease term.

By statute, a landlord generally must repair and eliminate conditions and defects that constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health, or safety of the occupants. A tenant must notify a landlord of the existence of the condition or defect, and the landlord has a reasonable time to make repairs. There is a rebuttable presumption that a period exceeding 30 days is unreasonable. If a landlord refuses to make repairs, the tenant may bring a rent escrow action in court and pay the rent to the court under specified criteria.

In a rent escrow action, the court may make appropriate findings and make any order or orders that justice requires, including an order terminating the lease, dismissing the action, abating the rent, or requiring the landlord to make repairs. Money placed in a rent escrow account is distributed according to the rent escrow statute. There are additional, but similar, rent escrow requirements applicable to the State’s lead paint abatement laws.

Background: In *Richwind Joint Venture 4 v. Brunson*, 355 Md. 661 (1994), the Court of Appeals held that a landlord is not liable for a defective condition on the property unless the landlord knows or has reason to know of the condition and had a reasonable opportunity to correct it. To the extent that *Brooks* is inconsistent with the *Richwind* holding, *Brooks* overruled *Richwind*.

Additional Information

Prior Introductions: Similar bills were introduced in the 2006 and 2005 sessions. HB 972 of 2006 received an unfavorable report from the House Judiciary Committee. HB 1403 of 2005 received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of the Environment, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2007
mll/jr

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