

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 377

(Delegate Simmons)

Environmental Matters

Judicial Proceedings

Landlord and Tenant - Summary Ejectment Proceedings - Recovery of
Attorney's Fees

This bill authorizes a court, in a summary ejectment proceeding regarding a nonresidential tenancy in which process is properly served, to award reasonable attorney's fees in addition to costs of the suit, the amount of rent, and late fees when judgment is in favor of the landlord. Reasonable attorney fees may only be awarded if the lease agreement authorizes the landlord to recover attorney's fees.

Fiscal Summary

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

Local Effect: See above.

Small Business Effect: Potential meaningful.

Analysis

Current Law: In a summary ejectment proceeding involving a nonresidential tenancy, the court may give judgment in favor of the landlord for the amount of the rent and late fee determined to be due, together with the cost of the suit, if the court finds that there was service of process or submission to the jurisdiction of the court that would support a judgment in contract or tort.

A nonresidential tenant who was not personally served with a summons is not subject to personal jurisdiction of the court if the tenant asserts the appearance is for the purpose of defending an *in rem* action prior to the time that evidence is taken by the court.

Background: Generally, attorney's fees are not recoverable in a civil action absent a requirement in statute or a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both, to pay the adverse party's costs, including reasonable attorney's fees.

In *Shum v. Gaudreau*, 317 Md. 49 (1989), the Court of Appeals found that contract damages were not "rent" and, thus, not recoverable under the summary ejectment statute. In a recently decided case, the Court of Special Appeals followed the Shum decision and held that attorney's fees authorized as damages in a rental contract were not "rent" and not recoverable under the summary ejectment statute. *Agbaje, P.C. v. JLH Properties, II, LLC.*, 169 Md. App. 355 (2006).

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 22, 2007
ncs/jr

Analysis by: T. Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510