

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 366

(Senator West, *et al.*)

Judicial Proceedings

Real Property - Residential Leases - Collectible Rent (Rent Transparency Act)

This bill authorizes a landlord who uses a written lease to collect any fee or charge as rent under specified conditions. Thus, the bill effectively expands the types of fees and charges that may be the basis for a landlord to file a complaint for repossession for failure to pay rent or for breach of lease.

Fiscal Summary

State Effect: The bill's requirements can be handled with the existing resources of the District Court, as discussed below. Revenues are not affected.

Local Effect: The bill is not anticipated to have a material fiscal or operational impact on the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Generally, a landlord who uses a written lease may collect as rent *any fee or charge* owed to the landlord under the lease, including:

- electric, sewer, water, and other utility charges;
- charges for oil, gas, and other fuels; and
- fines imposed by a homeowners association, condominium, or unit of State or local government for specified violations related to conditions at the property that are the responsibility of the tenant and within the tenant's control.

A landlord may collect as rent any fee or charge owed to the landlord only if the written lease used by the landlord (1) includes a provision, distinctly set apart from the other provisions of the lease, identifying the fees and charges that are collectible as rent under the lease and (2) notifies the tenant that the failure to pay any fee or charge collectible as rent under the lease may result in the eviction of the tenant.

Ratio Utility Billing System

If any fee or charge is billed through a ratio utility billing system, the lease must include notice of the system used to allocate the fee or charge, and on written request, a landlord who uses a ratio utility billing system must provide a tenant with information to document a bill for utilities.

Complaint for Repossession

A landlord may not file a complaint for repossession for failure to pay rent or for breach of lease if the only unpaid amount collectible as rent is a fee or charge for water of less than \$50.

Current Law: With respect to residential leases, no statute specifically defines “rent.” Additionally, no statute prohibits a landlord from recovering fees or charges as rent.

Failure to Pay Rent

Whenever the tenant fails to pay the rent when due, the landlord may file a complaint for repossession for failure to pay rent. Generally, the landlord must file the written complaint in the District Court of the county where the property is located. Among other specified items, that complaint must include (1) the amount of rent and any late fees due and unpaid, *less the amount* of any utility bills, fees, or security deposits paid by a tenant under specified provisions of the Public Utilities Article and (2) a request to repossess the premises and, if desired, a judgment for the amount of rent due, costs, and any late fees, *less the amount* of any utility bills, fees, or security deposits paid by a tenant under specified provisions of the Public Utilities Article.

Breach of Lease

If an unexpired lease authorizes the landlord to repossess the premises prior to the expiration of the term of the lease if the tenant breaches the lease, then the landlord may file a complaint for breach of lease. The complaint must be in writing, filed in the District Court of the county where the property is located, and based on the following circumstances: (1) the tenant breaches the lease; (2) the landlord meets specified notice requirements or the breach “demonstrates a clear and imminent danger” and meets

additional specified notice requirements; and (3) the tenant or person in actual possession of the premises refuses to comply.

Utility Billing Systems

Section 7-303 of the Public Utilities Article addresses the “submetering” of apartment and commercial buildings for electricity or natural gas. “Submetering” means the installation of equipment to determine the actual use of electricity or gas per residential unit or commercial rental unit. Based on the authority included in statute, the Public Service Commission (PSC) authorizes, by regulation, an owner, operator, or manager of an apartment house (including a condominium), office building, or shopping center with a master meter to install submeters for determining the actual use of electricity or gas per unit.

Approval from PSC is also required before an energy allocation system (a method of determining the approximate energy use consumed within a dwelling unit through the use of a measuring device) may be used by the owner, operator, or manager of an apartment house to determine the amount of gas or electricity used by an individual dwelling unit. PSC may approve an energy allocation system upon a demonstration by the owner that the system results in a reasonable determination of the cost of the energy use within a dwelling unit. The owner, operator, or manager may not use the energy allocation system to bill energy costs to tenants of an individual dwelling unit without PSC approval.

Background: The Administrative Office of the Courts (AOC) advises that, in fiscal 2018, there were a total of 653,739 actions for repossession for failure to pay rent, and 1,548 actions to regain possession of a property for breach of lease, filed in the District Court. In total, 661,319 landlord-tenant actions were filed in the District Court in fiscal 2018.

Whether a tenant’s rent payments are current is a central question in many landlord-tenant proceedings. A landlord must show that a tenant has failed to pay rent to succeed in a summary ejectment proceeding, and a tenant cannot sue a landlord concerning the condition of a rental unit if the tenant is delinquent in paying rent.

A recent Court of Appeals decision, *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016), calls into question the types of payments that may be considered rent. In *Lockett*, the court held that – for purposes of Maryland’s anti-retaliation provisions under § 8–208.1 of the Real Property Article – the term “rent” denotes periodic charges for the use or occupancy of a rental unit. Accordingly, “rent” does not include various other payments (such as utility charges) that a tenant may owe his or her landlord, even if the tenant’s lease characterizes such payments as “deemed rent” or “additional rent.” The decision applies

narrowly to actions brought under the anti-retaliation statute, but it has potential implications for other landlord-tenant proceedings where the payment of rent is at issue.

State Expenditures: AOC advises that the bill may require changes to landlord/tenant forms, brochures, and the District Court website. However, the costs of making the changes and reprinting can be absorbed with existing resources.

Small Business Effect: The bill may enable landlords who qualify as small businesses to collect additional charges and fees as rent, thereby authorizing them to file a complaint for repossession for failure to pay rent or for breach of lease to collect such additional charges and fees.

Additional Information

Prior Introductions: SB 493 of 2018 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 472, was withdrawn.

Cross File: None.

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

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