

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 946

(Senator Kelly)

Judicial Proceedings

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Landlord and Tenant - Failure to Repair Serious and Dangerous Defects -  
Tenant Remedies (Tenant Safety Act of 2024)

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This bill generally (1) establishes that a landlord that offers a dwelling unit for rent is deemed to warrant the dwelling fit for human habitation; (2) establishes remedies if a landlord breaches the warranty of habitability; and (3) establishes additional remedies if a landlord fails to repair serious and dangerous defects, as required under existing statute. Remedies created by the bill include authorizing multiple tenants to join as plaintiffs in actions based on a breach of the warranty of habitability or the failure of a landlord to repair serious and dangerous defects.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Meaningful.

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Analysis

**Bill Summary/Current Law:**

*Repair of Serious and Dangerous Defects – in General*

Statutory provisions under current law provide tenants with a mechanism for encouraging the repair of serious and dangerous defects that exist within or as part of any residential

dwelling unit, or upon certain common property, as specified. The defects are those in which a substantial and serious threat of danger to the life, health, and safety of the occupants is present. Current statutory provisions provide a remedy and impose an obligation upon landlords to repair and eliminate the serious and dangerous conditions and defects. The bill establishes that by offering a residential dwelling unit for rent, whether by written or oral lease or agreement, the landlord must be deemed to warrant that the unit is fit for human habitation and that the landlord is obligated to repair and eliminate serious/dangerous conditions and defects. The bill also explicitly adds the existence of mold in a dwelling unit that presents a serious and substantial threat to the health of the occupants to the list of dangerous conditions and defects for which a tenant may obtain relief.

#### *Available Remedies and Notice Requirements*

Under current law, in order to use specified remedies available when serious and dangerous defects are present, a tenant must notify the landlord of the existence of the defects or conditions using specified methods (*e.g.*, written communication sent by certified mail listing the asserted defects, a written violation from an appropriate State/local agency, etc.). A landlord then has a reasonable time after receipt of notice in which to make the repairs or correct the conditions, as specified.

Under current law, if the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions *or* (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises. The bill authorizes (1) a tenant to take one or *both* of these actions and (2) multiple tenants to join as plaintiffs in an action, in accordance with the Maryland Rules on joinder.

Under the bill, there is a rebuttable presumption that a tenant is entitled to the adjudication of a request for rent abatement. Furthermore, there is a rebuttable presumption that a tenant (1) is entitled to an abatement of prospective rent and (2) may not be required to pay into escrow more than 50% of the amount of rent required by the lease. A determination is without prejudice to a final disposition of rent that is due and unpaid to the landlord.

There is also a rebuttable presumption (under the bill) that a court order requiring rent escrow is limited to the payment of rent that is due and unpaid subsequent to the court order. A party may request that the court adjust the amount of rent that a tenant pays into court at any time.

Under current law, after rent escrow has been established, a court may, among other things and after a hearing (if one is requested by the tenant), order that if no repairs are made or if no good faith effort to repair is made within six months of the initial decision to place money in the escrow account, that the money in the account be disbursed to the tenant. Under current law, such an order will not discharge the right on the part of the tenant to pay rent into court and an appeal *will* stay the forfeiture. Under the bill, such an order *may* be stayed on appeal by the landlord.

Under the bill, if the court orders any relief to a tenant, the tenant may recover reasonable attorney's fees and costs and reasonable expenses related to litigation, such as expenses for mold assessment at the residence of the tenant.

These aforementioned provisions supersede any local law or ordinance comparable in subject matter *except to the extent that local law or ordinance provides broader applicability or more protection for tenants.*

#### *Breach of the Warranty of Habitability*

The bill further establishes additional relief for breach of the warranty of habitability, applicable to landlords, tenants, and residential dwelling units that are subject to the above provisions. Relief may not be conditioned on payment by the tenant of rent into escrow with the court.

In order to seek the remedies discussed below, a tenant must notify the landlord of the existence of the defects or conditions in accordance with certain requirements, as specified. Within a reasonable period of time after receipt of notice, the landlord must make the repairs or correct the conditions, as specified.

If a landlord breaches the warranty of habitability and refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action for damages and the abatement of rent against the landlord and (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action of distress for rent or to any other action brought by the landlord to recover rent or the possession of the leased premises. Multiple tenants may join as plaintiffs in an action in accordance with applicable Maryland Rules and these remedies are in addition to any other remedies provided under law.

The bill establishes the following as defenses to a claim for breach of the warranty of habitability: (1) the tenant, the tenant's family, agent, employees, assignees, or social guests caused the asserted defects or conditions; or (2) the landlord or the landlord's agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

The court must make appropriate findings of fact and issue any order that the justice of the case may require, including ordering any of the following:

- an award of actual damages;
- an abatement of rent due and unpaid; or
- the termination of the lease, return of any unused portion of a security deposit to the tenant, and relocation expense for a tenant.

If a court orders any relief to a tenant under these provisions, the tenant may recover reasonable attorney's fees and costs, as well as other expenses related to litigation, such as expenses for a mold assessment at the residence of the tenant.

**Small Business Effect:** Among other effects, landlords and other entities with control over residential property (including property management companies) are subject to more complex litigation in rent escrow cases (*e.g.*, single causes of action from multiple tenants) and awards of attorney's fees.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 691 and SB 807 of 2023.

**Designated Cross File:** HB 1117 (Delegate Stewart) - Environment and Transportation.

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

**Fiscal Note History:** First Reader - February 25, 2024  
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