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House Bill 1372 – Real Property – Residential Leases – Repair of Dangerous Defects and Failure to Pay Rent

Hearing before the House Environment and Transportation Committee, March 3, 2020

Position: Favorable

Public Justice Center supports HB 1372. The bill reforms the decades old “Rent Escrow” statute, Real Property Article § 8-211, to remove barriers that Maryland renters face when they seek relief in court for substandard housing conditions. Substandard rental housing disproportionately hurts lower-income families with children. But regardless of income, any renting household can face unsafe and unhealthy living conditions. All it takes is a broken pipe or a hard-hitting storm. Renters too often find that the court process is unworkable at the outset and unlikely to provide meaningful financial relief. HB 1372 offers 5 specific measures to improve the process so that more Maryland renters can effectively use the courts to ensure safe, healthy housing:

1. Allow a rent escrow claim to proceed independently of any alleged back rent owing.
2. Remove ineligibility based on prior history of late rent payments.
3. Create a warranty of habitability claim that allows for recovery of economic damages.
4. Permit judges to award reasonable attorneys’ fees and costs to a prevailing tenant.
5. Create a clear opportunity in Failure to Pay Rent actions for the tenant to raise a defense or counterclaim.

HB 1372 brings Real Prop. § 8-211 back to its original purpose.

It is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation. Real Prop. Art. § 8-211

The General Assembly set forth this twofold mandate in the early 1970s. Today, the purpose of the law is at odds with its implementation. In 2017, *The Baltimore Sun* investigated just how often the Rent Escrow law

misses its mark. The escrow process, they found, “routinely works against tenants, while in many cases failing to hold landlords accountable when they don’t ensure minimum standards of habitability.”¹

HB 1372 is a course-correction. It lowers counterproductive barriers and brings the law closer to realizing both the “meaningful sanctions” and the “effective mechanism” that the General Assembly intended.

Close the payment loophole.

The hallmark precondition to relief under the Rent Escrow law is “[p]ayment by the tenant, into court, of the amount of rent required by the lease.” RP § 8-211 (k)(2). The plain language in this phrase means the monthly rent set forth in the terms of the lease. Yet, today’s district courts commonly interpret the “amount of rent required by the lease” as synonymous with alleged back rent. When a landlord alleges that the tenant owes back rent, the judge will order the tenant to deposit all alleged arrears – even if disputed – into a court account as the starting place for any proceedings on the tenant’s claim. Consequently, if the tenant can deposit the current month’s rent into escrow but cannot cover all alleged arrears, the court will deny the tenant any relief from substandard housing conditions. The message from the bench (literally in one of PJC’s cases) is, “Take care of the rent situation and you can always come back later to do rent escrow.” The outcome is either a dismissed rent escrow action or, in the defensive context, a judgment for eviction.

This payment loophole may partly explain why *The Sun* found in its investigation of over 5,000 escrow actions that **judges establish an escrow account in only 50 percent of cases**. It also explains how substandard rental units are passed from one tenant to the next.

HB 1372 resets the meaning of “amount of rent required by the lease” to equal the amount of rent due under the lease for the period during which the tenant asserts their rent escrow claim. This change allows a tenant to pursue a remedy for needed repairs even if they admittedly owe back rent. HB 1372 does not deny the landlord’s own remedy in those situations. Instead, the bill provides that a court would proceed with relief through rent escrow and at the conclusion of the escrow case return to the matter of rent due and owing.

Without HB 1372, the denial of rent escrow cases propagates the very opposite of “meaningful sanctions” on negligent landlords. Courts are inadvertently upholding the proposition that a renting family should cope with harmful living conditions while squaring up financially with the landlord. If they can’t get current on the rent, they may be evicted – leaving the hazardous property to become the next renters’ problem. HB 1372 rejects that proposition and offers a better way forward.

HB 1372 sets forth a clear Warranty of Habitability and provides an avenue for tenants to seek compensation for their landlord’s breach

This bill also addresses a significant omission in current law – tenants in Rent Court eviction cases have no specific grounds to seek compensatory damages based on uninhabitability. Real Prop. § 8-211, while allowing a tenant to seek court-ordered repairs and reduction of the rent during their action, is not designed to account for the tenant’s economic injuries *pre-dating* the deposits into escrow. The financial harms that arose *in the past* from the dangerous conditions in the property loom over the escrow action but are often left unresolved or resolved incompletely. Most judges presiding in a rent escrow action take a pass on the question of what

¹ THE BALTIMORE SUN, “Dismissed: Tenants lose, landlords win in Baltimore’s rent court,” April 26, 2017, available at data.baltimoresun.com/news/dismissed/ (last accessed March 1, 2020).

compensation is due to the tenant for past harm. "That's not before the court, this is just rent escrow," or "I can't deal with that, only the amount paid into escrow" are common refrains in court. On the other end of the spectrum, some judges rule that no claim for damages can be had unless the tenant establishes a rent escrow case.

HB 1372 sets forth an explicit Warranty of Habitability and provides a meaningful opportunity for tenants to utilize the warranty in court.

- a) The bill makes clear that Real Prop. § 8-211 would afford **2 kinds of claims**: one for relief through escrow of rent and another for compensation, independent of escrowing the rent.
- b) This latter remedy is for breach of the warranty of habitability and allows the tenant to recover for out-of-pocket costs and the loss of value in the property. Loss of value is calculated as the difference between rent paid and the lowered rental value of the unit while uninhabitable conditions existed.
- c) A tenant may seek a continuance of **up to 14 days** in their landlord's Failure to Pay Rent action to raise the breach of warranty as a counterclaim.

HB 1372 also removes financial bars on eligibility for relief in rent escrow

Under current law, a tenant is barred from obtaining relief through rent escrow if they have been subjected to 3 or more Failure to Pay Rent judgments in the preceding 12 months. This works as a financial eligibility test as many landlords "serially file for eviction on the same tenants in the same units, with the goal not of removing them, but rather of collecting rent."² Serial filing of Failure to Pay Rent actions against a tenant may occur despite regular late payments that bring the tenant's account current. Recipients of monthly Social Security benefits are predisposed to falling prey to serial filing. In this context, the 3-judgment bar in Real Prop. § 8-211 takes legal rights away from a renter who is continually catching up on rent for a substandard rental property. HB 1372 removes this bar.

HB 1372 recognizes that tenants need legal representation to gain meaningful relief

This bill also introduces a fee-shifting provision by which a prevailing tenant may be awarded reasonable attorneys' fees and costs. This provision would bring to housing cases what other statutes bring to consumer protection and wrongful eviction cases: the assistance of the private bar. Most residential leases allow only the landlord to recover attorneys' fees and legal costs by contract. To balance the playing field, HB 1372 provides for fee-shifting, by which a court *may* award attorneys' fees to the prevailing tenant.

Please issue a report of FAVORABLE on HB 1372. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.

² Rebecca Gale, "Why Landlords File for Eviction (Hint: It's Usually Not to Evict)," CITY LAB, June 18, 2019 (available at <https://www.citylab.com/equity/2019/06/eviction-notice-process-rental-landlords-collect-late-rent/591553>).

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