MARYLAND MULTI-HOUSING ASSOCIATION, INC.

Bill Title: **House Bill 1372, Real Property - Residential Leases - Repair of Dangerous Defects and Failure to Pay Rent**

Committee: **Environment and Transportation**

Date: **March 3, 2020**

Position: **Unfavorable**

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Bill Summary

1. Warrant of Habitability: This bill states that by offering a residential dwelling unit for rent, whether by written or oral lease or agreement, the landlord shall be deemed to warrant that the residential dwelling unit is fit for human habitation and that the landlord holds the obligation to 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 occupants.
2. Relief: 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 bring an action for money damages against the landlord for breach of the warranty of habitability. Relief for breach of the warranty of habitability is not conditioned on the tenant's payment of periodic rent into court. When the assertion of rent escrow is made defensively, the allegation of past due rent owing from periods of the tenancy that precede the tenant's assertion of claims may not be grounds to deny relief through escrow and shall be heard by the court after the final adjudication of the tenant's rent escrow defense, together with any additional defenses or claims by the tenant.
3. Breach of Warrant of Habitability: In a claim for breach of the warranty of habitability, damages shall be calculated retroactively starting on the date on which the landlord actually knew or should have known of the breach of warranty and calculated as the total of the rent paid by the tenant during the time that dangerous conditions or defects continued, less the reasonable rental value of the dwelling unit in its deteriorated condition and the cost, if any, incurred and demonstrated by the tenant, of repairs to correct the alleged conditions or defects, relocation from the leased property proximately caused by the alleged conditions or defects and other economic losses proximately caused by the alleged conditions or defects.
4. Court: If a court orders any relief in favor of the tenant, the court may also award to the tenant reasonable attorney's fees and costs. If, at a trial held, the tenant appears and the court is satisfied that the tenant may have a defense to the landlord's claim or the tenant

may have a counterclaim against the landlord, either party is entitled to an adjournment for a period not exceeding 14 days, or longer with the consent of all parties, to file a pleading, procure necessary witnesses or evidence, or prepare for a trial on the merits.

Precedent

In Williams v. Housing Authority for Baltimore City, 361 Md. 143 (2000), an appeal successfully prosecuted by the Public Justice Center, the Maryland Court of Appeals recognized that under Baltimore City Public Local Law, an implied warranty of habitability exists in all city leases. As a result, City landlords warrant that the dwelling they lease is fit for human habitation. The Court held that damages in such actions are limited to the difference between the amount of rent paid or owed and the reasonable rental value of the dwelling in its deteriorated condition from the time that the landlord acquired actual knowledge of the breach of the warranty.

The Court stated that a breach of warranty action "provides a remedy not dissimilar to that available in a rent escrow action" because the warranty action is "tied to the property and the lease." The Court stated that both actions require the Court to hear evidence regarding the condition of the property, notice to the landlord, responsibility for the conditions complained of and the reasonable rental value of the property.

The only difference between the two actions found by the Court was that a rent escrow case focuses on the current situation in the property and a breach of warranty case looks back for a small period to establish the warranty claim. Thus, the Court indicated that claims for both could be brought in one action.

MMHA's Position

House Bill 1372 does not seek to simply codify the decision in Williams. This legislation significantly disturbs the delicate balance of the rent escrow law.

1. On page 2, lines 28-30, the legislation establishes statewide recognition of the warranty of habitability already recognized in Baltimore City Public Local Law. MMHA supports.

2. On page 2, line 31, the bill states that "and that the landlord holds the obligation to repair and eliminate dangerous conditions." MMHA objects to this overly broad language because it imposes a unilateral obligation for repair on the landlord, where that is not contemplated by either the original Baltimore City Public Local Law or the Williams opinion. This language should be stricken since the facts of each case may indicate that the repair obligations may be either the landlord or tenant. The line should read *"and that the landlord subject to Section (k) has an".*

3. On page 4, line 32, strike "periodic" from the sentence since this fails to allow for previous rent balances that may be due and owing by the tenant.

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4. MMHA objects to the deletion on page 5, lines 3-12. Since 1975, the equitable doctrine of "clean hands" has been a part of the delicate balance of landlord-tenant interests in rent escrow cases. The theory is that a landlord who is accused by a tenant of failing to properly maintain the property has a defense to that claim where the tenant has previously breached their obligation to timely pay rent by habitually paying so late that the landlord has had to file 3 eviction writs in a 12 month period. To strike this provision leaves the landlord exposed to constant litigation and potential damage claims from tenants who continuously fail to meet their lease obligations to pay rent in a timely way.

5. On page 5, line 14 delete "periodic" for the same reason as number 3 above.

6. On page 5, lines 15-24, Strike this section. It is unclear what the intent of this section is either under current rent escrow law or under the Williams case, regarding the warranty of habitability. MMHA is willing to discuss this matter with the Sponsor.

7. On page 6, line 11 strike "or should have known". This is consistent with the Williams case.

8. On page 6, lines 20-23, strike all. It's not within the Williams case.

10. On page 7, lines 13-15 – Language should reflect that attorney's fees should be granted to either side that prevails.

11. On page 9, line 31 – strike "14" and replace with "5 business days".

For the foregoing reasons and until the issues above are addressed, MMHA respectfully requests an unfavorable report on House Bill 1372.

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