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HB 1220 - Landlord and Tenant – Cancellation or Renewal of Lease – Notification Requirement

Hearing before the House Environment and Transportation Committee, Feb. 23, 2021

Position: SUPPORT WITH AMENDMENTS

The Public Justice Center is a not-for-profit, civil legal aid organization that provides legal advice and representation to over 700 renters each year throughout Maryland. We work to prevent unwarranted evictions and to uphold our clients' rights, under contract and under law. In many eviction cases, a primary point of dispute is whether the landlord provided adequate notice to terminate the tenancy or to renew the tenancy. Public Justice Center is supportive of HB 1220 as this bill would require that a first-class mailing follow any electronically mailed notice within 5 days. Herein, we recommend important changes to the bill's language.

State laws that concern requisite notice of lease termination are silent on the method of delivery. For instance, Real Property Article § 8-402 provides that the landlord "shall give notice in writing one month before the expiration of the term" of the lease while § 8-402.1, concerning termination for breach of lease, requires the landlord to have "given the tenant 30 days' written notice that the tenant is in violation of the lease and the landlord desires to repossess the leased premises." Because these statutes leave the delivery method silent, lease termination notices run the gamut of delivery methods: certified mailing, first-class mailing, postings at the property, electronic mail, text messages, or often a combination. Generally, because no single delivery method is entirely reliable, combinations of notice are a best practice. HB 1220 focuses on one such combination.

As to electronic notices, PJC often finds that tenants have not received a notice allegedly delivered electronically because their landlords have sent the notice to an incorrect e-mail address or phone number. In some instances, even where the e-mail address or phone number is correct, our client may have been blocked from accessing their account or device, thereby effectively lacking notice of the lease termination or renewal. For these reasons, we support HB

1220's proposed combination of delivery methods, by which a first-class mailing would follow the landlord's electronic mailing.

However, we have two points of improvement in this bill's construction.

1. The bill ought to accommodate the fact that many rental agreements describe a specific delivery method, usually postal, for notices made between landlord and tenant, including notices of termination and notice of renewal. Additionally, it may also be the case that federal or local statutes do not permit notice of termination by electronic means. And finally, where landlords are permitted to send written notice electronically, some use text messaging or other electronic means other than e-mail.

For these reasons, we recommend that HB 1220 should not override contractual terms or conflict with statutes that require a stronger delivery method and, further, that HB 1220 should countenance the broad spectrum of electronic methods at issue. We offer the following amending language at page 1, line 17:

IF A LANDLORD, UNDER TERMS OF THE LEASE AGREEMENT OR AS EXPRESSLY ALLOWED BY APPLICABLE LAWS, ELECTRONICALLY NOTIFIES A TENANT [BY E-MAIL] ABOUT THE CANCELLATION

2. We further recommend that the follow-up period for first-class mailing, after electronic mailing of the notice, should not exceed 2 days. Assuming mailed delivery takes 3 days, the current five-day formulation of HB 1220 would mean that a tenant does not receive the postal-delivered notice until 8 days after electronic delivery. Consequently, some tenants will have lost 8 days off the effective notice period. In a typical lease non-renewal scenario, if e-mail was defective, the tenant would have only 22 days' notice, instead of 30 days.

By changing 5 days to 2 days in HB 1220, we can help to ensure that the tenant in this scenario effectively loses only 5 total days in that notice period. We offer this amending language at page 1, line 8:

NOTIFY THE TENANT BY FIRST-CLASS MAIL WITHIN [5] 2 DAYS AFTER THE DATE ON WHICH THE ORIGINAL E-MAIL WAS SENT.

We look forward to working with the sponsor of this legislation and hope that we can address these refinements.

Please issue a report of FAVORABLE WITH AMENDMENTS on HB 1220. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.