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HB 49 - Landlord and Tenant - Repossession for Failure to Pay Rent - Lead Risk Reduction Compliance

Hearing before the House Environment and Transportation Committee, Jan. 26, 2021

Position: SUPPORT

HB 49 ensures that District Court rent dockets provide no safe harbor for landlords who fail to comply with the municipal rental licensing laws and the Maryland Reduction of Lead Risk in Housing law.

As detailed in Public Justice Center's 2015 study *Justice Diverted*[1], renters are not getting a full and fair hearing when they are sued for eviction in "Rent Court." Worse, landlords use the Rent Court even when they are violating local and state laws by leasing units without a city/county rental license or units that do not meet Maryland Department of the Environment's lead risk reduction inspection requirements.

Without HB 49, Rogue Landlords Will Continue to Take Advantage of Rent Court

In 2004 the General Assembly enacted a "Clean Hands" law requiring all landlords to disclose compliance with the Lead Law in order to file an eviction case in Rent Court. In 2011, the Court of Appeals found that a landlord's claim in Rent Court is conditioned on the property's compliance with any applicable rental license.[2] Consequently, landlords must state statement compliance with license and lead inspection requirements in paragraphs 2 and 3 of the "Failure to Pay Rent" complaint form.

But **79%** of landlords in the PJC's study failed to provide valid lead compliance information. In addition, **68%** of landlords failed to provide valid information about Baltimore Housing registration/licensing (which itself requires Lead Law compliance). And still, between 60 and 70 percent of non-compliant landlords won judgments for eviction.

[1] http://www.publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf
[2] *McDaniel v. Baranowski*, 419 Md. 560, 585 (2011)

Rent Court judges widely vary in how they deal with invalid or fictitious information about compliance. In many cases, judges will not take evidence from renters that the landlord's registration or inspection information is invalid. That's because **Real Property art. § 8-401 currently states that the validity of the lead inspection certificate cannot be an issue of fact at trial**. In other cases, landlords are given multiple continuances in order to become compliant while in active litigation of the eviction case. These practices provide incentive to bad actors to take the gamble and see if they can get away with using the courts without having complied with the law.

One theme is consistent among all judges: **because § 8-401 does not require them to ask landlords to prove up their license or certificate status, the burden of proof shifts to the tenant to raise the invalidity of these credentials.** Because renters have little time to prepare for Rent Court, and because they face high hurdles to obtaining certified agency records, this inadvertent burden shifting simply ensures that the landlord's "dirty hands" will not come up in trial. This weakens licensing and lead risk laws.

HB 49 is crucial legislation that fixes this problem head-on and across the state.

- The bill expressly places the burden on landlords who file Failure to Pay Rent actions to "provide direct evidence" of compliance at trial.

- The bill maintains judges' discretion in whether to continue a matter. If evidence of licensing or lead inspection certificate is at issue, HB 49 allows courts to continue the matter for up to 10 days (or longer by agreement of the parties). This gives landlord has a second shot at proving their compliance.

- The bill also maintains judges' discretion in how to resolve a case when the landlord cannot show a valid rental license or lead inspection certificate. Unlike prior iterations of this bill (2017-2019), HB 49 does not mandate dismissal. Instead, it mandates the evidentiary showing. The judge would weigh the evidence and decide ultimately whether the landlord has carried their burden.

HB 49 also codifies existing Court of Appeals precedent in McDaniel v. Baranowski

The Court of Appeals has set a **clear standard: a landlord "should not be able to seek to dispossess a tenant, summarily, without having a license to operate…."** *McDaniel v. Baranowski*, 419 Md. 560, 585 (2011). Despite this clear instruction, district courts inconsistently apply the *McDaniel* opinion, typically to the advantage of non-compliant landlords. For example, from the transcript of one Rent Court case in 2018:

Tenant's Attorney: "We've sought to find whether there's actual multi-family dwelling licensing for the three units in the property. But we're unable to find one by online look-up…. So we seek dismissal of the [action] unless the landlord can show that the property is –"

Judge: "All he has to do is write it down… he's written it down. So I assume it's correct. You can't prove otherwise. That's what he has [on the complaint], so we're going with that."

Four months later, on appeal, the district court's decision was reversed.

HB 49 strengthens the public safety objectives that legislature had in mind when they created the Lead Risk in Housing law and city/county rental license laws. This bill changes the district courts' role from passive bystander to active participant in those objectives. It is imperative to deter bad actors who seek special recourse through the courts and to create a meaningful incentive for landlords to comply with laws that protect the public from defective properties.

Please issue a report of FAVORABLE on HB 49. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.