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## **SB 892: Real Property – Residential Leases – Fee in Lieu of Security Deposit**

**Hearing before the Judicial Proceedings Committee on March 2, 2021**

### **Position: UNFAVORABLE**

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Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 700 tenants throughout Maryland each year. Numerous tenants contact the Public Justice Center each year over disputes with their respective landlords regarding the return of a security deposit.

Public Justice Center recognizes that a landlord's upfront security deposit requirement is a significant barrier for tenants seeking to leave unhealthy or unsustainable housing, and we want to thank the sponsors of the legislation for seeking to address this significant issue that limits mobility and fair housing choice.

Unfortunately, the bill as drafted would authorize an alternative scheme to security deposits without the guardrails and benefits to tenants that currently exist in Real Prop. § 8-203 for security deposits. In our understanding, SB 892 would authorize the practice of having tenants pay an additional monthly fee to the landlord that is likely understood by tenants as a form of "security deposit insurance." The landlord then pays that fee or perhaps some other monthly fee to a deposit alternative company. After the tenant vacates the property, if the landlord claims that the tenant still owes additional rent or has damaged the property, the landlord files a claim with the deposit alternative company. The company pays out the claim to the landlord and then may pursue the tenant for debt collection of the claim amount. If the tenant does not pay, the company has the legal authority to report negative information to the credit bureaus and file a judicial action for collection.

#### **The problems with this model are not addressed by SB 892:**

- **Tenants, in effect, lose much of their ability to contest the landlord's claim for damages.** First, tenants often do not agree with the landlord's claim for damages, and there is no effective means for tenants to challenge that claim with the deposit alternative company process. In our experience, landlords regularly charge tenants after move out with a

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\$200 “cleaning fee” (which is not damage beyond ordinary wear and tear) or for rent or excessive fees that the tenant does not owe. Oftentimes, tenants move to escape uninhabitable conditions. Landlords may subsequently sue for unpaid rent, and tenants may defend and /or counterclaim for uninhabitable conditions of disrepair or retaliation. However, under the practice authorized by SB 892, the deposit alternative company is suing the tenant, and the tenant is unable to counterclaim or have access to the documents or information in the judicial process that only the landlord has.

- **Potential to mislead: Tenant is not purchasing insurance.** These deposit alternative products appear to be marketed as a type of “insurance.” Yet, unlike any other type of insurance, the tenant here is not the insured. They pay the insurance premium through the landlord, but they are not covered in the event of a claim by the landlord. Instead, the tenant appears to be paying the monthly fee and may still be subsequently sued by the deposit alternative company instead of the landlord if the landlord makes a claim. The landlord has every incentive to make such claim since they will no longer be the party responsible for collecting on the claim or handling a dispute over the claim.
- **Lack of Disclosure.** The proposed legislation does not require the security deposit company to provide their contact information to the tenant and does not require the company to inform the tenant that if they miss a monthly payment then they may be required to pay a full security deposit. The proposed legislation does not require the deposit alternative company to notify the tenant if and when a landlord files a claim against the insurance and the outcome of that claim. We understand that the proponents of the legislation are willing to discuss this last concern further, and we appreciate that flexibility.
- **Lack of Regulation.** There is no requirement that the fee paid by the tenant mirrors the fee paid by the landlord to the deposit alternative company. This practice should not become a profit center for landlords. Also, we understand that there may be an amendment offered such that the deposit alternative companies would no longer be subject to regulation as an admitted carrier licensed the Maryland Insurance Administration. We would oppose such an amendment as well.

We recognize the intention of the bill sponsors: Tenants need more flexibility with respect to security deposits to enable mobility. For this reason, we support any proposal that requires or encourages landlords to accept payment of the security deposit in installments. Such programs reduce the barrier for tenants who need to move while maintaining the protections put in place by the General Assembly for security deposits (required interest rate; provisions for return; clear remedy for failure to return, etc.) under Real Prop. § 8-203.

**Please issue an UNFAVORABLE report on SB 892.** If you have any questions, please contact Matt Hill, [hillm@publicjustice.org](mailto:hillm@publicjustice.org), 410-625-9409, ext. 229.

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