



**Bill Title:** House Bill 392, Landlord and Tenant - Failure to Repair Serious and Dangerous Defects - Tenant Remedies (Tenant Justice Act)

**Committee:** Environment & Transportation

**Date:** February 8, 2022

**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.

House Bill 392 establishes a procedure whereby a single renter can seek remedies on behalf of a group of residents or a tenants' organization for a landlord's failure to repair serious and dangerous defects on a leased premises. It allows a resident to bring a civil action for money damages if a landlord fails to repair certain defects within a certain time period and allows for award of reasonable attorney's fees to a tenant who prevails in such an action.

MMHA OPPOSES this Bill because it seeks to dismantle Maryland's rent escrow procedure which balances the rights of tenants to live in housing free of serious and substantial defects with the responsibilities of landlords to supply such housing. This bill further establishes a specialized type of class action which circumvents Maryland's current stringent judicial process to certify class actions, usurping judicial discretion.

## I. BACKGROUND

### Maryland Real Property Code, Rent Escrow Code Section 8-211

In 1975, this Legislature passed the Rent Escrow statute for the purpose of "providing tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist with or as part of any residential dwelling unit or on property used in common of which the dwelling unit is a part".

The statute has very specific requirements for example:

- it applies only to "serious and substantial defects and conditions" defined by the statute,
- requires a tenant to provide notice of the defect to the landlord
- requires a tenant to escrow their rent while repairs are being made
- allows the landlord to have a "reasonable time" to address defects,
- specifies what actions of the tenant, their family members or guests would constitute a defense to the allegations of the existing defects, and



- allows the Court to determine what remedies appropriate to the situation should be made such as rent abatement and credits, entering injunctions allowing 3rd parties to make needed repairs and even termination of the lease.

### Maryland Rule 2-231-Class Actions

- Maryland Rule 2-231 is designed to address large scale litigation seeking redress for similar injuries stemming from similar causes governs how class actions in civil cases are certified.
- Four prerequisites must be present before a court can consider certifying one or more persons as a class to bring suit against another party - these are
  - potential class members are so numerous that adding additional tenants to a lawsuit is not practical,
  - there are questions of facts or law common to the class members,
  - the claims or defenses of the chosen representative are typical of other class members, and
  - the chosen representative will fairly and adequately protect the interests of the class.

It is important to understand the policy considerations behind these elements:

- The most important element of a class action is efficiency and certainty for all parties.
- If everyone in the class has been damaged the same way and wants the same thing, then there is an efficiency achieved in proceeding by class action versus individual suits.
- However, the rule requires that there be sufficient overlap in injuries/remedies of all class members so that all class members have all of their rights vindicated.
- Moreover, a defendant must have the assurance that the class members are adequately identified so that they know whether the class litigation will settle all of the plaintiffs' claims.

## **II. HB 392's PROPOSED ADDITION TO THE RENT ESCROW STATUTE IS UNNECESSARY.**

Nothing in current law prevents a Rent Escrow case from being litigated as a class action where there is a common and pervasive issue being experienced by some or all tenants. However, the proponents of this Bill desire to forego the rigorous testing required by Rule 2-321 which ensures that proceeding as a class will protect and benefit all class members and reach an outcome efficiently. This bill needlessly adds a new and confusing procedure to the Rent Escrow statute.



**III. EXISTING REMEDIES PROVIDED BY THE RENT ESCROW STATUTE STRONGLY PROTECT TENANTS WHERE REPAIRS ARE NECESSARY**

Unlike complicated class action litigation, the typical Rent Escrow case involves the need to address a particularized problem or problems in a specific tenant’s rental unit. Even in multifamily buildings, a tenant’s repair issues are generally unique to their living situation and easily identifiable through tenant complaints and inspections by the Landlord or Code Officials. Housing providers must repair and eliminate conditions that are a serious threat to the life, health, or safety of occupants.

If a housing provider fails to repair serious or dangerous problems in a rental unit, a resident has the right to pay rent into an escrow account established at the local District Court.

The Court will hold the rent until a Judge hears the case and makes a decision which under Williams v. Authority of Baltimore City, 361 Md. 143 (2000) “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 commencing from the time that the landlord acquired actual knowledge of the breach [of warranty].

**IV. HB 392’s ATTEMPT TO CIRCUMVENT MARYLAND’S CLASS ACTION RULES MUST RECEIVE AN UNFAVORABLE REPORT**

Class certification exists to ensure that the representative(s), who stand in a fiduciary relationship to the class, will adequately represent the entirety of the class, and not just certain interests. The objective is to essentially benefit the class in union from whatever outcome may be achieved, without certain interests being placed above others.

Doing away with this requirement in Rent Escrow matters in favor of an unworkable new and procedurally flawed alternative is unnecessary and threatens to end the over 40-year balance that this Legislature has had in place to protect the rights of both residents of rental property and their housing providers.

For these reasons, we respectfully request an unfavorable report on House Bill 392.

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