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SB 223 Landlord and Tenant – Eviction Actions – Filing Surcharge and Prohibited Lease Provisions

Hearing before the Senate Judicial Proceedings Committee, February 3, 2022

Position: FAVORABLE

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. **The PJC supports SB 223, but we would oppose SB 223 if the bill is amended to allow the increased surcharge to be passed through to tenants under any circumstances.**

Do not make tenants pay more for their own eviction!

SB 223 would increase the filing fee surcharge on eviction actions from \$8 to \$73 and prohibit the court and the landlord from passing on this increase to the tenant. Prior to the pandemic, landlords filed 660,000 eviction complaints each year in a State with only 730,000 renter households, the highest eviction filing rate in the nation. The General Assembly took an important step to address this issue in 2021 by passing HB 18, which will provide tenants with access to counsel in eviction cases when funded and which requires landlords to send tenants a 10-day notice prior to filing an eviction action. SB 223 would further incentivize landlords to work with tenants and social services.

While we support SB 223 as drafted, if the bill is amended to allow landlords or the court to pass on this \$65 increase to the tenant under any circumstances, the purpose of the bill is eviscerated. There would no longer be any disincentive for the landlord to file an eviction action if the landlord or the court can pass that surcharge onto the tenant. **Our organization and Renters United Maryland would vocally oppose any surcharge increase in which that surcharge may be passed onto the tenant under any circumstances.**

Even a minor increase that could be passed onto tenants would have significant effects on renters and housing stability in Maryland:

1. **Allowing a pass-through of any amount to tenants means a fee increase squarely on the backs of low-income renters trying to avoid an eviction.** Even if eviction filings are reduced by 25% and 32,000 tenants receive counsel in eviction cases, that leaves approx. 460,000 eviction filings, many of which will include an increased fee that very vulnerable households will have to pay to avoid eviction.

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2. **Allowing a fee pass-through means that tenants who are struggling most will now have to pay that increased fee in order to avoid eviction. This will mean more evictions, not fewer.** In order to “pay and stay” from a rent court judgment, the tenant must pay all court costs. We have seen numerous tenants who have paid the rent but been evicted because they couldn’t pay the fees.
3. **Allowing a fee pass-through defeats the purpose of the bill, which is to disincentivize serial eviction filing** (month after month when rent is a few days late). If the landlord can recover the increased surcharge, it will have little effect on landlord eviction filing.
4. **Tenants still have an incentive to pay the rent in a timely fashion because landlords can still assess a 5% late fee and court filing fee** – just not this increased surcharge.
5. **If a landlord truly wants to evict a tenant who is chronically late, then after three judgments the landlord can foreclose on the right to redeem (e.g., no “pay and stay”)**. There is no need for the landlord to continue seeking judgments and passing on the increased surcharge.
6. **When fully funded, Access to Counsel will assist annually approximately 32,000 tenants who have a defense. It does not solve Maryland’s significant affordability gap:** There are 193,819 extremely low-income (\$31,600/year for family of four) renter households in Maryland. 74% of those households are severely cost-burdened, i.e., paying more than 50% of their income in rent. These households are one paycheck or unexpected expense away from facing an eviction.
7. **“Judicial discretion” for passing on the fee increase is what happens now and tenants almost always lose.** In all default judgments, the court has “discretion” to award court costs against tenants. They do it every time. Anytime the landlord gets a judgment, the court automatically assesses the court costs. Even if the case doesn’t go to trial, the landlord assesses the costs against the tenant via their lease provisions – even if the case is dismissed. The tenant virtually always loses. This pass-through would defeat the entire purpose of the bill.

Even an amendment that would allow landlords to pass through the fee to tenants only after the 3rd failure-to-pay-rent filing in a year would still fall disproportionately on the renters who are least able to pay the increased fee because they are often on the brink of eviction. In the experience of our organization, landlords file against the same tenant repeatedly within the year because the purpose of the eviction filing is not eviction *per se* but rather debt collection.¹ For

¹ “The execution of an eviction is a double-edged sword for landlords, who must balance the costs of unit turnover with those of allowing a tenant to remain in rent arrears. But this is not the case for filing. *Filing* costs a modest fee, and initiates a legal process that leverages the power of the state both symbolically and

example, if there is a dispute between the landlord and tenant over \$500 in rent or other fees, the tenant may pay the \$1,000 monthly rent timely, but the landlord may still file an eviction complaint for multiple successive months because there remains a \$500 back balance to which the landlord allocates first the tenant's payment each month, charging a late fee in each of those months as well. Even with a prohibition on pass-through of this surcharge, tenants still have ample incentive to pay the rent timely to avoid late fees and the current court costs that landlord pass through pursuant to statute. This additional proposed surcharge should instead serve as an incentive to the landlord to attempt to work with the tenant, accept a payment plan, and connect the tenant to social services if needed, instead of skipping straight to an eviction filing each month.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a FAVORABLE REPORT WITHOUT AMENDMENTS on SB 223**. If you have any questions, please contact: Matt Hill, attorney, 410-625-9409, ext. 229, hillm@publicjustice.org

physically to encourage the tenant to pay her late rent. Moreover, the process of repeated (“serial”) filing for eviction and charging late fees, even on tenants who are expected to eventually pay their rent, is used by some landlords as an additional revenue source.” Drs. Philip ME Garboden and Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, City and Community: A Journal of the Community and Urban Sociology Section of the American Sociological Association, Vol. 18, No. 2, June 2019, at 11-12 (emphasis original) (internal citations omitted).