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HB0703 – Real Property – Actions to Repossess – Judgment for Tenants and Proof of Rental Licensure

**Hearing before the House Judiciary Committee,
Feb. 16, 2022**

Position: SUPPORT (FAV)

Public Justice Center (PJC) is a nonprofit public interest law firm that serves over 600 renters each year. We stand with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. PJC seeks the Committee's Favorable report on HB0703.

HB0703 aims to disincentive landlords' non-compliance with local rental license laws. The bill accomplishes this by blocking unlicensed landlords from accessing the district courts' trio of specialized, fast-track procedures for eviction: Failure To Pay Rent (Real Prop. § 8-401), Tenant Holding Over (§ 8-402), and Breach of Lease actions (§ 8-402.1).

Under HB0703, if a landlord does not a valid rental license (where applicable), they cannot use special court procedures for eviction. If they want to use any of those three procedures, they need to comply with local law and obtain the necessary rental license.

Rental licensing is a fixture of local efforts to ensure safe, healthy housing throughout Maryland. By making licenses for rental operations contingent on routine housing inspections, Maryland jurisdictions have a proactive means to ensure that dwelling units meet habitability standards and to protect renters from unsafe housing conditions. Rental license schemes typically supplement local agencies' complaint-based inspection programs.

HB0703 puts the burden of proof on landlords to show a valid rental license to a judge in any action to evict a residential tenant.

Without a law that expressly places the burden on landlord plaintiffs, illegally operating landlords easily go undetected in the courts' streamlined eviction procedures. When an unlicensed landlord uses the courts' eviction procedures, they profit from licensing non-compliance by using the threat of eviction to collect rent. Equally, they may use the court-approved threat of eviction to silence and to intimidate

tenants who withhold rent or raise complaints about substandard conditions. When unlicensed landlords carry through with court-ordered evictions, they remove tenants who spoke up and replace them with new tenants unaware of the unlicensed operation.

This cycle of profit and evasion of local law is unwittingly aided and abetted by judges, clerks, and sheriffs. It hurts renters and undermines local agencies' efforts to eradicate unsafe housing.

HB0703 ends the cycle and cleans up the courts by putting the onus on landlords to show a valid rental license where the local jurisdiction requires one.

Background on use of specialized court procedures by unlicensed landlords

The Court of Appeals decision *McDaniel v. Baranowski*, 419 Md. 560 (2011), established that unlicensed landlords lack claimant status in Failure To Pay Rent actions and may not use that special, summary procedure. The Court said that landlords must “plead and demonstrate” valid licensing when they file summary ejectment actions, but the decision did not spell out whether landlords must demonstrate the licensing at trial. Consequently, district court forms for Failure to Pay Rent actions require that landlords state a rental license number (where applicable), but there is no burden of proof unless a tenant contests the issue at trial.

In the decade since *McDaniel*, the use of “summary” court procedures by unlicensed landlords remains steady. Public Justice Center’s [2015 study *Justice Diverted*](#) revealed that, from an investigation of over 100 contested eviction actions in Baltimore City, over 70 percent of landlords had either omitted rental licensing information from the complaint or provided the court invalid information.¹ Examining the entire state in [a 2016 report](#), Maryland Legal Aid reported that, in over 21,000 eviction cases resulting in default judgments for repossession, the landlord had failed to provide any rental licensing information on the court complaint despite not having an exemption from licensing.²

Since then, the use of “summary” eviction procedures by rogue landlords has continued, as evident in recent appellate cases:

- *Pettiford v. Next Generation Trust Service*, 467 Md. 624 (2020), finding that tenants in unlicensed properties may raise a habitability defense to Failure to Pay Rent actions without the threat of immediate eviction.
- *Aleti v. Metropolitan Baltimore, LLC*, 251 Md.App. 482 (2021), finding that unlicensed landlords cannot charge legal fees to tenants for Failure to Pay Rent actions.

¹ Public Justice Center, *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court 24-25* (2015), http://www.publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf

² Maryland Legal Aid, *Human Rights in Maryland’s Rent Court: A Statistical Study 24* (2016), https://www.mdlab.org/wp-content/uploads/MDLegalAid_RentCourtStudy_Release-Date-9-8-16.pdf

- *Velicky v. Copycat Building LLC*, 474 Md. 201 (2021), holding that unlicensed landlords, though blocked from Failure to Pay actions, may still use the Tenant Holding Over process to evict tenants.

The November 2021 Court of Appeals decision *Velicky v. Copycat Building* has made the legal landscape even less clear. The Court affirmed its prior decision in *McDaniel* that unlicensed landlords may not use summary ejectment for Failure To Pay Rent – but also found that such landlords may utilize Tenant Holding Over actions to evict their tenants. In dissent, Judge Watts said, “Allowing Copycat to evict Petitioners in a tenant holding over action under RP § 8-402 without a license essentially renders the licensing requirement of Baltimore City Code, Art. 13, § 5-4(a) meaningless and defeats its purpose of ensuring that rental properties are fit to live in. As a result of the majority opinion, Copycat and other landlords will have very little incentive to get licenses, which would require bringing rental properties up to code.”

HB0703 clarifies and strengthens the barrier against rogue landlords’ use of special court procedures.

HB0703 would require all landlords to demonstrate, by preponderance of evidence at the trial of a reaction, that the rental unit is licensed if required by local law. To meet that burden, a landlord would need only a physical or electronic copy of the license to show to the judge at trial. By meeting that evidentiary burden, the landlord may proceed with their case and may win a judgment for possession. Where the landlord fails to meet this burden of proof, HB0703 leaves it to judges to decide the final disposition of the action.

Importantly, HB0703 clarifies that it is neither the court nor the tenant who should carry the burden of identifying unlicensed properties or initiating the inquiry as to licensing status. This bill does not require clerks to ministerially rule on licensing compliance – that is the judge’s duty. Additionally, this bill clarifies that temporary or provisional rental licenses would not satisfy the landlord’s burden.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a FAVORABLE report on HB0703**. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.