



HOMELESS PERSONS REPRESENTATION PROJECT, INC.

HB 693: Courts – Surcharges and Payment to Special Funds

**Hearing before the House Judiciary Committee,
February 16, 2022**

Position: FAVORABLE WITH AMENDMENTS

The Homeless Persons Representation Project, Inc. (HPRP) is a non-profit civil legal aid organization that provides free legal representation to people who are homeless or at risk of homelessness on legal issues that will lead to an end to homelessness. HPRP regularly represents tenants in failure to pay rent cases and other landlord-tenant matters in Baltimore City.

We support HB 693 as long as it includes one key amendment: The Court and the landlord must be prohibited from passing onto tenants the increased filing fee for failure-to-pay-rent (summary ejectment) actions. Unless amended, after a default judgment, renters desperately seeking to avoid eviction would be required to pay this \$60 increase to “pay and stay” and avoid eviction & homelessness. Some will not be able to do so. **If HB 693 does not include this amendment, we must oppose the bill.**

Please do not make tenants pay more for their own eviction.

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 in 2021 by providing tenants with access to counsel in eviction cases when funded while also requiring landlords to send a 10-day notice prior to filing an eviction case. Raising the filing fee – without passing it onto the tenant – would further disincentivize landlords from serial filing. A prohibition on passing the increased fee onto tenants is essential:

1. **Passing the fee onto tenants would double the total amount that tenants must pay to “pay and stay” and avoid eviction and homelessness.** To “pay and stay” from a rent court judgment, the tenant must pay all court costs. If the bill is amended to allow a pass through, this means doubling the total amount a resident must pay to redeem (from \$60 to \$120; or \$80 to \$140 in Balt. City). *Some families will be unable to pay the fee – especially very low income, subsidized tenants whose rent is often only \$100/month – and will be evicted because of the increased fee.*
2. **“Judicial discretion” for passing on the fee is what happens now. Tenants**

normally lose because most cases end in default judgments for the landlord plus costs. Over 90% of rent cases that are not dismissed end in a “default judgment” against the tenant. The Court checks a box on the form: “Judgment in favor of Landlord for possession of the premises and costs.” This is the current exercise of “discretion,” and the tenant almost always loses. 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. Even if eviction filings are reduced by 25% and 32,000 tenants receive counsel in eviction cases, that leaves appx. 460,000 eviction filings, the vast majority of which will include a \$60 increased fee that very vulnerable households will have to pay to avoid eviction.

3. **Allowing a fee pass-through defeats a major purpose of the bill, which is to disincentivize serial eviction filing.** 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 (i.e., 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.

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 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 for 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.

If an amendment that prohibits pass-through to tenants is not feasible, we suggest striking the increased fee for summary ejectment from the bill. We support additional funding for civil legal services and access to counsel in evictions. Our concern is with raising the surcharge on rent court actions from \$8 to \$68 and allowing a pass-through to tenants. Suggested amendments to prohibit a pass through are below.

HPRP is a member of the Renters United Maryland coalition and asks that the Committee issue a **FAVORABLE WITH AMENDMENTS report on HB 693**. If you have any questions, please contact: Carisa A. Hatfield, Esq., at 443-402-5395, or at chatfield@hprplaw.org.

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 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).

Three amendments borrowed from HB 298 re: prohibiting pass through to tenants:

Amendment 1: Page 3, line 1, add new subparagraph (c)(2)(ii):

(ii) IF ASSESSED UNDER ITEM (I)1 OF THIS PARAGRAPH, SHALL BE ASSESSED AGAINST A LANDLORD AND MAY NOT BE AWARDED OR ASSIGNED BY THE DISTRICT COURT AS A FEE OR COST AGAINST A RESIDENTIAL TENANT; AND

Amendment 2: Adopt amendments to RP § 8-208 from HB 298:

Article – Real Property

8–208.

(d) A landlord may not use a lease or form of lease containing any provision that:

(7) Is against public policy and void pursuant to § 8–105 of this title; [or]

(8) Permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord; OR

(9) PROVIDES THAT A TENANT IS RESPONSIBLE FOR, OR REQUIRES A TENANT TO AGREE TO BE RESPONSIBLE FOR, PAYMENT OF A FILING SURCHARGE ASSESSED AGAINST THE LANDLORD BY THE DISTRICT COURT UNDER § 24 7–301(C)(2)(I)1 OF THE COURTS ARTICLE.

Amendment 3: Revisions to RP 8-401 from HB 298:

8–401.

(a) Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises in accordance with this section.

(b) (1) Whenever any landlord shall desire to repossess any premises to which 1 the landlord is entitled under the provisions of subsection (a) of this section, the landlord 2 or the landlord’s duly qualified agent or attorney shall ensure that the landlord has completed the procedures required under subsection (c) of this section.

(2) After completing the procedures required under subsection (c) of this section, a landlord or the landlord’s duly qualified agent or attorney may file the landlord’s written complaint under oath or affirmation, in the District Court of the county wherein the property is situated:

(i) Describing in general terms the property sought to be repossessed;

(ii) Setting forth the name of each tenant to whom the property is rented or any assignee or subtenant;

(iii) Stating the amount of rent and any late fees due and unpaid, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7–309 of the Public Utilities Article;

(iv) Requesting to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, EXCLUDING ANY SURCHARGE ASSESSED AGAINST THE

LANDLORD UNDER § 7-301(C)(2)(I)1 OF THE COURTS ARTICLE, and any late fees, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article;

(v) If applicable, stating that, to the best of the landlord's knowledge, the tenant is deceased, intestate, and without next of kin; and

(vi) If the property to be repossessed is an affected property as defined in § 6-801 of the Environment Article, stating that the landlord has registered the affected property as required under § 6-811 of the Environment Article and renewed the registration as required under § 6-812 of the Environment Article and:

1. A. If the current tenant moved into the property on or after February 24, 1996, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c) of the Environment Article; or

B. On or after February 24, 2006, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c), § 6-817(b), or § 6-819(f) of the Environment Article; or

2. Stating that the owner is unable to provide an inspection certificate number because:

A. The owner has requested that the tenant allow the owner access to the property to perform the work required under Title 6, Subtitle 8 of the Environment Article;

B. The owner has offered to relocate the tenant in order to allow the owner to perform work if the work will disturb the paint on the interior surfaces of the property and to pay the reasonable expenses the tenant would incur directly related to the relocation; and

C. The tenant has refused to allow access to the owner or refused to vacate the property in order for the owner to perform the required work.