



Bill No: HB 691-- Landlord and Tenant—Failure to Repair Serious and Dangerous Defects—Tenant Remedies (Tenant Safety Act)

Committee: Environment and Transportation

Date: February 24, 2022

Position: Unfavorable

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's Counties.

House Bill 691 establishes that housing providers that offer rental housing shall warrant the units fit for human habitation. The bill authorizes a single resident to seek remedies on behalf of a group of residents or a tenant's organization if a housing provider fails to repair serious and dangerous defects on the property. Additionally, a group of residents or a tenant organization can employ remedies for any violation resulting in failure to repair defects in multiple units. The bill allows a resident to bring a civil action for monetary damages against the Housing provider for failure to repair defects within 90 days of the Court finding the conditions still exist. A resident that prevails in an action is entitled to reasonable attorney's fees.

AOBA opposes this legislation for the following reasons:

- The bill will amend the rent escrow process and establish a new specialized type of class action that evades the current process to certify class actions;
- Existing rent escrow laws provide protections for residents.

As drafted, an organization or group of tenants can employ remedies on behalf of a resident. This presents grave concerns for AOBA members as it creates a new process for class action suits for one individual to represent an entire group without legal rights and liabilities to speak for other residents and bring a civil action to a housing provider.

This bill essentially creates a "collective action" that conceptually fails to be a useful model for rent escrow proceedings. Residents use rent escrow to get the courts to require a housing provider to perform necessary repairs in the dwelling unit. Collective action will prolong the process for remedies and delay repairs as there are specific rules within the statute that the housing provider and resident must follow to ensure the Court determines the facts and appropriate remedies for each case. These include:

- whether notice of the problem was adequately given to the housing provider,
- whether the defects constitute a "substantial threat to the life, health, and safety" of the resident,
- whether the housing provider has a defense to the complaint, such as lack of cooperativeness of the resident, interference with access, and the tenant having too many prior judgments to bring an action for escrow,
- how much rent to put in escrow while repairs are made,
- whether there has been a disruption of the resident's "quiet enjoyment" of their unit and, if so, how much rent abatement should be awarded to compensate for that, and in severe cases, whether the situation warrants the Court issuing an injunctive action for an outside contractor to make repairs and ultimately, if warranted, to end the tenant's lease and award damages.

Even where a defect might affect a common area or an entire building (for instance, if the whole roof collapses or the heat is out in the entire building), the unique impact experienced in each rental unit and/or by each tenant mitigates against the "collective action's" core idea that all tenants are similarly situated claimants who can rely on one person to represent their interests. Additionally, tenants who decide not to "opt-in" to the proceedings present the specter of never-ending rent escrow actions, which could quickly exhaust legal and operational resources for housing providers.

AOBA members believe the existing rent escrow statute provides potent remedies to protect tenants. Unlike complicated class action litigation, the typical rent escrow case involves addressing a particular problem or problems in a specific resident's rental unit. Even in multifamily buildings, residents' repair issues are generally unique to their living situation and easily identifiable through resident complaints and inspections by the housing provider or Code Officials. Housing providers must repair and eliminate conditions that seriously threaten occupants' life, health, or safety. Suppose a housing provider fails to fix severe or dangerous problems in a rental unit. In that case, a resident can pay rent into an escrow account established at the local District Court.

For these reasons, AOBA urges an unfavorable report on HB 691. For further information, contact Ryan Washington, AOBA Government Affairs Manager, at rwashington@aoba-metro.org or call 202-770-7713.