



**MARYLAND  
LEGAL AID**

*Advancing*  
**Human Rights and  
Justice for All**

**HB0691 - Landlord and Tenant – Failure to Repair Serious and Dangerous Defects -  
Tenant Remedies (Tenant Safety Act)**

Hearing before the Senate Judicial Proceedings Committee on April 4, 2023

**Position: FAVORABLE (With Sponsor’s Amendments)**

*Maryland Legal Aid (MLA) submits its written and oral testimony on HB0691 at the request of bill sponsor Delegate Vaughn Stewart.*

MLA is a non-profit law firm that provides free legal services to the State’s low-income and vulnerable residents. Our 12 offices serve residents in each of Maryland’s 24 jurisdictions and handle a range of civil legal matters, including housing cases involving substandard conditions. MLA urges the Committee’s favorable report on HB0691, which would allow groups of tenants to file rent escrow actions.

HB0691 creates 4 long-needed tools for renters to rein in negligent landlords who refuse to make necessary repairs to dangerous housing conditions:

1. The bill enables a tenant association or a single tenant, as “lead petitioner,” to file a rent escrow case for repair of hazardous conditions that affect multiple units or commons areas of a building or complex.
2. HB0691 also codifies the Implied Warranty of Habitability (“IWH”), which is typically ignored in Maryland courts.
3. HB0691 sets forth a “fee shifting” provision in the existing rent escrow law, whereby prevailing tenants would win attorney’s fees and costs.
4. The bill also establishes mold hazards as a specific grounds for establishing a rent escrow.

These reforms help to balance Maryland’s nearly 50-year-old rent escrow law. HB0691 would significantly improve tenants’ ability to act collectively, quickly, and efficiently to compel potentially life-saving repairs.

### ***Lead Petition for Rent Escrow***

As passed in the House, HB 691 introduces a Lead Petition, in which a single tenant may initiate an action for rent escrow asserting that substantially similar dangerous defects affect multiple households in a multi-family property. If the court establishes the escrow account, the Lead Petitioner would then pay rent into the account in order to maintain the action. Next, a 30-day opt-in process begins during which additional tenants may add their units into the case. Each of these opt-in tenants would file a request to join the action and indicate whether they wish to pay their rent into escrow accounts. Although an opt-in tenant is not required to pay into escrow, if they elect not to and then also fail to pay rent to their landlord, they would be left unprotected from the landlord's pursuit of collection or eviction. In other words, HB0691 does not contemplate that an entire rental community could "live rent free."

Notably, too, the opt-in procedure is limited to claims for equitable relief, namely court-ordered repairs. The bill does not allow a group action for money damages.

The House adopted an amendment to HB 691 to ensure that the Lead Petitioner does not practice law on behalf of the opt-in tenants. Nonetheless, the Maryland Judiciary has raised concerns that, no matter what the bill says expressly, HB 691 requires the Lead Petitioner to undertake unauthorized practice of law ("UPL") by filing pleadings and papers on the group's behalf and by testifying on the group's behalf. There are no such requirements in the bill, however. HB 691 requires each opt-in tenant to file a request with the court that pleads facts about their unit and their grounds for joining the Lead Petition. The bill leaves to judges' sound discretion how a court should proceed with taking testimony in proceedings. Presumably, whenever an opt-in tenant's testimony is needed, the court would summon that person to testify.

### ***Warranty of Habitability***

HB 691 expressly states that a warranty of habitability is implied in all rental agreements and additionally provides both affirmative and defensive claims for violation of the warranty.

Although "[t]he concept of an implied warranty of habitability is no stranger to the common law,"<sup>1</sup> Maryland district courts invariably deny tenants' claims based on violation of the warranty in part because judges interpret the rent escrow statute as overriding the warranty. For instance, when a tenant raises dangerous defects as a set-off defense to non-payment of rent, the bench may

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<sup>1</sup> *Jack Spring, Inc. v. Little*, 50 Ill. 2d 351, 360 (1972).

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respond, “If you are asserting that there are poor conditions, you must file an escrow case.” This ubiquitous confusion of two distinct legal claims – one for compensation based on past defects, the other for injunctive relief (repairs, rent abatement) based on continuing defects – requires the clarification offered by this bill.

### ***Fee-shifting***

The fee-shifting provision in HB 691 would increase the accessibility and effectiveness of the rent escrow law. Opponents of the bill have objected to this language that allows a court to award attorneys’ fees to the prevailing tenants. This Committee is well-aware that fee-shifting provisions depart from the “American Rule” on attorney’s fees, i.e., that each party is responsible for paying their own attorneys’ fees, regardless of the outcome of the case. Fee-shifting breaks with the rule to promote utilization and enforcement of remedial laws. Civil rights, consumer protection, and environmental laws are examples. Another example is Maryland’s retaliatory eviction statute (Real Prop. § 8-208.1) whereby a court may award attorneys’ fees to the tenant who prevails in showing that their landlord retaliated by attempting an eviction. HB 691 proposes the same measure for rent escrow and the warranty of habitability.

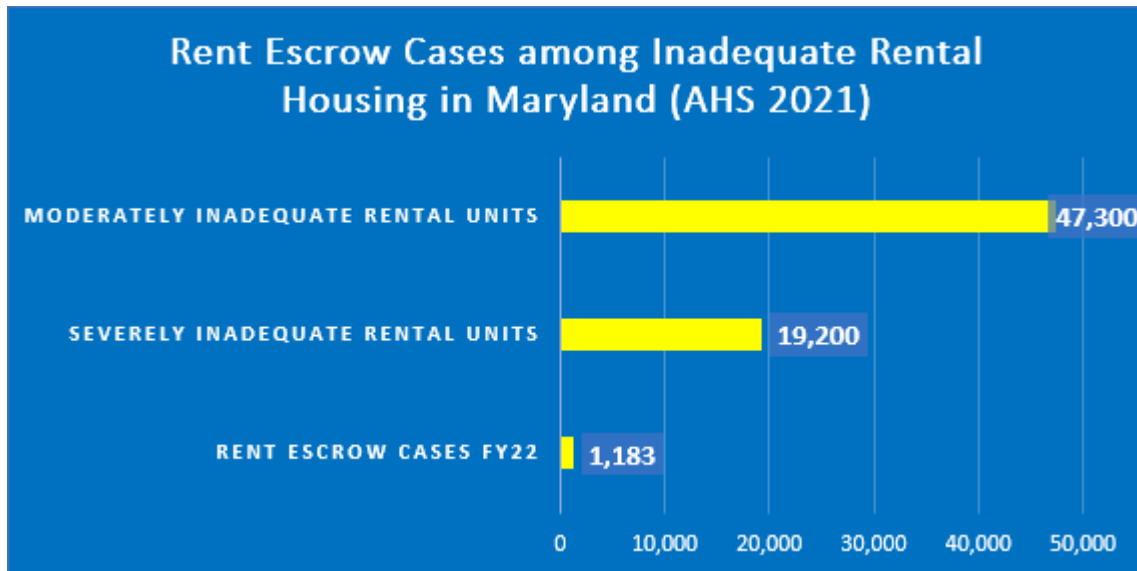
Absent a fee-shifting mechanism, few attorneys in the private bar represent tenants in rent escrow cases. Their potential clients, who typically earn low incomes, are unlikely to be able to afford to pay attorney fees. Nor can these renters obtain free legal representation for affirmative rent escrow cases under the Access to Counsel in Evictions law. Under the recent enactment, the Access to Counsel law did not include affirmative rent escrow actions except where the renter has been constructively evicted (meaning, they have already temporarily or permanently vacated the rental unit). Maryland Legal Aid frequently raises rent escrow claims on behalf of our income-eligible clients, but we do not have the resources to meet all requests for assistance. The availability of an attorneys’ fee award would increase the likelihood that low-income renters are able to obtain legal representation, which in turn boosts the likelihood that they utilize the laws that the General Assembly intended for their protection.

Notably, the rent escrow statute already includes a provision by which landlords may win an award of attorneys’ fees if the court finds the rent escrow action was frivolous or brought in bad faith.

### ***Low utilization of rent escrow***

The Maryland Judiciary’s statistics on rent escrow filings also demonstrate the low utilization of rent escrow. The number do not lie: renters, individually, file these cases only rarely. As reported

by the Maryland Judiciary, the number of rent escrow cases filed in FY 22 pales in comparison to the number of Maryland households that reported “severely” and “moderately” inadequate defects in the 2021 American Housing Survey<sup>2</sup>:

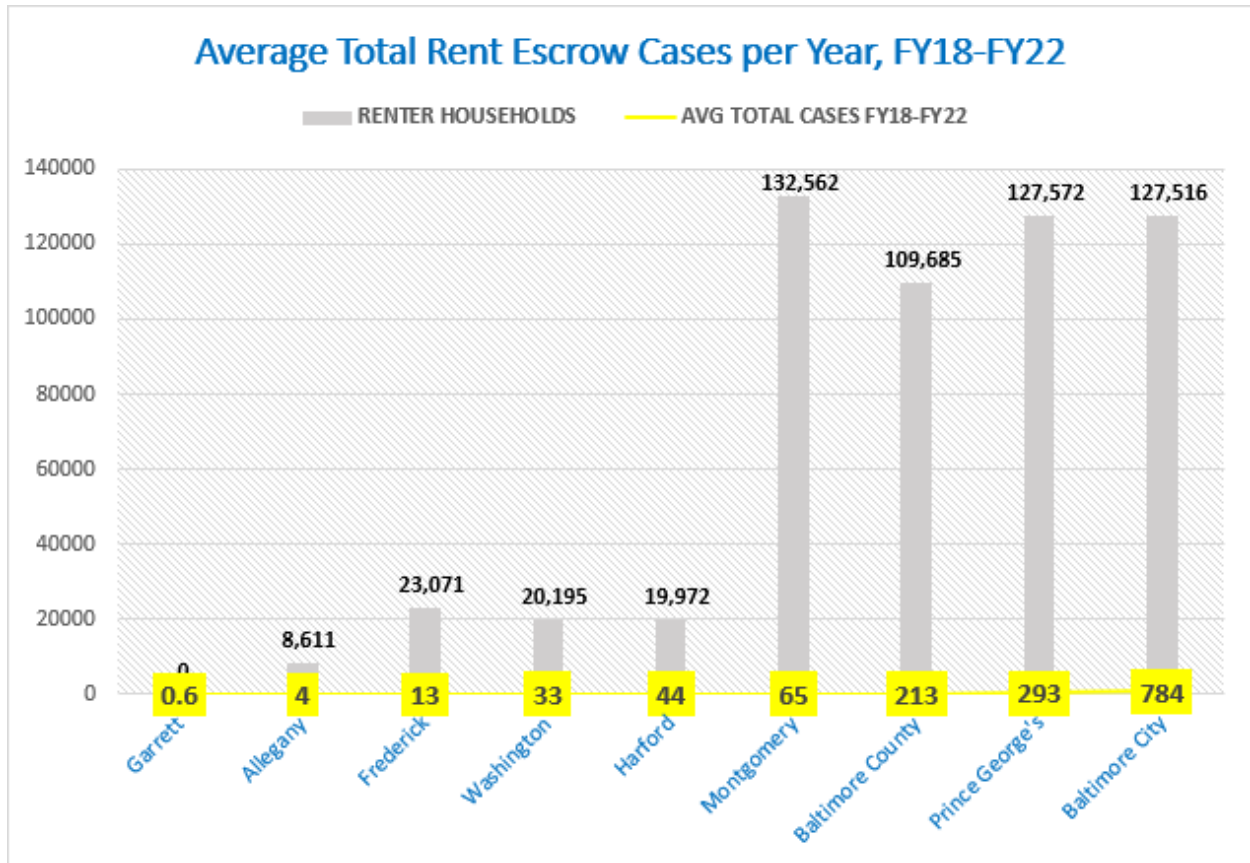


Sources: U.S. Census Bureau, American Housing Survey for the United States: 2021, Table Creator (Select area: Maryland, Select a table: Housing Quality); Maryland Judiciary, About the District Court: Statistics, <https://mdcourts.gov/district/about#stats>.

These data tell us that, under the existing constraints of the rent escrow law, approximately one case is filed for every severely inadequate rental unit. This low utilization of rent escrow is even starker when compared to the overall number of renter households. In the jurisdictions represented by Committee members, the 5-year averages of total rent escrow cases represent not even 1% of the total number of renter households per jurisdiction:

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<sup>2</sup> U.S. Census Bureau, American Housing Survey for the United States: 2021, Appendix A-13, <https://www2.census.gov/programs-surveys/ahs/2021/2021%20AHS%20Definitions.pdf>.



Sources: U.S. Census Bureau, American Community Survey, 2021: ACS 5-Year Estimates Subject Tables, S2501 Occupancy Characteristics (Filter by county); Maryland Judiciary, About the District Court: Statistics, <https://mdcourts.gov/district/about#stats>.

Despite the potential value of the rent escrow law, the law itself is clearly under-used. HB 691's opt-in provision is a serious measure to increase access and utilization of rent escrow when systemic hazards occur.

**Case Study: Prince George's County**

Several years ago, MLA clients in Prince George's County at an affordable rental housing building, primarily serving the elderly, experienced burst pipes. The property was flooded on several floors. The owner decided only to wet vac the carpeted flooring and failed to remove drywall. Predictably, mold grew throughout the common areas on the premises. Compounding the problem, routine maintenance was deficient, residents alleged. The owner failed to clean and maintain the HVAC systems and neglected to replace air filters. Apparently, as a result, condensation accumulated in the HVAC units and leaked out of the systems, causing mold to spread inside the rental units.

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Individual resident complaints received negligible response from the owner. These residents, many of whom had respiratory health issues, struggled with accelerating health concerns. They banded together to attempt to force the owner, who continued to deny the existence of a problem, to address their concerns. Rent escrow could provide relief only for individual units, and not ever tenant suffering with disrepair could escrow their rent. They endured months of hardship as they attempted to find counsel to explore a class action for money damages. HB0691 which would have offered this group of tenants a direct means to access the courts together and to obtain, by virtue of a lead tenant’s escrow of rent, a court’s order of repairs to the entire property.

***Mold hazards***

House amendments to HB 691 also incorporated the language of HB0972, which adds “mold... that presents serious and substantial threat to the health of the occupants” as one of 6 specific grounds for establishing a rent escrow. Although opponents of this measure suggest that “mold” is already a basis for establishing rent escrow, practitioners know that the courts are inconsistent in how they view the appearance of mold under the rent escrow law. The language in HB0691 will clarify for judges, landlords, and tenants alike that mold hazards are cognizable under the statute and, furthermore, that the health of the tenant would be a factor in how a court assesses mold in establishing an escrow case.

For all these reasons, **Maryland Legal Aid urges the Committee’s favorable report (with any Sponsor amendments)**. If you have any questions, please contact:

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