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SB 603 - Real Property – Residential Leases – Fee in Lieu of Deposit

Hearing before the Judicial Proceedings Committee, March 7, 2023

Position: OPPOSE (UNFAV)

Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 800 tenants in Maryland each year. Numerous tenants contact the Public Justice Center each year over disputes with their respective landlords regarding the return of a security deposit. Public Justice Center recognizes that a landlord’s upfront security deposit requirement is a significant barrier for tenants seeking to leave unhealthy or unsustainable housing, and we want to thank the sponsor of the legislation for seeking to address this significant issue that limits mobility and fair housing choice.

We are concerned that SB 603 promotes the use of a complex financial product without adequate tenant/consumer protections; there are alternative ways to address the housing choice barrier posed by a security deposit. SB 603, which is strongly supported by the company Lease Lock, does not address many concerns that we have stated in previous years, and, in some ways, creates additional problems in this year’s version of the bill:

1. The language is unclear on whether the fee-in-lieu payments may be designated as “rent” by the landlord and collected under threat of eviction in rent court (p. 3, lines 3-5). There should be clear language in the bill indicating that the fee in lieu is not “rent.”
2. Nothing limits landlords to charging tenants only the cost of the Lease Lock product. Thus, landlords may turn these “fees in lieu” into another profit center by charging an administrative fee in addition to the actual cost of the insurance to the landlord (p. 5 lines 15-17).
3. The bill would encourage landlords to charge the maximum security deposit allowed by law – 2 months’ rent – in order to force tenants into buying the Lease Lock product. In last year’s bill, if the landlord offer the fee-in-lieu product, they were only allowed to charge only one month’s rent for the security deposit if the tenant chose a traditional

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security deposit. This year's version removes that cap. We are very concerned that if there is no cap, landlords will charge the maximum security deposit of 2 months' rent in order to coerce tenants to purchase the fee-in-lieu product which is a better deal for landlords than a traditional security deposit.

4. If a tenant no longer wants to pay the fee, then the tenant has to pay the full deposit without any credit for the prior fees paid.
5. The fee-in-lieu arrangement offers fewer tenant protections than a security deposit or surety bond under Real Property § 8-203:
 - a. Unlike a security deposit agreement that transfers automatically to the new owner, if a new landlord takes over the property, the fee arrangement is not required to transfer to the new owner, and the new owner can require the payment of a security deposit.
 - b. If an insurer seeking to collect from a tenant upon a claim that the insurer paid to the landlord, and the insurer violates the statutory notice requirements, the bill allows the insurer to "cure" the deficiency.
 - c. To have a pre-move-in inspection under the bill, a tenant must give notice in writing by certified mail at least 15 days before she moves in. This could result in tenants being accused of damage that was not their responsibility.
6. Finally, we are generally concerned that we do not yet understand the full implications of this financial product and how it will affect renters in the marketplace. We suggest further study on this matter including whether this will lead to an increase in third-party debt collection. In other words, Lease Lock may be more likely than a landlord to sell off purported tenant debts to a third-party debt collector, making it more difficult for tenants to later dispute the validity of the purported debt.

Other ways of addressing the housing choice barrier posed by security deposits include requiring landlords to allow tenants to pay the security deposit in installments over the course of the tenancy, e.g., allowing the tenant to pay the security deposit in three installments over the course of 6 months. This policy would promote housing mobility and housing choice without the use of complex financial products that have not been adequately studied.

Public Justice Center asks that the Committee **issue an UNFAVORABLE report on SB 603**. If you have any questions, please contact: Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.