MARYLAND MULTI-HOUSING ASSOCIATION, INC.

Bill Title: **House Bill 691, Landlord and Tenant - Failure to Repair Serious and Dangerous Defects - Tenant Remedies (Tenant Safety Act)**

Committee: **Judicial Proceedings Committee**

Date: **April 4, 2023**

Position: **Unfavorable**

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose membership consists of owners and managers of more than 207,246 rental housing homes in more than 937 apartment communities. Our members house over 667,000 residents of the State of Maryland throughout the entire State of Maryland. MMHA membership also includes more than 216 associate members that supply goods and services to the multi-housing industry. More information is available at https://www.mmhaonline.org/

House Bill 691 amends the rent escrow statute and authorizes a single tenant or tenants' organization to bring an action for money damages against the housing provider for breach of the warrant of habitability stemming from a failure to repair serious and dangerous defects on the leased premises. The bill provides details on what must be contained in a petition.

MMHA opposes this bill because it seeks to dismantle Maryland's long standing rent escrow procedure which balances the rights of tenants to live in housing free of serious and substantial defects with the responsibilities of landlords to supply such housing. This bill further establishes a specialized type of multi-plaintiff litigation which circumvents Maryland's current stringent judicial process to certify class actions, usurping judicial discretion and upending the protections provided by current rent escrow proceedings. Specifically, MMHA has the following objections to House Bill 691:

1. "Actual Notice": Given this new ability to effectively file a class action in rent escrow, we have questions about what constitutes "actual notice" on page 4, line 3. What does actual notice mean in this context? And actual notice to who? Can a tenant just tell the building porter or some other person who is not designated to address maintenance issues and then call that actual notice for a whole building? Actual notice should be in writing by certified mail with proper service on the resident agent. Otherwise, this could be a due process violation.

2. Damages/Attorneys' Fees: Page 4, line 18, allows a tenant to bring "damages" against the landlord for breach of the warranty of habitability. The bill deletes "money" damages.

What kind of damages does this cover? At the same time, on page 7, line 29, only a tenant can receive attorneys' fees from the landlord. This is a significant expansion of the rent escrow statute as it currently does not allow a tenant to receive attorneys' fees. Why aren't attorney's fees mutual?

3. Rent Escrow Accounts: Such a rent escrow action should only occur if all tenants pay into an account. This way we know that the tenants are taking this seriously and not seeking to delay a failure to pay rent. Two provisions of the bill appear to be at odds. Page 5, beginning at line 18 (8-211(I)(4)(I)) requires each tenant to pay into separate escrow accounts in order to join the rent escrow action. However, page 8, lines 1-4, (8-211(k)(2)) allows relief by escrow if paid by the tenant or lead petitioner.

4. Multiple Buildings: Page 5, beginning at line 2, allows this class action amongst multiple buildings, which need not be contiguous. This bill would create a class action to extend to multiple buildings across several city blocks as long as the property is owned by the same landlord. As written, this could extend to hundreds of units. Some of these projects are several city blocks, on completely different streets. There should be more of a limit than what is expressed in the statute.

5. Breach of Warranty of Habitability: Page 5, line 5, allows for relief based on the breach of warranty of habitability which may not be conditioned on payment by the tenant of rent into the court. Can this be based on an allegation? The language is not clear. This should only be, if and when, the court actually finds a breach, not just based on the allegation. Otherwise, all the tenants will allege so they need not pay into escrow. Also while the measure of damages in a Warranty of Habitability matter is as stated in Williams vs. Baltimore City Housing Authority 361 Md. 143 (Md. 2000), 760 A.2d 697, 2000

> "damages for breach of the warranty shall be computed retroactively to the date of the landlord's actual knowledge of the breach of warranty and shall be the amount of rent paid or owed by the tenant during the time of the breach less the reasonable rental value of the dwelling in its deteriorated condition."

Will the results vary between joining members because different types of items are damaged in their units with a variety of seriousness in each?

6. Res Judicata/Collateral Estoppel: On page 6, lines 8, prior to judgment, a tenant who joined the lawsuit may request leaving the action and pursuing a remedy individually without prejudice. This bill could violate res judicata/collateral estoppel for a tenant to leave the group after the case has started but before conclusion, and then let the tenant bring their own separate action. Once a tenant joins, they should not be able to depart "without prejudice" if the court has already made findings of fact or conclusions of law.

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7. Tenant Notification: Page 6, beginning at line 22, requires the landlord to allow the tenant the ability to notify other tenants of this class action to "drum up" more tenants, in a manner determined by the court. In large multi-family buildings, would this require a landlord to give a tenant access to their tenant portal? For how long? In typical class actions, the plaintiff's counsel notifies potential tenants rather than using the defendant/landlord as a means to increase the class. That should be the case here.

For these reasons, we respectfully request an unfavorable report on House Bill 691.

For additional information, please contact Aaron J. Greenfield, 410.446.1992