



Bill No: SB 162— Landlord and Tenant - Termination of Residential Lease - Limitation of Liability for Rent

Committee: Judicial Proceedings

Date: January 30, 2024

Position: Unfavorable

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members who 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.

Senate Bill 162 would allow a resident to terminate a lease early and limit the resident’s liability for rent to no more than two months if a certified counselor, therapist, or psychologist provides notice specifying that the resident has an intellectual or developmental disability or mental disorder that impedes their ability to continue to live in the leased premise.

AOBA appreciates the bill's sponsor for bringing forth this legislation to tackle mental health and applauds the sponsor for requiring that therapists and psychologists must be licensed in the State to provide notice of early termination of the lease. This language is helpful for instances where abuses arise regarding online diagnoses from websites that do not operate in the State, and residents can have easy access to doctors’ notes for deficiencies in mental or intellectual abilities. However, the association still has grave concerns and opposes SB 162 due to the following reasons:

- Physicians can already provide a diagnosis for mental disabilities that limits a renter's liability of rent in existing statutes;
- With the advent of online mental health counseling, it is far too easy to obtain a fraudulent diagnosis;
- The term “substantially limited by the leased premises” is not defined, and it is unclear who will be responsible for making this determination; and

- The bill limits the housing provider's ability to set terms for breaking the lease for mental disabilities.

Under current Maryland law, physicians are already able to provide a note or letter to housing providers stating a renter's inability to continue to live in a leased premise due to physical, intellectual, and mental disabilities. Residents must be able to demonstrate the following: 1) that their disabilities substantially restrict their physical mobility within or entering and exiting the leased premises or 2) require the resident to move to a facility or institution to receive care. AOBA members work with the residents and ensure they are reasonably accommodated if they demonstrate their inability to live independently or continue to rent out their units. The current model works best for housing providers and residents, and adding counselors and therapists to the existing definition will make the law duplicative.

Another issue AOBA members have cited is how easy it is to access doctors' notes and receive diagnoses online. Our members have encountered occurrences where residents can easily receive a doctor's note online from entities not operating locally or in the region that gives credence to the credibility of the notice and the diagnosis, which may lack a comprehensive examination of a resident's mental and intellectual capacities. To provide additional safeguards for housing providers, AOBA suggest language that requires the office's physical location to be in the State or region where they are authorized to practice.

Furthermore, the bill creates a new condition, **on Page 2, Lines 29-31**, for any mental disabilities substantially limited by the leased premises. This provision is confusing and problematic because 1) the bill makes it unclear who is responsible for making the determination, 2) there is no guidance for evaluating a resident's unit under the bill's definition 3) resident will be able to create new claims under the Fair Housing Act or Americans with Disabilities Acts by forcing a housing provider to give a resident reasonable accommodation by allowing early termination of lease.

Lastly, the bill does not authorize a landlord to decide the terms of early termination of the lease. Housing providers cannot determine the termination conditions and can significantly lose rent revenue. They can only receive up to two months of rent without considering the turnover costs for making necessary investments in vacant units once a tenancy ends. For example, if a resident is under a 12-month lease that began in January and they decide to break their lease in March, under this new law, they would only be liable for the two months of rent; the housing provider must make up the difference. On average, a housing provider spends around \$3,000-\$4,000 to turnover the unit, which includes any repairs, maintenance, and the period of time the unit is vacant between tenancies. Contributing to a decrease in revenue will undoubtedly impact housing providers, and they will have no way to recoup their losses. There needs to be consideration for housing providers to be able to decide on the terms of ending the lease agreement in this bill.

For these reasons, AOBA requests an unfavorable report on SB 162. For further information, contact Ryan Washington, AOBA's Government Affairs Manager, at 202-770-7713 or email rwashington@aoba-metro.org.