



**MARYLAND
LEGAL AID**

*Advancing
Human Rights and
Justice for All*

House Bill 1274

Landlord and Tenant – Failure to Pay Rent – Evidence of Notice to Tenant

Hearing in the House Environment and Transportation Committee

Hearing on March 5, 2024

Position: FAVORABLE with Amendment

Maryland Legal Aid (MLA) submits its written and oral testimony on HB1274 at the request of bill sponsor Delegate Melissa Wells.

MLA is a non-profit law firm that provides free legal services to the State’s low-income and vulnerable residents. Our offices serve residents in each of Maryland’s 24 jurisdictions and handle a range of civil legal matters, the most prominent of which is housing. Our Tenants’ Right to Counsel Project represented tenants in over 2,000 cases in 2023. Maryland Legal Aid asks that this Committee report **favorably** on HB1274.

HB1274 amends § 8-401 of Real Property to require, in all “Failure to Pay Rent” (FTPR) eviction cases, the landlord to show evidence that they delivered a 10-day Notice of Intent to File a Complaint for Summary Ejectment to initiate the eviction process. Under this bill, evidence of delivery of the notice must be attached to the FTPR complaint when filed with a court clerk.

Since October 2021, Maryland law has required that landlords deliver a 10-day Notice of Intent to File ([Court Form DC-CV-115](#)) as the precondition to initiating a FTPR action against the tenant. If the landlord fails to provide this notice, the court may dismiss the FTPR case. Failure to deliver the requisite 10-day notice prejudices tenants because they are shorted their 10 days to cure the rent deficiency before litigation may arise and they are not notified of critical information that the form notice provides – such as the details of the alleged arrearage, the contact information of the landlord, information about financial assistance, and information about free legal assistance and representation.

However, in proceeding in which the tenant asserts that the landlord failed to deliver the 10-day notice, some judges simply ask the landlord, “Did you send it?” The landlord invariably answers “yes,” and the eviction case continues, without any further evidence or supporting documentation provided.

HB1274 rectifies this scenario. Instead of placing tenants in the position of having to prove a negative, i.e., that delivery of the notice did not occur, this legislation requires, in all cases, that the landlord

present evidence of having provided the notice. This evidence could be as simple as a digital photograph of the door where the notice was posted.

Since June 2023, when MLA began tracking data on this issue, we have represented tenants in over 100 cases involving the landlord's failure to comply with the 10-day Notice law. We believe HB1274, as drafted, addresses a significant problem.

Suggested amendment to address coerced opt-ins to electronic delivery of notice

However, MLA sees an additional issue on the ground that HB1274 could solve. In many cases in which the landlord attests that the 10-day Notice was served electronically, our clients did not have an opportunity to opt into that method of delivery. Section 8-401 currently allows electronic delivery of the notice "if elected by the tenant." Some courts have allowed these cases to proceed because the tenant may have at some point completed an electronic leasing process or registered to use the landlord's online leasing portal. Our clients often have no choice to opt out of electronic aspects of leasing operations.

As a friendly amendment to HB1274 to tackle coerced electronic notifications, the following language borrows from the Sponsor's successful legislation in 2023 ([HB0151/CH0146](#)) on notices of rent increases. HB0151's language on delivery of notice followed the same scheme in Real Prop. § 8-401, specifically, allowing electronic notice "if elected by the tenant." However, HB0151 went further than § 8-401 to address coerced opt-ins by prohibiting landlords from requiring tenants to accept notice electronically.

MLA suggests these additions to HB1274 based on the language of last session's HB0151:

On page 2, after line 13, insert:

(IV) THE ELECTRONIC DELIVERY METHOD SHALL PROVIDE THE LANDLORD WITH PROOF OF TRANSMISSION OF THE NOTICE.

(V) A LANDLORD MAY NOT CONDITION THE ACCEPTANCE OF A LEASE APPLICATION ON THE TENANT'S ELECTION TO RECEIVE NOTICE UNDER THIS SUBSECTION BY ELECTRONIC DELIVERY.

On page 2, after line 22, insert:

8-208.

(d) A landlord may not use a lease or form of lease containing any provision that:

- (7) Is against public policy and void pursuant to § 8-105 of this title;
- (8) Permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord; or
- (9) Requires the tenant to accept notice of rent increases under § 8-209 **OF THIS SUBTITLE OR NOTICES REQUIRED UNDER TITLE 8, SUBTITLE 4 OF THIS ARTICLE** by electronic delivery.

By requiring proof of the delivery of the 10-day Notice and by prohibiting coerced opt-ins to electronic delivery, this bill addresses real-world problems and reinforces existing Maryland law. **Maryland Legal Aid urges the Committee to issue a FAVORABLE report on House Bill 1274.**

If you have any questions, please contact:

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