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SB 1167 - Real Property – Residential Leases – Fee in Lieu of Deposit

Hearing before the Judicial Proceedings Committee, April 2, 2024

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 1167 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 1167, 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. Because tenants will not be interested parties to the insurance contract between Lease Lock and the landlord, tenants would not be able to make claims to the insurer, challenge an insurer’s decision to deny a claim, or dispute an insurer’s decision to pay a claim until after the tenant is subject to collection actions – affecting their credit score and ability to re-rent at other properties.
2. This year’s bill adds the language “ (3) AN AGREEMENT TO PAY A FEE IN LIEU OF A SECURITY DEPOSIT IS NOT A DEFENSE IN AN ACTION BROUGHT BY A LANDLORD UNDER § 8-401 OF THIS TITLE FOR A TENANT’S FAILURE TO PAY RENT.” This is confusing and could lead to tenants losing their right to contest whether payment of the fee in lieu is appropriate or collectable in rent court as “rent.”

3. 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. We have seen a proliferation of so-called “junk fees” such as “trash fees” and “transaction fees” that have become a profit center for landlords rather than a reflection of actual costs or payment for additional, optional services. The bill should limit landlords to only charging tenants the actual cost of the insurance coverage.
4. 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 the 2022 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 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. The Governor’s housing bill may address this issue, but the bill should still be amended to address the issue as well.
5. 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.
6. 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. There should be clear language in the bill indicating that the fee in lieu is not “rent.” Given the complexity of when the tenant may owe or not owe this fee in various scenarios including when the tenant opts out of paying the fee, when the landlord stops paying for the insurance, and whether the fee represents the actual amount paid by the landlord for the insurance – no renting family should ever face eviction and potential homelessness for a dispute over whether this fee is owed and in what amount through a summary ejection process. **The bill needs to explicitly state that no landlord may deem this fee as “rent” that may be collected in a summary ejection case.**
7. 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 SB 1167**. If you have any questions, please contact: Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.