

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1117

(Delegate Stewart, *et al.*)

Environment and Transportation

Judicial Proceedings

**Landlord and Tenant - Failure to Repair Serious and Dangerous Defects -
Tenant Remedies (Tenant Safety Act of 2024)**

This bill generally (1) establishes that a landlord that offers a dwelling unit for rent is deemed to warrant the dwelling “fit for human habitation”; (2) establishes remedies if a landlord breaches the warranty of habitability; and (3) establishes additional remedies if a landlord fails to repair serious and dangerous defects, as required under existing statute. Remedies created by the bill include authorizing multiple tenants to join as plaintiffs in actions based on a breach of the warranty of habitability or the failure of a landlord to repair serious and dangerous defects.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law:

Repair of Serious and Dangerous Defects

In General: Statutory provisions under current law provide tenants with a mechanism for encouraging the repair of serious and dangerous defects that exist within or as part of any

residential dwelling unit, or upon certain common property, as specified. The defects are those in which a substantial and serious threat of danger to the life, health, and safety of the occupants is present. Current statutory provisions provide a remedy and impose an obligation upon landlords to repair and eliminate the serious and dangerous conditions and defects.

Available Remedies and Notice Requirements: Under current law, in order to use specified remedies available when serious and dangerous defects are present, a tenant must notify the landlord of the existence of the defects or conditions using specified methods (e.g., written communication sent by certified mail listing the asserted defects, a written violation from an appropriate State/local agency, etc.). A landlord then has a reasonable time after receipt of notice in which to make the repairs or correct the conditions, as specified.

Under current law, if the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions *or* (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises. The bill authorizes (1) a tenant to take one or *both* of these actions; (2) multiple tenants to join as plaintiffs in an action, in accordance with the Maryland Rules on joinder; and (3) a court to order separate trials or issue any other order necessary to prevent delay or avoid prejudice.

Under the bill, there is a rebuttable presumption that a tenant is entitled to the adjudication of a request for rent abatement. Furthermore, there is a rebuttable presumption that a tenant is entitled to an abatement of prospective rent in an amount to be determined by the court. A determination is without prejudice to a final disposition of rent that is due and unpaid to the landlord.

There is also a rebuttable presumption (under the bill) that a court order requiring rent escrow is limited to the payment of rent that is due and unpaid subsequent to the court order. A party may request that the court adjust the amount of rent that a tenant pays into court at any time. If a tenant alleges that a defect or condition exists at the leased premises at a trial for failure to pay rent, the court may grant a postponement on request of either party in order for the parties to provide evidence and additional information regarding the alleged defect or condition.

Under current law, after rent escrow has been established, a court may, among other things and after a hearing (if one is requested by the tenant), order that if no repairs are made or if no good faith effort to repair is made within six months of the initial decision to place money in the escrow account, that the money in the account be disbursed to the tenant.

Under current law, such an order will not discharge the right on the part of the tenant to pay rent into court and an appeal *will* stay the forfeiture. Under the bill, such an order *may* be stayed on appeal by the landlord.

Under the bill, if the court orders any relief to a tenant who brings an action, the tenant may recover reasonable attorney's fees and costs and reasonable expenses related to litigation. However, if the court finds that a tenant filed a complaint in bad faith or without substantial justification, the court may enter a judgment in favor of the landlord for reasonable attorney's fees and costs and expenses related to litigation.

These aforementioned provisions supersede any local law or ordinance comparable in subject matter *except to the extent that local law or ordinance provides broader applicability or more protection for tenants.*

Breach of the Warranty of Habitability

Under the bill, "fit for human habitation" means that a dwelling unit and property of which the dwelling unit is a part are free from serious defects or conditions that constitute, or will constitute if not promptly corrected, a fire hazard or other serious and substantial threat to the life, health, or safety of occupants of the dwelling unit.

A landlord that offers a residential dwelling unit for rent, whether by written or oral lease agreement, must be deemed to warrant that the dwelling unit is fit for human habitation. The warranty of habitability exists throughout a tenant's tenancy.

The bill further establishes additional relief for breach of the warranty of habitability, applicable to landlords, tenants, and residential dwelling units that are subject to the above provisions (regarding the repair of serious and dangerous defects). Relief may not be conditioned on payment by the tenant of rent into escrow with the court.

In order to seek the remedies discussed below, a tenant must notify the landlord of the existence of the defects or conditions. The notice must be given by (1) a written communication sent by certified mail listing the asserted defects or conditions; (2) actual notice of the defects or conditions; or (3) a written violation, condemnation, or other notice from an appropriate State, county, municipal, or local government agency stating the asserted defects or conditions. Within a reasonable period of time after receipt of notice, the landlord must make the repairs or correct the conditions, as specified.

If a landlord breaches the warranty of habitability and refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action for damages and the abatement of rent against the landlord and (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative

defense to an action of distress for rent or to any other action brought by the landlord to recover rent or the possession of the leased premises. Multiple tenants may join as plaintiffs in an action in accordance with applicable Maryland Rules and these remedies are in addition to any other remedies provided under law.

The bill establishes the following as defenses to a claim for breach of the warranty of habitability: (1) the tenant, the tenant's family, agent, employees, assignees, or social guests caused the asserted defects or conditions; or (2) the landlord or the landlord's agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

The court must make appropriate findings of fact and issue any order that the justice of the case may require, including ordering any of the following:

- an award of actual damages;
- an abatement of rent due and unpaid; or
- the termination of the lease, return of any unused portion of a security deposit to the tenant, and relocation expense for a tenant.

Under the bill, if the court orders any relief to a tenant who brings action, the tenant may recover reasonable attorney's fees and costs and reasonable expenses related to litigation. However, if the court finds that a tenant filed a complaint in bad faith or without substantial justification, the landlord may recover reasonable attorney's fees and costs and expenses related to litigation.

Small Business Effect: Among other effects, landlords and other entities with control over residential property (including property management companies) are subject to more complex litigation in rent escrow cases (*e.g.*, single causes of action from multiple tenants) and awards of attorney's fees.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 691 and SB 807 of 2023.

Designated Cross File: SB 946 (Senator Kelly) - Judicial Proceedings.

Information Source(s): Maryland Association of Counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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rh/jkb

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Analysis by: Donavan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510