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To: The Honorable Kumar Barve
Chair, Environment and Transportation Committee

From: Kira Wilpone-Welborn
Staff Attorney

Re: House Bill 1372 – Residential Leases – Repair of Dangerous Defects and Failure to Pay Rent

The Consumer Protection Division of the Office of the Attorney General supports House Bill 1372 sponsored by Delegates Wells, Boyce, Lehman, and Lierman. The bill would refine the current rent escrow process to provide tenants with additional remedies to ensure that their landlords repair dangerous conditions in residential rental housing. Rent escrow is intended to provide tenants with a means of incentivizing landlords to repair dangerous defects in their rental units; however, often the bar for a tenant to access the rent escrow remedy is too high. House Bill 1372 would address barriers preventing tenants from using the rent escrow remedy and allow rent escrow to help ensure safe residential rental housing as the original statute intended. Additionally, House Bill 1372 would codify an affirmative remedy for tenants to seek recovery for past damages due to unrepaired dangerous defects in their rental units, i.e., breach of the warranty of habitability.

Landlord-tenant complaints are consistently among the top complaints received from consumers each year by the Consumer Protection Division. A significant number of the landlord-tenant complaints the Consumer Protection Division receives involve complaints about the conditions in rental housing. While the Division is occasionally able to resolve the complaints by having landlords agree to address the conditions or reimburse a tenant for any repair costs paid by a tenant, if the Division is unable to achieve an amicable resolution to an individual complaint, it will recommend that the tenant seek a judicial remedy, such as filing a rent escrow action.

Under the current law, however, tenants are required to pay into an escrow account current rent plus any past due rent in order to bring the conditions of the property to the court's attention. Often the tenant's past-due rent is the result of the tenant having used money intended for rental payments to instead make repairs to the rental property or pay for alternative housing because their unit is uninhabitable. House Bill 1372 would address this barrier by removing the pay-to-play requirement. The bill provides that a tenant need only pay current rent into a rent escrow account



and a judge would be empowered to determine whether any past due rent should be paid or reduced based upon the conditions of the rental property. Thus, tenants would be given the opportunity to present their complaint about the condition of the property to the court without having to first come up with all amounts that may or may not be due.

The bill also provides a necessary remedy for tenants to be able to collect reimbursement for past economic harms due to a landlord's failure to repair dangerous defects. The current rent escrow framework does not explicitly make clear that tenants should be able to recover for damages that accrue before an escrow action is filed, but after a landlord has notice of a dangerous defect. The codification of the warranty of habitability would ensure that tenants could recover for past harms. As such, not only would House Bill 1372 make rent escrow more accessible to tenants and provide relief for tenants' unreimbursed expenses, it would also help the Consumer Protection Division resolve complaints through mediation because landlords would know that should mediation fail, tenants would be able to use rent escrow and the warranty of habitability to address habitability complaints.

Accordingly, the Division requests that the Environment and Transportation Committee give House Bill 1372 a favorable report.