



HB 1372
Real Property – Residential Leases –
Repair of Dangerous Defects and Failure to Pay Rent
Hearing before the House Environment and Transportation Committee
March 3, 2020
Position: SUPPORT

The Pro Bono Resource Center of Maryland (“PBRC”), an independent 501(c)(3) non-profit organization, is the statewide clearinghouse for pro bono civil legal services in Maryland. As the designated pro bono arm of the Maryland State Bar Association, PBRC provides training, mentorship, and pro bono service opportunities to members of the private bar. PBRC supports HB1372 because we have experienced first-hand the ways that the current rent escrow procedure harms, rather than protects, renters in Maryland.

- a. Tenants need representation in rent escrow proceedings and the fee-shifting clause in HB 1372 allowing a court to award attorney’s fees to prevailing tenants will lead to more tenants securing representation for their rent escrow cases.**

Through PBRC’s Low Bono Rent Escrow Program (funded by the Maryland Legal Services Corporation)—which is an extension of our Tenant Volunteer Lawyer of the Day Program (funded by the Maryland Judiciary’s Access to Justice Department)—income-eligible tenants in Baltimore City are placed with a staff or volunteer attorneys for representation in rent escrow proceedings. Initially, this program was solely pro bono, meaning the volunteers received no compensation for their legal services. The demand for pro bono representation in these cases became so high that we decided to pilot a low bono model where our volunteer attorneys handling rent escrow cases would be paid a reduced-fee hourly rate to incentivize more members of the private bar to join our volunteer pool. Since rolling out the low bono program to our volunteers, we have secured low bono representation for tenants in 85% of the rent escrow cases we’ve opened.

But relying on low bono and pro bono volunteer attorneys is not a permanent solution. This program currently operates in only one jurisdiction in the state, is available only to tenants who are at 50% of the Maryland Median Income (MMI), and is completely contingent on grant funding. The rest of the work is left to legal services attorneys who generally have a very limited capacity to handle rent escrow cases in-house. Allowing the court to award attorney’s fees to prevailing tenants where the court deems it appropriate would incentivize more members of the private bar to represent tenants with habitability claims. This is not a new idea; many consumer protection statutes include a fee-shifting clause for this very reason. The fee-shifting provision in HB 1372 is important, especially to tenants who cannot afford counsel, and will increase representation for tenants in rent escrow cases.

b. HB 1372 eliminates the “three judgment bar” preventing tenants from utilizing rent escrow to encourage repairs to dangerous defects if her rent has been late three times in a year (“six judgment bar” in Baltimore City).

Rent escrow is designed to encourage, or more specifically, to court-order, that a landlord repair dangerous defects existing on a property that are considered threats to the tenant’s life, health, and/or safety. Whether or not a tenant has valid habitability claims has nothing to do with a tenant’s payment history and should have no bearing on a tenant’s right to invoke rent escrow. At a time when rents are rising, many renters live paycheck-to-paycheck. In the event of unexpected illness, a cut in hours at work, or some other “life happens” kind of expense, a tenant may be late on rent and receive a judgment in rent court. Additionally, many landlords utilize third-party automated filing systems such as “Click Notices” to generate thousands of FTPR complaints at a time. Mistakes happen that result in judgments being entered when they shouldn’t; for example, just last week I represented a tenant who was not only being sued for the wrong amount, but the agent (a well-known, very experienced agent) had filed the exact same complaint twice, causing the tenant to get two court notices with two different dates. Fortunately, my client—who speaks little English and has never been to rent court—was wise enough to show me the duplicate complaint. The agent said, “Oh yeah, that’s [filing duplicate complaints] been happening a lot” and agreed to dismiss the case. If my client either didn’t know about the second hearing (scheduled a week later) or thought that it was taken care of with the duplicate case, he would have gotten a default judgment. Whether by mistake or because of short-term financial hardship, a tenant who is living with threats to life, health, and/or safety and has given the landlord proper notice and reasonable time to remedy the issues should not be prevented from utilizing rent escrow in the eight month of her tenancy simply because received a judgment during the third, fifth, and sixth months of her tenancy. The three-judgment rule (six judgments in Baltimore City) only works against the renters that the rent escrow law is designed to protect.

c. Removing the “paywall” requirement that a tenant pay all alleged back rent into escrow in order to present her habitability claims to a judge will ensure that the rent escrow law works the way it is intended to work.

Through our rent court work, we have found that a significant barrier exists that prevents tenants from utilizing rent escrow when their landlord fails to remedy dangerous defects on the property. This barrier—what tenant advocates refer to as the “paywall” requirement that tenants pay all alleged back rent into escrow—is preventing low-income renters from utilizing the rent escrow process, even where an inspector finds that threats to life, health, or safety exist on the property.

Far too many clients come to mind whose situations exemplify the unfair, unjust outcomes created by the rent escrow “paywall,” but perhaps the best example is the following:

Three different tenants lived in different units in the same apartment building. Due to conditions on the property that had been going on for at least five months, including improperly working heat, improperly working toilets, rodent infestation, broken locks on the front door, and mold, the tenants each decided to withhold a month’s rent. In turn, their landlord filed a failure to pay rent action against each tenant. In rent court, all three tenants raised a rent escrow defense. Of the three tenants, only one was able to successfully utilize rent escrow to address the problems because the other two did not have the back rent to deposit into escrow by the court-ordered deadline. As a result, they both had judgments for

failure to pay rent entered against them and did not get their day in court to address the issues with the property. The tenant who was able to overcome the paywall barrier and deposit alleged back rent into escrow was awarded that amount back at the conclusion of the rent escrow proceedings, and, since the landlord timely remedied the unsafe conditions on the property, he was awarded the additional rent that had been deposited into escrow as it became due. This is how the rent escrow process is intended to work, and the only reason it didn't work for all the tenants in this scenario is because of the existence of the paywall. HB1372 would have allowed all tenants to pursue rent escrow so long as they could deposit into escrow rent as it became due. Then, once the landlord fixed the problems, a judge would consider whether the past due rent is should be credited to the tenant (based on her warranty of habitability claim) or whether the landlord should be awarded the past due rent at the time escrow was raised.

In debt collection cases, a defendant who disputes all or some of the alleged debt is not required to pay the amount claimed to the court before having a trial. Such a procedure would be patently unfair and unjust, which is why HB 1372 is so important to renters in Maryland. In the same way that alleged debtors get a trial to defend themselves if the raise a defense, tenants who raise a credible habitability defense should also get a hearing before being ordered to pay the alleged past due rent.

For the above reasons,

PBRC urges a FAVORABLE report on HB 1372.

Please contact Sydney Dunning, Director of PBRC's Courtroom Advocacy Project, with any questions. sdunning@probonomd.org • 443-703-3049