



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 3, 2020

House of Delegates – Environment and Transportation Committee

House Bill 1372 – Real Property – Residential Leases – Repair of Dangerous Defects and Failure to Pay Rent

Position: Favorable

Chairman and Members of the Committee:

For the record, my name is Delegate Melissa Wells and I thank you for allowing me to appear before the committee today to testify in Support of House Bill 1372

Rent escrow was established in the early 1970s as way for renters to make a claim against the landlord based on dangerous conditions in the rental property. This claim can be a lawsuit against the landlord (“affirmative rent escrow”) or a defense to a Failure to Pay Rent case (“defense rent escrow”). The law requires tenants first to provide notice of the conditions and a reasonable opportunity for the landlord to do repairs. Additionally, relief is pre-conditioned on the tenant’s paying “the amount of rent required by the lease, unless modified by the court,” into a court account.

In rent escrow cases, courts hold the tenant’s rent money and have wide discretion to provide injunctive relief, such as to order repairs, reduce the rent, or terminate the lease. Escrowed money is also distributed at the conclusion of the case to one or both of the parties.

This system creates a host of problems and barriers for tenants including:

1. **Financial barriers.** Tenants are commonly ordered to deposit all alleged back rent to proceed with their rent escrow case. Current law also bars relief to any tenant with 3 or more ‘Failure to Pay Rent’ judgments in the prior 12 months (6 judgments in Baltimore City).
2. **No remedy for past harm.** Many tenants assert rent escrow claims after weeks or months of dealing with dangerous conditions. In the rent escrow case, they seek compensation for the hardships and harms that pre-dated the escrow case. However, courts typically disregard these claims because “that’s not what rent escrow is for.”
3. **Lack of legal representation.** Litigation against a landlord is difficult. To win a case about housing defects, renters need attorneys. But few private practitioners can afford to take these cases. Most leases do not allow tenants to recover attorney’s fees, and the current rent escrow statute does not award attorney’s fees to a winning tenant. Even pro bono and legal aid groups are not sufficiently resourced to take many rent escrow cases. Ultimately, the lack of counsel is a barrier that prevents or discourages tenants from challenging substandard housing.

HB 1372 aims to provide the following solutions:

1) HB 1372 removes financial barriers:

- The bill removes the 3-judgment bar on raising a rent escrow claim.
- The bill clarifies that tenants do *not* need to pay all alleged back rent into escrow in order to have their case heard. The bill would require that when a tenant requests repairs and reduction of future rent, the tenant

should pay at most just the current monthly rent and then make continuing payments to the court while the case continues.

2) The bill provides a clear method for renters to seek compensation for past harm and hardship.

- The bill revises the existing law to emphasize that there are 2 remedies: (1) rent escrow, which is appropriate to seek repairs and reduction of future rent and requires the tenant's payment of funds into a court account; and (2) a Warranty of Habitability, through which to seek damages (compensation) for past harm/hardship and which does *not* require payment of funds into a court account.

Damages for violation of the Warranty of Habitability are limited to

- the cost to the renter of out-of-pocket expenses, such as repairs,
- the cost of the renter's temporary alternative shelter, such as a hotel, and
- The difference between rent paid and the lowered value of the rental unit in its damaged condition.

3) The bill allows (does not require) judges to award costs and attorney's fees to tenants who win.

4) HB 1372 creates a concrete procedure for tenants in Rent Court to bring forward their rent escrow and warranty of habitability claims. Under the existing process, tenants have short notice of a Rent Court case, no opportunity to file an answer or counterclaim, and little time to prepare for court.

- Instead of having prove up their claims on short notice, renters would state their case to a judge, who would then continue the matter for up to 14 days.
- The continuance under HB 1372 is specifically for the purpose of preparing a defense (rent escrow) or filing a pleading (warranty of habitability).

With this, I would request a favorable report, and I ask that my panel be allowed to provide you with additional information

Delegate Melissa Wells