

March 10, 2020

Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
251 House Office Building
6 Bladen Street
Annapolis, MD 21401

**RE: Testimony Regarding House Bill 628
Montgomery County—Residential Leases—Just Cause Eviction and
Eviction Reporting**

Dear Chairman Barve and Committee Members:

Thank you for the opportunity to testify in support of House Bill 821. House Bill 821 will protect vulnerable families in Montgomery County by requiring landlords to clearly communicate to tenants why they are not renewing an occupant's lease. This measure would promote housing security, stability, and due process for renters in two key ways: First, it will improve fairness in the residential rental market by affording month-to-month tenants similar protections afforded to lessees under a typical lease; and second, it will further align Montgomery County's Landlord-Tenant laws with its obligations to implement protections against arbitrary and unlawful interference with a person's access to housing under state, federal, and international law. Delegate Jheanelle Wilkins requested Maryland Legal Aid, Inc. provide this testimony to the Committee on this legislation. Maryland Legal Aid, Inc. ("Legal Aid") is a private, non-profit organization that provides free legal services to indigent Maryland residents. In our 13 offices that serve the entire state, we assist individuals and families with a wide array of civil legal issues including, consumer, housing, public benefits, and family law matters. We also represent abused and neglected children and provide legal services to senior citizens and nursing home residents, as well as working with the private bar to help thousands of Marylanders expunge their criminal records. This letter serves as notice that James E. Toliver, Esq. will be testifying on behalf of Legal Aid at the request of Delegate Jheanelle Wilkins.

According to the most recent data from the American Community Survey, renters as a portion of the housing market in Montgomery County continue to increase, with 35% of all households having a landlord. This represents a 3.2% increase in the number of tenants versus homeowners since 1990 where the renter versus homeowner rates were 32.1% and 67.9% respectively. Of the 91,000 households added to Montgomery County in the last 30 years 41,132 of these households (approximately 45 percent) were renters. This trend of renters becoming an increasingly larger share of housing consumers is only expected to continue, as renting becomes the preferred means of housing for persons over the age of 60. While tenancies are an increasingly permanent part of how county residents

house themselves, the current legal framework governing the landlord-tenant relationship does not include the appropriate measure of fairness expected in a housing market.

Under the current law, a residential landlord doing business in Montgomery County is required to offer their tenants a two year initial lease term, but the parties can agree to a shorter term as long the offer and rejection of the initial two-year lease is in writing. If both the landlord and tenant agree to continue the renting relationship past the original lease term, but do not renew the existing lease or create a new rent contract, the lease becomes a month-to-month tenancy. Under a month-to-month tenancy the lease term, as the name implies, is one calendar month. The present legal framework does not require a month-to-month landlord to provide any justification for denying a tenant a renewed monthly lease, even when a family has always paid their rent and complied with the terms of their lease. The effect of this regime is the creation of a harmful power imbalance between housing providers and vulnerable housing consumers, where this lack of having to provide any cause for why a lease is not being renewed gives the landlord a “shortcut” to oust a tenant without affording them any real due process and escape the safeguards Maryland law affords residential renters. This distortion in market power affects all tenants but are visited disproportionately on Legal Aid’s poor and elderly clients.

I. HOUSE BILL 821 WILL IMPROVE FAIRNESS IN RESIDENTIAL RENTAL MARKET BY PROVIDING MONTH-TO MONTH TENANTS WITH SIMILAR RIGHTS PROVIDED TO TENANTS WITH A DEFINED LEASE TERM.

Residential leases in Montgomery County fall into essentially two categories; leases with a clearly defined term (typically one year); and leases that continue for an indeterminate period of time as month-to-month tenancies. Under the former if a landlord wishes to turn a tenant out of house and home before the expiration of their lease the landlord must initiate a breach of lease action, and prove by preponderance of the evidence two things; that the tenant breached a term of the lease and second the breach is severe enough to warrant eviction. The second element, that the violation is serious enough that depriving a family of their housing is appropriate, is referred to as demonstrating “just cause”.

With a month-to-month tenancy a renting family loses all the procedural protections provided under a defined lease term. At the same time the property owner gains the ability to skip having to provide a reason as to why they are no longer continuing the leasing relationship. This gap in procedural protections unnecessarily creates unfairness in the residential renting market where an unscrupulous housing provider may circumvent common sense protections for housing consumers by simply “running out the clock” and allowing the just cause requirement to lapse at the end of the defined lease term. Worst still is the climate of silence and fear that a lack of just cause requirement creates for month-to-month tenants, where a tenant will not report housing violations out of fear of a landlord summarily ousting them.

This is a scenario all too familiar to Legal Aid in representing clients. A typical scenario our office finds itself assisting with is as follows: A client with two children will have lived in her home for years, sometimes over a decade, without any issue. At the start of her family's tenancy the client had a standard lease of a year, but after this original term expired the landlord put her on a month-to-month contract. Unbeknownst to the client, while the landlord continuously renewed his expected financial benefit each month, her family lost the basic dignity of being provided a reason why her lease would not be renewed. At first this arrangement seemed to be mutually beneficial, but once the client began to voice her dissatisfaction with the conditions of the property or its management, the landlord, without explaining why, informed the client that her lease would not be renewed and she and her family had 60 days to find new living arrangements, an impossible task given the scarcity of affordable units for low-income families. The client failed to find housing in the timeframe dictated by the landlord, and without the protections a just cause requirement would provide, was evicted as a tenant holding over.

Maryland law contemplates that like any contract, when a landlord and tenant enter into a lease there should be some parity in power between the parties on either side of the agreement. Because of the unavoidable disparity in bargaining strength between a landlord and tenant, the Legislature put in place specific protections for most renters. Outside the ambit of existing renter protections are tenants on month-to-month leases.

HB 821 advances the goal of protecting tenants' procedural right to secure and stable housing by bringing month to month occupants fully within the law's protection from arbitrary and potentially unlawful evictions. This bill would provide month-to-month tenants, essentially, the same standard of communication regarding why a landlord is ending a tenancy that renters with a traditional lease have. This would tremendously increase fairness in renting for all tenants, but especially for low-income people. HB 821's just cause requirements will compel landlords to be transparent with all their tenants, regardless of the length of a lease, and state their reasons for denying tenants continued housing, resulting in a more equitable housing market in Montgomery County.

HB 821 would also disincentivize the use of month-to-month tenancies to sidestep the procedural protections afforded by traditional lease terms. As long as a tenant is on month-to-month, less scrupulous landlords can (and do) rely on the implicit threat of sudden and unavoidable eviction to keep their tenants "in line" and discourage them from protecting themselves and their families. By requiring that landlords prove just cause to terminate a tenancy, HB 821 would lessen the effectiveness of allowing an existing lease to default to a month-to-month tenancy, and would encourage landlords to offer leases of a year or more at the expiration of an initial lease term. This in turn would increase the stability of a tenant's tenure of housing, something that is of exceptional importance for our clients, for whom the costs associated with moving can be prohibitive.

II. INTERNATIONAL HUMAN RIGHTS NORMS AND LAW COMPEL INCREASED PROTECTIONS FOR TENANTS

The passage and implementation of HB 821 would also be an important step towards bringing Maryland closer to its obligations under human rights norms and international law. The legal tradition in the U.S. has long embraced looking to foreign and international precedent for guidance on domestic legal questions. Consequently, federal and state courts and legislative bodies in the U.S. regularly look to the opinions of international bodies and colleagues in foreign jurisdictions for assistance in reaching sound conclusions under domestic law. Former Supreme Court Justice Anthony Kennedy once wrote that “[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”¹ Furthermore, Article 2 of our own Maryland state constitution provides that “all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State.” In other words, endeavoring to meet the obligations laid out by international treaties is not merely good policy; it’s a constitutional directive.

Article 25 of the Universal Declaration of Human Rights declares that “[e]veryone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including...housing...” The Committee on Economic, Social, and Cultural Rights, the body that monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR), observed that this right requires that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”² Furthermore, the International Covenant on Civil and Political Rights (ratified by the US in 1993), affirms that “[n]o one shall be subjected to arbitrary or unlawful interference with his [or her]... home.”³

By enacting this legislation, the legislature would be taking a small but important step toward providing the security of tenure called for in this Covenant.

III. CONCLUSION

Landlords and their agents may argue that this bill would strip away their ability to remove “problem tenants”, or that it would place undue or onerous costs on property owners and developers. However, the only thing that passage of this bill would do is guarantee there is no shortage in the circuit of accountability that powers a just and robust residential rental market. Under the current system, landlords are amply empowered to evict “problem tenants” by giving notice, filing a case, and acquiring a court in order to obtain repossession of a premises; HB 821 would merely require that for month-to-month tenants a landlord state the reason why they are ending the tenancy. HB 821 does not create any

¹ *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005)

² General Comment 4, U.N. Doc. E/1992/23 (1991)

³ ICCPR, Art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95- 20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.

new rights for tenants it merely recognizes the procedural importance of the exchange of knowledge between a housing provider and consumer. Nor does this bill impose a burden that landlords are not already proven to be able to meet. Simply put, the current law makes the tenant's right to defend themselves and their families subservient to the landlord's demand to be unquestioned, and changing this unjust dynamic would substantially improve the housing situation of both our clients and of tenants as a whole.

For these reasons we ask this committee for a favorable report on HB 821.

Sincerely,

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