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HB 574 Montgomery County Stable Homes Act MC 8-21

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Position: FAV

The Public Justice Center is a not-for-profit, civil legal aid organization that serves over 700 renters each year throughout Maryland, including Montgomery County. Our clients know firsthand the indignity of facing eviction for no fault of their own. Under current Montgomery County law, landlords may terminate or non-renew a lease on 60 days' notice. The notice does not need to provide a reason. If the renter stays on, the landlord may then file a "Tenant Holding Over" (THO) eviction action in District Court, under Real Property § 8-402. This statewide statute does not require a landlord to demonstrate any reason for the decision to terminate or non-renew the lease. These ground rules of THO evictions have largely stayed intact throughout the COVID-19 pandemic. Gov. Hogan's Executive Order on evictions, as well as the CDC Order halting evictions through March 2021, have left thousands of Maryland households vulnerable to a lease termination loophole.

Public Justice Center urges the Committee to move this bill favorably. Arbitrary lease terminations destabilize the lives of working people, their children, and their communities. Amid a once-in-100-years pandemic, lease termination and the consequent displacement expose Marylanders to transmission of the coronavirus.¹ **For Montgomery County renters, HB 574 does away with no-fault eviction by ensuring that there would be a "just cause" for evicting renters who are doing their best to live the rules. This bill is about preserving peace and stability in rental housing. The COVID-19 crisis has made crystal clear that housing stability is crucial not just to individual human needs but to the safety and health of communities, states, and the nation.**

HB 574 addresses the harm of arbitrary lease terminations.

A PJC client lost her job in March 2020 after Gov. Hogan ordered closure of non-essential businesses. Still waiting to receive her unemployment benefits, she could make only a partial payment for April rent. Her landlord was contacting her several times a week for payment of the rest. In late April, when she was not even a full month behind on rent, the landlord gave her a notice to vacate. She had lived at the rental property for 12 years.

¹ Annie Nova, "Evictions have led to hundreds of thousands of additional Covid-19 cases, research finds," CNBC, Nov. 27, 2020, available at <https://www.cnbc.com/2020/11/27/evictions-have-led-to-hundreds-of-thousands-of-extra-covid-cases.html> (last access on Dec. 7, 2020) ("lifting state moratoriums and allowing eviction proceedings to continue caused as many as 433,700 excess cases of Covid-19 and 10,700 additional deaths in the U.S. between March and September.").

At that time, her landlord could not proceed with a Failure to Pay Rent eviction action and would not be able to until August 31, 2020, when the District Court began scheduling these proceedings. In the meantime, our client was vulnerable to a THO action. **By issuing a notice to vacate, even amid a state of emergency, the landlord had covered the one legal condition for bringing a THO action in the courts. This was powerful leverage for the landlord while our client faced a crisis, uncertainty, and fear.**

Countless more PJC clients have faced similar circumstances in this pandemic. As they waited on unemployment checks and rental assistance, their landlords exerted pressure to leave by issuing vacate notices and filing THO actions. From limited data released by the Maryland Judiciary during the pandemic, we know that while non-payment actions plummeted, THO filings increased 105 percent compared to September 2019 and 117 percent compared to October 2019. For the same periods, Montgomery County cases increased 34 percent and 50 percent, leading up to a 93 percent increase year over year in November.

Tenant Holding Over cases filed <i>Maryland</i>				Tenant Holding Over cases filed <i>Montgomery County</i>			
	2020	2019	%Change		2020	2019	%Change
July	294	279	5%	July	33	35	-6%
August	409	310	32%	August	42	36	17%
September	512	250	105%	September	47	35	34%
October	552	254	117%	October	57	38	50%
November	436	225	94%	November	58	30	93%

Anecdotally, PJC attorneys see a trend toward THO actions filed in lieu of Failure to Pay Rent actions, particularly since November, as landlords find that the district courts are scheduling THO cases for trial months sooner than non-payment cases. With the recent return to partial closure because of the worsening pandemic, the District Court has invented a category of “emergency tenant holding over actions,” which will proceed despite the closure. As there is no guidance on what, if anything, would cause a THO action to be an “emergency,” we are seeing ordinary cases receive expedited treatment, forcing our clients and our attorneys into courtrooms despite the continuing coronavirus case and death figures.

Notably, judicial statistics do not tell the story of how many renter households ‘self-evicted’ after they received a notice to vacate. In a typical year, Maryland’s no-fault policy on lease termination puts pressure on tenants to accept rent increases, declining housing conditions, and the futility of resisting displacement. In this extraordinary crisis, the lack of a just cause requirement is exposing renters to an unmitigated threat of displacement, illness, and even death.

The need for “Just Cause” in evictions is greater than ever.

The Stable Homes Act is a balanced response to rampant unaffordability and an epidemic of displacement. In Montgomery County “[o]ver 80 percent of families with incomes below 50 percent of the Area Median Income (below \$58,600 for a family of four as of June 1, 2018) are cost burdened (that

is, they pay more than 30 percent of their income in rent), and over half of these families are extremely cost burdened (pay more than 50 percent of their income in rent).”² Whether low-wage workers, seniors, or people with disabilities, those who live one paycheck to the next are under enormous pressure to keep up with unaffordable rent. If forced to move because their current landlord refuses to renew their lease, these renters face dire straits in securing funds to pay moving costs and to pay the security deposit and first month’s rent when they sign the lease for their next home. When affordable, safe, habitable housing is a rare commodity as at present, a just-cause requirement for evictions ensures that no person is arbitrarily displaced from their home.

HB 574 would buoy the rental housing market. It recognizes that when renters are stably housed, they are better able to contribute to the workforce and the economy. Requiring just cause as a precondition for an eviction is a limited requirement which boosts the stability of the market by stabilizing families, neighborhoods, and communities to ensure that no one is arbitrarily deprived of their home.

In a public health emergency that has caused unprecedented wage loss, it is important that HB 574’s enumerated “just causes” do not include habitual non-payment of rent, as set forth in prior iterations of this legislation.

Maryland’s current retaliation law does not fully protect tenants

Maryland’s existing protection against retaliatory lease terminations (Real Property § 8-208.1), while helpful, has numerous shortcomings:

- The list of protected activities includes only specific activities like complaining about the condition of the property.
- If the tenant’s protected activity occurred more than 6 months before the eviction action, or the tenant is not current on rent, then the tenant has no defense.
- The renter has the burden to prove the landlord’s motive in a court process that does not allow discovery or time to subpoena records or witnesses. These renters have no right to legal representation.

For many renters, the current retaliation law offers no protection. HB 574 provides wider protection. Landlords would still evict tenants for legitimate reasons such breach of lease. They would not, however, evict tenants arbitrarily or out of retaliatory motive.

Please issue a FAVORABLE report on HB 574. If you have any questions, please contact Zafar Shah, (410) 625-9409, shahz@publicjustice.org.

² MONTGOMERY COUNTY OFFICE OF LEGISLATIVE OVERSIGHT, *Evictions in Montgomery County*, iii (2018), available at https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/2018_10EvictionsMontgomeryCounty.pdf.