



Testimony in SUPPORT of HB18
Landlord and Tenant - Eviction Action - Right to Counsel
Judicial Proceedings & Budget and Taxation Committee

Jonathan Riedel, On Behalf of CASA

February 17, 2021

Good Afternoon Chairman Clippinger Members of the Committees:

CASA is pleased to provide strong support for HB18, Landlord and Tenant - Eviction Action - Right to Counsel. CASA is the largest membership-based immigrant services and advocacy organizations in the mid-Atlantic region, with a membership of over 100,000 Black and Latino immigrants and working families. Thank you for this opportunity to testify today in support of HB18.

The facts are clear on housing law: there is a gross disparity of power between landlords and tenants. Thousands of families every year are evicted, whether by a court's judgment, a sheriff's execution, a landlord's illegal lockout, or a tenant's departure because they feel they have no other choice. Many of these evictions and quasi-evictions occur despite tenants having good defenses and legitimate complaints that are never heard. This does not have to be the case.

CASA's experience with housing law is deep and long-standing. We see a number of disputes between landlords and tenants that can be resolved simply and easily through a tenant's right to counsel. We very frequently observe landlords engaging in acts, whether willful, negligent, or unintentional, that are clearly prohibited by law. However, tenants are rarely able to fight these illegal acts without competent legal advice and representation. Our members are primarily Spanish-speaking immigrants whose language barriers and cultural unfamiliarity with housing court create tremendous obstacles. Currently, there is simply not enough legal representation to go around, either from legal services organizations, private attorneys, or pro bono counsel.

Our members, who are uniquely vulnerable to exploitation by landlords, come to us with a variety of housing complaints. I would like to mention a few of these here in order to explain how a right to counsel is invaluable to helping tenants vindicate their rights.

Attorneys Can Help Enforce Landlord Obligations to Provide Safe and Sanitary Living Conditions.

First, landlords often ignore tenant complaints about conditions in their apartments and homes, including mold, roaches, bedbugs, rodents, inadequate heating and cooling, electrical hazards, faulty plumbing, major structural defects, and flooding. In our experience, these are not minor problems, such as a drafty window or a roach infestation that can be remediated through a

monthly extermination. Rather, they are conditions that cause physical and economic injury to tenants, from electrical shocks to flooded apartments that destroy the tenants' property.

Under the law, these conditions would absolutely justify avoidance of the contract (“constructive eviction”), a reduction in rent, or damages in a civil action. But tenants can rarely assert these rights on their own: county enforcement is often lax, and is especially difficult in the pandemic, while rent escrow protections are very narrowly available, procedurally confusing, and extremely risky for vulnerable tenants. So many tenants simply continue living in deplorable conditions and paying their rent in full, without knowing that they have the right to safe and sanitary housing under their contracts and under state law. We see in many cases that tenants fall behind or terminate their contracts early due to the horrendous conditions, only to receive notice of a landlord initiating eviction proceedings and sometimes civil suits to obtain money judgments of several thousand dollars. Under the law, the most just result is that the landlord should pay damages to the tenant for failing to provide adequate living quarters, but in practice, the landlord often wins in the courtroom because the landlord has a lawyer and the tenant does not. A tenant's attorney could effectively address this disparity.

Attorneys Can Fight Prohibited Fees and Rental Increases.

Second, landlords frequently charge fees to tenants that are prohibited by state and local law. *Legal fees* are prohibited in Montgomery County absent a court order. The amount of *late fees* are capped by law. With emergency pandemic legislation, more jurisdictions are providing for prohibitions and limitations on *rental increases* and late fees. Many *other kinds of fees* are arbitrarily added to tenant ledgers, including for parking, method of rent payment, maintenance, and general “violations”, even when there is nothing in the lease or the law providing for such penalties. Many landlords continue to charge these fees and refuse to remove them from tenant ledgers until CASA gets involved to fight them. Thus, some tenants have paid thousands upon thousands of dollars in fees that are not legally collectible. We see this most frequently with multi-family properties managed by professional property management companies.

Attorneys Can Ensure Return of Tenant Property Such as Security Deposits.

Third, landlords frequently withhold security deposits for ordinary wear and tear, in clear and unambiguous violation of state law. We have seen landlords charge all sorts of renovation expenses to the last tenant, from carpet replacement to new flooring to repainting the walls, none of which are the tenant's responsibility. We see this equally among large companies, small companies, and individual landlords. There is enormous confusion about the scope of what is permissible, and the Attorney General's office receives countless complaints each year about illegal security deposit withholding.

A security deposit may be just a few hundred dollars, but is typically a full month's rent. To a landlord, withholding a month of rent merely reduces or eliminates their reletting costs, but does not make or break their books. By contrast, for many tenants who were expecting the return of their security deposit and had paid the entirety of their rent in reliance on that expectation, this is a catastrophic blow to their finances. Our members sometimes have to take out personal loans in order to pay for the initial costs of a new apartment; the loss of a security deposit may therefore become the difference between restoring an economic foundation and spiraling into debt. An

attorney on the tenant's side to help resolve these disputes in advance would greatly help clarify this area of the law and ensure compliance by both landlord and tenant.

Attorneys Can Help Ensure Landlords' Compliance with Existing Housing Law.

Fourth, in many of the more populous jurisdictions including Baltimore, Montgomery County, and Prince George's County, a rental license is required to rent a property. Without this rental license, the collection of rent from the tenant is flatly prohibited. Many tenants have therefore been paying under a contract that is void or voidable. For this violation of law, tenants can not only entirely avoid certain kinds of evictions, but also recover thousands of dollars in damages. Yet the tenant is almost never aware of this defense without the advice of a competent lawyer. With the right to counsel, a lawyer who can help the tenant investigate whether the landlord has a license to operate will almost certainly save tenants thousands of dollars and promote landlords' compliance with existing license laws.

As you can see from this testimony, no landlord is perfect. Some make mistakes; some refuse to uphold their end of the bargain; and some willfully violate tenants' rights. Regardless of the motivation of the landlord, it is the tenants who suffer. The massive power imbalance perpetuated by the current system means that thousands of people who should not be evicted each year lose their homes, or are forced to continue to live in conditions that are unsafe and unsanitary. By establishing a right to counsel for tenants, HB18 helps facilitate access to justice, leveling the playing field in court and helping to keep Maryland families where they belong: in their homes.

For the reasons outlined above, CASA strongly supports HB18. The savings to the government of upholding tenants' rights will far outweigh the costs.

Jonathan Riedel
Legal Fellow, CASA
jriedel@wearecasa.org