



C. Matthew Hill
Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 229
hillm@publicjustice.org

HB 298 Landlord and Tenant – Eviction Actions – Filing Surcharge and Prohibited Lease Provisions

Hearing before the House Judiciary Committee, February 16, 2022

Position: FAVORABLE

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their right to safe, habitable, affordable, and non-discriminatory housing. **We support HB 298 as drafted, but we would oppose HB 298 if the bill is amended to allow the increased surcharge to be passed through to tenants under any circumstances.**

Please do not make tenants pay more for their own eviction.

HB 298 would increase the filing fee surcharge on eviction actions from \$8 to \$73 and prohibit passing on this increase to the tenant. Prior to the pandemic, landlords filed 660,000 eviction complaints each year in a State with only 730,000 renter households – the highest eviction filing rate in the nation. The General Assembly took an important step to address this in 2021 by providing tenants with access to counsel when funded while also requiring landlords to send a 10-day notice prior to filing an eviction case. Raising the fee – without passing it onto the tenant – would further disincentivize filing.

1. **Passing the fee onto tenants would more than double the total amount that tenants must pay to “pay and stay” and avoid eviction and homelessness.** To “pay and stay” from a rent court judgment, the tenant must pay all court costs. If the bill is amended to allow a pass through, this means more than doubling the total amount a resident must pay to redeem (\$60 to \$125 or \$80 to \$145 in Balt. City). *Some families will be unable to pay the fee – especially very low income, subsidized tenants whose rent is often only \$100/month – and will be evicted because of the increased fee.*
2. **“Judicial discretion” for passing on the fee is what happens now. Tenants almost always lose because most cases end in default judgments for the landlord plus costs.** Over 90% of rent cases that are not dismissed end in a “default judgment” against the tenant. The Court checks a box on the form: “Judgment in favor of Landlord for possession of the premises and costs.” This is the current exercise of “discretion,” and the tenant almost always loses. Even if the case doesn’t go to trial,

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

the landlord assesses the costs against the tenant via their lease provisions – even if the case is dismissed. The tenant virtually always loses. Even if eviction filings are reduced by 25% and 32,000 tenants receive counsel in eviction cases, that leaves appx. 460,000 eviction filings, the vast majority of which will include a \$65 increased fee that very vulnerable households will have to pay to avoid eviction.

3. **Allowing a fee pass-through defeats the purpose of the bill, which is to disincentivize serial eviction filing.** If the landlord can recover the increased surcharge, it will have little effect on landlord eviction filing.
4. **Tenants still have an incentive to pay the rent in a timely fashion because landlords can still assess a 5% late fee and court filing fee – just not this increased surcharge.**
5. **If a landlord truly wants to evict a tenant who is chronically late, then after three judgments the landlord can foreclose on the right to redeem (i.e., no “pay and stay”).** There is no need for the landlord to continue seeking judgments and passing on the increased surcharge.
6. **When fully funded, Access to Counsel will assist annually approximately 32,000 tenants who have a defense. It does not solve Maryland’s significant affordability gap:** There are 193,819 extremely low-income (\$31,600/year for family of four) renter households in Maryland. 74% of those households are severely cost-burdened, i.e., paying more than 50% of their income in rent. These households are one paycheck or unexpected expense away from facing an eviction.

Even an amendment that would allow landlords to pass through the fee to tenants only after the 3rd failure-to-pay-rent filing in a year would still fall disproportionately on the renters who are least able to pay the increased fee because they are often on the brink of eviction. In the experience of our organization, landlords file against the same tenant repeatedly within the year because the purpose of the eviction filing is not eviction *per se* but rather debt collection.¹ For example, if there is a dispute between the landlord and

¹ “The execution of an eviction is a double-edged sword for landlords, who must balance the costs of unit turnover with those of allowing a tenant to remain in rent arrears. But this is not the case for filing. *Filing* costs a modest fee, and initiates a legal process that leverages the power of the state both symbolically and physically to encourage the tenant to pay her late rent. Moreover, the process of repeated (“serial”) filing for eviction and charging late fees, even on tenants who are expected to eventually pay their rent, is used by some landlords as an additional revenue source.” Drs. Philip ME Garboden and Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, City and The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

tenant over \$500 in rent or other fees, the tenant may pay the \$1,000 monthly rent timely, but the landlord may still file an eviction complaint for multiple successive months because there remains a \$500 back balance to which the landlord allocates first the tenant's payment each month, charging a late fee in each of those months as well. Even with a prohibition on pass-through of this surcharge, tenants still have ample incentive to pay the rent timely to avoid late fees and the current court costs that landlord pass through pursuant to statute. This additional proposed surcharge should instead serve as an incentive for the landlord to attempt to work with the tenant, accept a payment plan, and connect the tenant to social services if needed, instead of skipping straight to an eviction filing each month.

Finally, some of the opposition in the Senate testified that the serial filing rate in Maryland is due to courts purportedly refusing to allow "future rent." In our experience and the experience of four colleagues with whom I consulted around the state, the court does regularly award "future rent" in failure-to-pay-rent cases.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee issue a **FAVORABLE REPORT WITHOUT AMENDMENTS on HB 298**. If you have any questions, please contact Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.

Community: A Journal of the Community and Urban Sociology Section of the American Sociological Association, Vol. 18, No. 2, June 2019, at 11-12 (emphasis original) (internal citations omitted).

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.