

HOUSE BILL 1487

N1

7lr1402

By: **Delegate Rosenberg**

Introduced and read first time: February 10, 2017

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Landlord and Tenant – Repossession for Failure to Pay Rent – Procedures**

3 FOR the purpose of requiring an action for repossession for failure to pay rent to contain a
4 certain statement on whether the property is an affected property under certain
5 lead-based paint abatement laws; authorizing a court to dismiss an action for
6 repossession for failure to pay rent that does not include certain information on the
7 status of the property as an affected property; altering certain time frames for
8 scheduling a trial date and serving a summons in an action for repossession for
9 failure to pay rent under certain circumstances; requiring a constable or sheriff to
10 refund service fees under certain circumstances; authorizing a court to adjourn a
11 certain trial to obtain documents or other proof of a claim or defense; repealing a
12 certain prohibition against raising as an issue of fact a landlord's compliance with
13 certain requirements related to lead-based paint abatement; authorizing a court to
14 take certain actions pending a decision on a certain appeal; prohibiting a landlord
15 from seeking a certain judgment for unpaid rent when there is an existing judgment
16 or warrant of restitution in effect for the same rent; prohibiting a landlord from filing
17 an action for repossession for failure to pay rent after a certain time; and generally
18 relating to actions for repossession for failure to pay rent.

19 BY repealing and reenacting, with amendments,
20 Article – Real Property
21 Section 8–401
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2016 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 **Article – Real Property**

27 8–401.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises.

(b) (1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, the landlord or the landlord's duly qualified agent or attorney shall file the landlord's written complaint under oath or affirmation, in the District Court of the county wherein the property is situated:

(i) Describing in general terms the property sought to be repossessed;

(ii) Setting forth the name of each tenant to whom the property is rented or any assignee or subtenant;

(iii) Stating the amount of rent and any late fees due and unpaid, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7–309 of the Public Utilities Article;

(iv) Requesting to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, and any late fees, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7–309 of the Public Utilities Article;

(v) If applicable, stating that, to the best of the landlord's knowledge, the tenant is deceased, intestate, and without next of kin; [and]

(vi) **STATING WHETHER THE PROPERTY TO BE REPOSSESSED IS AN AFFECTED PROPERTY AS DEFINED IN § 6–801 OF THE ENVIRONMENT ARTICLE; AND**

(VII) If the property to be repossessed is an affected property as defined in § 6–801 of the Environment Article, stating that the landlord has registered the affected property as required under § 6–811 of the Environment Article and renewed the registration as required under § 6–812 of the Environment Article and:

1. A. If the current tenant moved into the property on or after February 24, 1996, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6–815(c) of the Environment Article; or

B. On or after February 24, 2006, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6–815(c), § 6–817(b), or § 6–819(f) of the Environment Article; or

2. Stating that the owner is unable to provide an inspection certificate number because:

A. The owner has requested that the tenant allow the owner access to the property to perform the work required under Title 6, Subtitle 8 of the Environment Article;

B. The owner has offered to relocate the tenant in order to allow the owner to perform work if the work will disturb the paint on the interior surfaces of the property and to pay the reasonable expenses the tenant would incur directly related to the relocation; and

C. The tenant has refused to allow access to the owner or refused to vacate the property in order for the owner to perform the required work.

(2) THE COURT MAY DISMISS ANY COMPLAINT THAT FAILS TO PROVIDE THE INFORMATION REQUIRED UNDER PARAGRAPHS (1)(VI) AND (VII) OF THIS SUBSECTION.

(3) For the purpose of the court's determination under subsection (c) of this section the landlord shall also specify the amount of rent due for each rental period under the lease, the day that the rent is due for each rental period, and any late fees for overdue rent payments.

[(3)] (4) The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering the constable or sheriff to notify the tenant, assignee, or subtenant by first-class mail:

(i) To appear before the District Court at the trial to be held on the **[fifth] 14TH** day after the filing of the complaint; and

(ii) To answer the landlord's complaint to show cause why the demand of the landlord should not be granted.

[(4)] (5) (i) The constable or sheriff shall proceed to serve the summons upon the tenant, assignee, or subtenant or their known or authorized agent **AT LEAST 7 DAYS BEFORE THE TRIAL DATE** as follows:

1. If personal service is requested and any of the persons whom the sheriff shall serve is found on the property, the sheriff shall serve any such persons; or

2. If personal service is requested and none of the persons whom the sheriff is directed to serve shall be found on the property and, in all cases where personal service is not requested, the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property.

(II) IF THE CONSTABLE OR SHERIFF IS UNABLE TO SERVE THE SUMMONS AS REQUIRED UNDER THIS PARAGRAPH, THE COURT SHALL RESCHEDULE THE HEARING TO ALLOW FOR SERVICE AT LEAST 7 DAYS IN ADVANCE OF THE NEW HEARING.

(III) THE CONSTABLE OR SHERIFF SHALL REFUND ANY FEES FOR SERVICE WHEN FAILURE OF THE CONSTABLE OR SHERIFF TO TIMELY SERVE A SUMMONS IS NOT THE RESULT OF A DELAY BY THE COURT.

[(ii)] (IV) The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

[(5)] (6) Notwithstanding the provisions of paragraphs (1) through [(4)] (5) of this subsection, in Wicomico County, in an action to repossess any premises under this section, service of process on a tenant may be directed to any person authorized under the Maryland Rules to serve process.

[(6)] (7) (i) Notwithstanding the provisions of paragraphs [(3)] (4) through [(5)] (6) of this subsection, if the landlord certifies to the court in the written complaint required under paragraph (1) of this subsection that, to the best of the landlord's knowledge, the tenant is deceased, intestate, and without next of kin, the District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering the constable or sheriff to notify the occupant of the premises or the next of kin of the deceased tenant, if known, by personal service:

1. To appear before the District Court at the trial to be held on the [fifth] 14TH day after the filing of the complaint; and

2. To answer the landlord's complaint to show cause why the demand of the landlord should not be granted.

(ii) 1. The constable or sheriff shall proceed to serve the summons upon the occupant of the premises or the next of kin of the deceased tenant, if known, as follows:

A. If any of the persons whom the sheriff is directed to serve are found on the property or at another known address, the sheriff shall serve any such persons; or

B. If none of the persons whom the sheriff is directed to serve are found on the property or at another known address, the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property.

2. The affixing of the summons upon the property shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

(c) (1) If, at the trial on the **[fifth] 14TH** day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure their necessary witnesses **OR OBTAIN DOCUMENTS OR OTHER PROOF OF A CLAIM OR DEFENSE**, the court may adjourn the trial for a period not exceeding **[1 day] 7 DAYS**, except with the consent of all parties, the trial may be adjourned for a longer period of time.

(2) (i) **[The information required under subsection (b)(1)(vi) of this section may not be an issue of fact in a trial under this section.**

(ii) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent and late fees are actually due and unpaid, the court shall determine the amount of rent and late fees due as of the date the complaint was filed less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article, if the trial occurs within the time specified by subsection **[(b)(3)] (B)(4)** of this section.

[(iii)] (II) 1. If the trial does not occur within the time specified in subsection **[(b)(3)(i)] (B)(4)(I)** of this section and the tenant has not become current since the filing of the complaint, the court, if the complaint so requests, shall enter a judgment in favor of the landlord for possession of the premises and determine the rent and late fees due as of the trial date.

2. The determination of rent and late fees shall include the following:

A. Rent claimed in the complaint;

B. Rent accruing after the date of the filing of the complaint;

C. Late fees accruing in or prior to the month in which the complaint was filed; and

D. Credit for payments of rent and late fees and other fees, utility bills, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article after the complaint was filed.

1 **[(iv)] (III)** In the case of a residential tenancy, the court may also give
2 judgment in favor of the landlord for the amount of rent and late fees determined to be due
3 together with costs of the suit if the court finds that the residential tenant was personally
4 served with a summons.

5 **[(v)] (IV)** In the case of a nonresidential tenancy, if the court finds
6 that there was such service of process or submission to the jurisdiction of the court as would
7 support a judgment in contract or tort, the court may also give judgment in favor of the
8 landlord for:

- 9 1. The amount of rent and late fees determined to be due;
- 10 2. Costs of the suit; and
- 11 3. Reasonable attorney's fees, if the lease agreement
12 authorizes the landlord to recover attorney's fees.

13 **[(vi)] (V)** A nonresidential tenant who was not personally served
14 with a summons shall not be subject to personal jurisdiction of the court if that tenant
15 asserts that the appearance is for the purpose of defending an in rem action prior to the
16 time that evidence is taken by the court.

17 (3) The court, when entering the judgment, shall also order that possession
18 of the premises be given to the landlord, or the landlord's agent or attorney, within 4 days
19 after the trial.

20 (4) The court may, upon presentation of a certificate signed by a physician
21 certifying that surrender of the premises within this 4-day period would endanger the
22 health or life of the tenant or any other occupant of the premises, extend the time for
23 surrender of the premises as justice may require but not more than 15 days after the trial.

24 (5) However, if the tenant, or someone for the tenant, at the trial, or
25 adjournment of the trial, tenders to the landlord the rent and late fees determined by the
26 court to be due and unpaid, together with the costs of the suit, the complaint against the
27 tenant shall be entered as being satisfied.

28 (d) (1) (i) Subject to the provisions of paragraph (2) of this subsection, if
29 judgment is given in favor of the landlord, and the tenant fails to comply with the
30 requirements of the order within 4 days, the court shall, at any time after the expiration of
31 the 4 days, issue its warrant, directed to any official of the county entitled to serve process,
32 ordering the official to cause the landlord to have again and repossess the property by
33 putting the landlord (or the landlord's duly qualified agent or attorney for the landlord's
34 benefit) in possession thereof, and for that purpose to remove from the property, by force if
35 necessary, all the furniture, implements, tools, goods, effects or other chattels of every
36 description whatsoever belonging to the tenant, or to any person claiming or holding by or
37 under said tenant.

(ii) If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later:

1. The judgment for possession shall be stricken; and

2. The judgment shall be applied to the number of judgments necessary to foreclose a tenant's right to redemption of the leased premises as established in subsection (e)(2) of this section unless the court in its discretion determines that the judgment may not apply for purposes of subsection (e)(2) of this section.

(iii) If the landlord orders a warrant of restitution but takes no action on the warrant within 60 days from the later of the date the court issues the order for the warrant or the date as otherwise extended by the court:

1. The warrant of restitution shall expire and the judgment for possession shall be stricken; and

2. The judgment shall be applied to the number of judgments necessary to foreclose a tenant's right to redemption of the leased premises as established in subsection (e)(2) of this section unless the court in its discretion determines that the judgment may not apply for purposes of subsection (e)(2) of this section.

(2) (i) The administrative judge of any district may stay the execution of a warrant of restitution of a residential property, from day to day, in the event of extreme weather conditions.

(ii) When a stay has been granted under this paragraph, the execution of the warrant of restitution for which the stay has been granted shall be given priority and completed within 3 days after the extreme weather conditions cease.

(e) (1) Subject to paragraph (2) of this subsection, in any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving the landlord restitution of the leased premises, the tenant shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or the landlord's agent all past due amounts, as determined by the court under subsection (c) of this section, plus all court awarded costs and fees, at any time before actual execution of the eviction order.

(2) This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) (1) The tenant or the landlord may appeal from the judgment of the District Court to the circuit court for any county at any time within 4 days from the rendition of the judgment.

1 (2) **(I)** The tenant, in order to stay any execution of the judgment, shall
2 give a bond to the landlord with one or more sureties, who are owners of sufficient property
3 in the State of Maryland, with condition to prosecute the appeal with effect, and answer to
4 the landlord in [all] costs and damages mentioned in the judgment, and other damages as
5 shall be incurred and sustained by reason of the appeal.

6 **(II) THE COURT MAY DETERMINE THE AMOUNT OF THE BOND TO**
7 **BE PAID UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

8 (3) The bond shall not affect in any manner the right of the landlord to
9 proceed against the tenant, assignee or subtenant for any and all rents that may become
10 due and payable to the landlord after the rendition of the judgment.

11 **(G) A LANDLORD MAY NOT FILE A WRITTEN COMPLAINT FOR REPOSSESSION**
12 **OF A RESIDENTIAL PROPERTY UNDER THIS SECTION:**

13 **(1) FOR A SPECIFIC CLAIM, PRIOR TO THE EXPIRATION OF A**
14 **JUDGMENT PREVIOUSLY ENTERED OR WARRANT OF RESTITUTION PREVIOUSLY**
15 **ISSUED FOR THAT SPECIFIC CLAIM; AND**

16 **(2) MORE THAN 1 YEAR AFTER A SPECIFIC FAILURE TO PAY RENT**
17 **OCCURRED.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2017.