

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 512

(Senator Jones, *et al.*)

Judicial Proceedings

Real Property - Retaliatory Action by Landlords and Mobile Home Park Owners

This bill repeals current provisions governing retaliatory evictions of tenants of residential rental property and mobile home park residents. In their place, the bill establishes new rules governing retaliatory actions by landlords and mobile home park owners.

Fiscal Summary

State Effect: If the Attorney General’s Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources. The bill’s effect on the Judiciary’s workload cannot be reliably estimated, but has the potential to be substantial, perhaps requiring additional personnel.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill specifies that a landlord or mobile home park owner may not take “retaliatory action” against a tenant or mobile home park resident because the tenant or resident engaged in a “protected activity.”

Under the bill, a retaliatory action includes • increasing the rent or imposing other obligations on a tenant or a mobile home park resident; • decreasing services or failing to comply with other obligations; • bringing or threatening to bring an action for possession;

- refusing to renew a lease or rental agreement without a reasonable, nonretaliatory business justification; or
- violating a tenant's or mobile home park resident's privacy, harassing a tenant or mobile home park resident, or using threats or coercion against a tenant or mobile home park resident.

A tenant or mobile home park resident is protected against retaliatory action if

- the tenant or resident made a good faith complaint to the landlord or mobile home park owner;
- the tenant or resident made a good faith complaint to a government agency;
- the landlord or mobile home park owner received a notice of violation from a government agency regarding a violation affecting the rented property;
- the tenant or resident communicated in good faith with public media or public officials about a tenancy;
- the tenant or a government agency provided information under the State's lead paint laws;
- the tenant or resident consulted a lawyer or filed or participated in a lawsuit related to the tenancy;
- the tenant participated in a rent escrow action; or
- the tenant or resident organized, was a member of, or participated in a tenants' or residents' organization.

A landlord or mobile home park owner may not take retaliatory action against a tenant or mobile home park resident because the tenant or resident engaged in one or more of the protected activities. The tenant or resident has the burden of proving that a retaliatory action was because of the tenant's or resident's protected action. Retaliation is a question of fact, to be determined under a preponderance of the evidence standard.

Evidence that a tenant or resident engaged in a protected activity within six months before the alleged retaliatory action creates a presumption that the conduct of the landlord or mobile home park owner violated the prohibition against retaliation. The presumption does not arise if a tenant or resident is in default in rent.

If the landlord or mobile home park owner violates the bill, the tenant or resident

- may bring an action or counter claim for damages; and
- has a defense in any action for possession of the premises. The court may invalidate any action found to be retaliatory. In addition, the court may enter judgment for costs and reasonable attorney's fees
- against a landlord or park owner if the landlord or park owner is found to have taken retaliatory action against a tenant; or
- against a tenant or resident if the tenant or resident is found to have claimed retaliatory action in bad faith or without substantial justification.

The bill's provisions may not be construed to alter the rights of either a landlord or a tenant arising from a breach of a provision of the lease. The bill supersedes any comparable ordinance or law unless it provides greater protection to a tenant.

Current Law/Background:

Retaliatory Eviction Against a Tenant of Residential Property

Generally, a landlord may not evict a tenant of residential property or arbitrarily increase the rent or decrease services to which the tenant is entitled solely because • the tenant or the tenant's agent has filed a good faith written complaint with the landlord or with a public agency against the landlord; • the tenant or agent has filed a lawsuit or lawsuits against the landlord; or • the tenant is a member or organizer of any tenants' organization.

If a judgment in an eviction proceeding is for the tenant for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the landlord. If the court finds that the tenant's assertion of a retaliatory eviction defense was in bad faith or without substantial justification, the court may enter judgment for reasonable attorney fees and court costs against the tenant. Relief under these provisions is not available if a specified number of judgments have been entered against the tenant for failing to pay rent within a specified period, depending on the obligation to pay rent under the tenancy.

An eviction may not be deemed retaliatory upon the expiration of a six-month period following the determination of the initial case by a court or administrative agency. These provisions do not alter the landlord's or tenant's rights to terminate or not renew a tenancy governed by a written lease for a stated term of greater than one month at the expiration of the term or at any other time as the parties may agree. If a county or Baltimore City enacts a comparable ordinance, that ordinance supersedes these provisions.

Similar requirements apply to a tenant providing information to a landlord under the State's lead paint requirements. If a landlord's action is found to be retaliatory under these provisions, the tenant is entitled to the relief provided under the State's retaliatory eviction statute and is eligible for reasonable attorney's fees and costs. This does not alter the landlord's or tenant's rights arising from a breach of any provision of a lease.

By State law, a landlord may not evict a tenant of residential property in Montgomery County because • the tenant has filed a complaint with a public agency against the landlord; • the tenant has filed a lawsuit against the owner; or • the tenant is a member of any tenants' organization. In an eviction action, if the judgment is in favor of the tenant for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the landlord. These provisions do not restrict the authority of Montgomery County to legislate in the area of landlord-tenant affairs. In addition to any

other remedies, Montgomery County may, by local law, establish authorization for a local agency to invoke enforcement procedures upon an administrative determination that a proposed eviction is retaliatory as prohibited by State or local law. These procedures may include injunctive or other equitable relief.

Retaliatory Eviction Against a Mobile Home Park Resident

A mobile home park owner may not evict a resident or arbitrarily increase the rent or decrease services to which the resident is entitled solely because • the resident or the resident's agent has filed a written complaint with the park owner or with a public agency against the park owner; • the resident or agent has filed a lawsuit or lawsuits against the owner; or • the resident is a member or organizer of any tenants' organization.

If a judgment in an eviction proceeding is for the resident for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the park owner. An eviction may not be deemed retaliatory upon the expiration of a six-month period following the determination of the initial case by a court or administrative agency. These provisions do not alter the park owner's or resident's rights arising from breach of any provision of a rental agreement or rule, or either party's right to terminate or not renew the agreement.

Additional Information

Prior Introductions: A similar bill, SB 599 of 2006, received a hearing in the Senate Judicial Proceedings Committee and was referred to interim study by the committee.

Cross File: HB 1344 (Delegate Glenn, *et al.*) – Environmental Matters.

Information Source(s): Montgomery County, Prince George's County, Garrett County, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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mll/jr

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