

SENATE BILL 109

N1, M3

9lr0447

By: **Senator Stone**

Introduced and read first time: January 15, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Leases – Required Mold Assessment and**
3 **Remediation**

4 FOR the purpose of requiring a landlord, at the request of a tenant, to perform a
5 certain mold assessment of the tenant's dwelling unit under certain
6 circumstances; requiring a landlord to perform the mold assessment within a
7 reasonable time after receiving a certain written certification; requiring a
8 landlord to carry out certain mold remediation measures under certain
9 circumstances; requiring a landlord to take certain precautions when carrying
10 out mold remediation measures; requiring a landlord to carry out mold
11 remediation measures within a reasonable time after performing a certain mold
12 assessment; authorizing a tenant to deposit rent in an escrow account with a
13 certain court under certain circumstances; providing for certain defenses in an
14 action for rent escrow under this Act; providing for the release of money
15 deposited in an escrow account under this Act; prohibiting a landlord from
16 taking certain retaliatory action against a tenant who seeks the remedies under
17 this Act; providing that the right of a tenant to deposit rent in an escrow
18 account under this Act is in addition to any other rights or remedies; providing
19 that this Act does not preempt certain local laws or ordinances; defining a
20 certain term; and generally relating to residential leases and a landlord's
21 obligation to perform a certain mold assessment and carry out certain mold
22 remediation measures.

23 BY repealing and reenacting, without amendments,
24 Article – Real Property
25 Section 8–201
26 Annotated Code of Maryland
27 (2003 Replacement Volume and 2008 Supplement)

28 BY adding to
29 Article – Real Property

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 8-211.2
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2008 Supplement)

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

6 **Article - Real Property**

7 8-201.

8 (a) This subtitle is applicable only to residential leases unless otherwise
9 provided.

10 (b) This subtitle does not apply to a tenancy arising after the sale of
11 owner-occupied residential property where the seller and purchaser agree that the
12 seller may remain in possession of the property for a period of not more than 60 days
13 after the settlement.

14 **8-211.2.**

15 (A) **IN THIS SECTION, "MOLD":**

16 (1) **MEANS AN ORGANISM OF THE CLASS FUNGI THAT CAUSES**
17 **DISINTEGRATION OF ORGANIC MATTER AND PRODUCES SPORES; AND**

18 (2) **INCLUDES ANY SPORES, HYPHAE, AND MYCOTOXINS THAT ARE**
19 **PRODUCED BY MOLD.**

20 (B) (1) **AT THE REQUEST OF A TENANT, A LANDLORD SHALL ASSESS**
21 **THE TENANT'S DWELLING UNIT FOR THE PRESENCE OF MOLD IF:**

22 (I) **THE DWELLING UNIT HAS EXPERIENCED SEVERE**
23 **WATER DAMAGE; AND**

24 (II) **SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE**
25 **TENANT PROVIDES THE LANDLORD WITH A WRITTEN CERTIFICATION FROM A**
26 **PHYSICIAN THAT AN INDIVIDUAL WHO IS A NAMED PARTY IN, OR AN**
27 **AUTHORIZED OCCUPANT UNDER THE TERMS OF, THE LEASE HAS A SERIOUS**
28 **MEDICAL CONDITION LIKELY CAUSED BY EXPOSURE TO MOLD.**

29 (2) **A MOLD ASSESSMENT REQUIRED UNDER THIS SUBSECTION**
30 **SHALL INCLUDE:**

31 (I) **A VISUAL INSPECTION OF THE DWELLING UNIT; AND**

1 **(II) THE COLLECTION AND ANALYSIS OF AIR AND SURFACE**
2 **SAMPLES.**

3 **(3) (I) A LANDLORD SHALL PERFORM THE MOLD ASSESSMENT,**
4 **AS REQUIRED UNDER THIS SUBSECTION, AT THE LANDLORD'S EXPENSE AND**
5 **WITHIN A REASONABLE TIME AFTER RECEIVING THE WRITTEN CERTIFICATION**
6 **REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.**

7 **(II) THERE IS A REBUTTABLE PRESUMPTION THAT A**
8 **PERIOD IN EXCESS OF 30 DAYS FROM RECEIPT OF THE WRITTEN CERTIFICATION**
9 **IS UNREASONABLE.**

10 **(4) A CERTIFICATION THAT IS PROVIDED TO A LANDLORD UNDER**
11 **PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE:**

12 **(I) WRITTEN BY A PHYSICIAN WHO IS LICENSED BY THE**
13 **STATE BOARD OF PHYSICIANS TO PRACTICE MEDICINE IN THE STATE UNDER**
14 **TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;**

15 **(II) PREPARED ON THE LETTERHEAD OR PRINTED**
16 **PRESCRIPTION FORM OF THE PHYSICIAN; AND**

17 **(III) SIGNED BY THE PHYSICIAN.**

18 **(C) (1) IF A MOLD ASSESSMENT INDICATES AN ABNORMALLY HIGH**
19 **LEVEL OF MOLD WITHIN THE DWELLING UNIT, THE LANDLORD SHALL**
20 **REMEDiate THE MOLD BY:**

21 **(I) REPAIRING AND ELIMINATING ANY CONDITIONS AND**
22 **DEFECTS ON THE PREMISES CONTRIBUTING TO THE MOLD GROWTH; AND**

23 **(II) REMOVING THE MOLD.**

24 **(2) IN CARRYING OUT THE MOLD REMEDIATION MEASURES**
25 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE LANDLORD SHALL TAKE**
26 **PRECAUTIONS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF BUILDING**
27 **OCCUPANTS.**

28 **(3) (I) A LANDLORD SHALL REMEDIATE THE MOLD, AS**
29 **REQUIRED UNDER THIS SUBSECTION, AT THE LANDLORD'S EXPENSE AND**
30 **WITHIN A REASONABLE TIME AFTER PERFORMING THE MOLD ASSESSMENT.**

1 **(II) THERE IS A REBUTTABLE PRESUMPTION THAT A**
2 **PERIOD IN EXCESS OF 30 DAYS FROM THE DATE THE MOLD ASSESSMENT WAS**
3 **PERFORMED IS UNREASONABLE.**

4 **(D) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR ANY**
5 **AGREEMENT, WHETHER WRITTEN OR ORAL, IF A LANDLORD FAILS TO PERFORM**
6 **THE MOLD ASSESSMENT OR CARRY OUT THE MOLD REMEDIATION MEASURES**
7 **REQUIRED UNDER THIS SECTION WITHIN A REASONABLE TIME, THE TENANT**
8 **MAY DEPOSIT THE TENANT'S RENT IN AN ESCROW ACCOUNT WITH THE CLERK**
9 **OF THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE PREMISES ARE**
10 **LOCATED.**

11 **(2) IN AN ACTION FOR RENT ESCROW UNDER THIS SECTION, IT IS**
12 **A SUFFICIENT DEFENSE THAT:**

13 **(I) A TENANT OR OCCUPANT OF THE DWELLING UNIT, OR A**
14 **GUEST OF A TENANT OR OCCUPANT, CAUSED THE SEVERE WATER DAMAGE TO**
15 **THE DWELLING UNIT;**

16 **(II) THE SEVERE WATER DAMAGE TO THE DWELLING UNIT**
17 **WAS THE RESULT OF A CHRONIC WATER INTRUSION INTO THE DWELLING UNIT,**
18 **AND THE TENANT:**

19 **1. KNEW OR SHOULD HAVE KNOWN OF THE CHRONIC**
20 **WATER INTRUSION; AND**

21 **2. FAILED TO NOTIFY THE LANDLORD OF THE**
22 **WATER INTRUSION WITHIN A REASONABLE TIME AFTER THE TENANT KNEW OR**
23 **SHOULD HAVE KNOWN OF THE WATER INTRUSION; OR**

24 **(III) THE TENANT REFUSED TO GIVE THE LANDLORD OR THE**
25 **LANDLORD'S AGENT ACCESS TO THE DWELLING UNIT AT A REASONABLE TIME**
26 **TO PERFORM THE MOLD ASSESSMENT OR CARRY OUT THE MOLD REMEDIATION**
27 **MEASURES REQUIRED UNDER THIS SECTION.**

28 **(3) MONEY DEPOSITED IN AN ESCROW ACCOUNT UNDER THIS**
29 **SUBSECTION SHALL BE RELEASED TO:**

30 **(I) THE LANDLORD ON COMPLIANCE BY THE LANDLORD**
31 **WITH THE MOLD ASSESSMENT AND REMEDIATION PROVISIONS OF THIS**
32 **SECTION; OR**

33 **(II) TO THE TENANT OR ANY OTHER PERSON WHO HAS**
34 **PERFORMED THE REQUIRED MOLD ASSESSMENT AND CARRIED OUT**

1 **REMEDICATION MEASURES ON PRESENTATION OF A BILL FOR THE REASONABLE**
2 **COSTS OF THE MOLD ASSESSMENT AND REMEDIATION MEASURES.**

3 **(E) (1) A LANDLORD MAY NOT RETALIATE AGAINST A TENANT WHO**
4 **ELECTS TO SEEK THE REMEDIES UNDER THIS SECTION BY:**

5 **(I) EVICTING THE TENANT;**

6 **(II) TERMINATING THE TENANCY; OR**

7 **(III) INCREASING THE RENT.**

8 **(2) IT IS PRESUMED THAT, EXCEPT IN THE CASE OF NONPAYMENT**
9 **OF RENT, AN ATTEMPT TO EVICT THE TENANT, TERMINATE THE TENANCY, OR**
10 **INCREASE THE RENT WITHIN 2 MONTHS AFTER COMPLIANCE WITH THE**
11 **REQUIRED MOLD ASSESSMENT AND REMEDIATION MEASURES IS IN**
12 **RETALIATION FOR THE TENANT'S ELECTION TO SEEK REMEDIES UNDER THIS**
13 **SECTION AND IS VOID.**

14 **(F) (1) THE RIGHT OF A TENANT TO DEPOSIT RENT IN AN ESCROW**
15 **ACCOUNT UNDER THIS SECTION IS IN ADDITION TO ANY OTHER RIGHTS OR**
16 **REMEDIES AVAILABLE TO THE TENANT AT LAW OR IN EQUITY.**

17 **(2) THIS SECTION DOES NOT PREEMPT ANY LOCAL LAW OR**
18 **ORDINANCE THAT IS MORE STRINGENT OR IMPOSES A HIGHER STANDARD WITH**
19 **RESPECT TO A LANDLORD'S OBLIGATION TO REMEDIATE MOLD FROM A**
20 **DWELLING UNIT.**

21 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
22 **October 1, 2009.**