



**MARYLAND  
LEGAL AID**

*Advancing*  
**Human Rights and  
Justice for All**

## **CR 22-0124R - Informational Hearing - Residential Rental Licensing**

Before the Ways and Means Committee of the Baltimore City Council  
April 18, 2023

*Maryland Legal Aid (MLA) submits its written and oral testimony at the request of Councilmember Kristerfer Burnett.*

MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our attorneys and paralegals oversee a range of civil legal matters, including cases that uphold tenants' rights to safe, healthy housing in Baltimore City.

### **Background**

Baltimore City Council enacted Ord. 18-130 (2018) to expand rental licensing, to rein in negligent landlords, and to protect renters proactively by requiring the inspection and licensing of all non-owner-occupied rental units. In the framework of the ordinance, inspections were privatized, allowing landlords to contract with a state-certified home inspector of their choice, at a price point of their choice. The scheme also used a tiered system whereby, after the initial two-year licensing period, the City can renew a license for one year if the property has violations outstanding for more than 90 days; for two years if violations were outstanding for 60-90 days; or three years where violations were outstanding for less than 60 days. These measures were intended to reduce costs for the Department of Housing and Community Development (DHCD) and free up resources for administration of the licensing program and targeted enforcement activities.

Ord. 18-130 also prohibited landlords from leasing a property without a valid rental license and from charging or collecting rent for any period in which the property lacks a valid rental license. Additionally, the law attempted to protect against conflicts of interest among landlords and their contracted inspectors, including an annual audit, as well as provision that required DHCD to provide free public access to (1) rental license information, (2) all violation notices, orders, or citations, and (3) notices of any denial, suspension, or revocation of the rental license. MLA is experienced in advising and representing Baltimore City renters whose unlicensed landlords use threats and court procedures to collect rent illegally. At times, these abuses happen despite DHCD's knowledge.

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A telling example is the 76-unit CopyCat building at 1501 Guilford Avenue. In July 2020, MLA began representing tenants at this property, which was operating without a valid rental license for two years since the new law’s effective date. The CopyCat owner sued tenants repeatedly to obtain rent in violation of the ordinance. MLA brought two cases on appeal to the state Court of Appeals (now known as the Supreme Court of Maryland). In November 2021, the Court held that although CopyCat could not, as an unlicensed landlord, lawfully use “Failure to Pay Rent” actions to collect rent under the threat of eviction, they could nonetheless bring “Tenant Holding Over” eviction actions. The Maryland General Assembly attempted to undo that decision, and thereby require landlords to demonstrate a valid rental license in any type of eviction case, by enacting Senate Bill 563 in April 2022. However, former Governor Hogan vetoed that legislation. In the 2023 session, the bill passed again (House Bill 36/Senate Bill 100), this time with narrow carve-outs for unlicensed landlords under exceptional circumstances. This legislation now awaits Governor Moore’s signature.

Based on our individual clients’ cases, MLA submits the following observations about the current state of rental licensing in Baltimore City:

*Challenges in the current inspection process*

We frequently question the reliability of inspection reports because their findings are cumulative and the inspections themselves are too old to provide DHCD with a basis for issuing the rental license.

- *Cumulative reports:* We encounter instances in which our clients present evidence of substandard conditions in their rental units and explain that these conditions have been ongoing for a prolonged period. We then find that DHCD recently issued or renewed a license. When we obtain a copy of the inspection report, we find that the inspection occurred during the prolonged period of continuing substandard conditions and did not cite those conditions. Often, these inspection reports lack any specific findings or notations and, instead, the inspector has drawn a single line through the “Pass” column. This type of reporting reflects a likelihood that inspectors do not inspect and check off one element of the report after the next.
- *Stale reports:* We also find that inspection reports are submitted and accepted even though inspections occurred several months prior to the completion of the license applications. Under Art. 13 § 5-7(b)(2)(ii), the inspection must be performed not more than 60 days (for 1- and 2-unit properties) or 90 days (for multi-family properties) before

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the landlord submits their completed application for a license or renewal. We find that DHCD ignores this rule in many instances.

*Conflicts of interest:* Although DHCD requires home inspectors to disclose whether they have a financial interest in the rental properties that they inspect, it is unknown whether DHCD does anything to verify these disclosures or to investigate the relationships between landlords and home inspectors beyond the statutorily required disclosure. For instance, although we may recurrently identify a particular home inspector or home inspection company in cases involving substandard conditions, it is unknown whether DHCD uses any conflict-of-interest risk matrix to identify potential or actual conflicts of this kind.

*Uninspected multi-family units:* The rental license law does not establish a number or percentage of units in multi-family properties that must be inspected. DHCD issued a guidance in 2019<sup>1</sup> that provides the fraction of total units to be inspected. For instance, for a property of 101-125 total units, 18 units must be inspected. For a property of 301-500 units, only 26 units must be inspected. While the guidance instructs that inspections should “be distributed among different buildings and floors within the property,” it does not require randomization of units. Nor does it prohibit the landlord from choosing which units will be inspected. Consequently, in large multi-unit buildings or complexes, a passing inspection and resulting rental license may mask the substandard conditions that our clients describe to us.

### ***Review of Issued/Renewed Licenses***

*Auditing:* Pursuant to Art. 13 § 5-7(d), DHCD must conduct an annual audit of rental license inspections. In the four years since Ord. 18-130 went into effect, we do not know whether any such audit has occurred. Equally, the intended scale and manner of annual inspections audit are unknown. Beyond auditing the inspections, DHCD is not required to audit the licenses themselves, that is, the submitted applications and the procedures leading to issuance/renewal of the licenses. MLA finds that auditing the entire procedure would benefit the program by identifying inconsistencies that we encounter in client matters. For example, a complete audit should be able to demonstrate instances in which DHCD:

- Issued code enforcement violation notices within a brief period after the issuing/renewing of a license.

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<sup>1</sup> Baltimore City Department of Housing and Community Development, Rental Licensing Inspector Guidance 8, Jan. 31, 2019, <https://dhcd.baltimorecity.gov/sites/default/files/dhcd/attachments/Inspection%20Checklist%20-%20Inspector%20Guidance%20Document.pdf>.

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- Issued/renewed a license based on a landlord’s submission of an outdated lead inspection certificate.
  - Issued a rental license despite grounds to deny the license application, such as the landlord’s attempts to collect rent for unlicensed periods.

*Complaints:* Although DHCD provides on its website that the public may report an unlicensed property by contacting the Code Enforcement Legal Section by email, there is no equivalent mechanism for reporting that a license application should be denied or that a license should be revoked.

*Suspension and revocation:* Although MLA has heard a few anecdotes about suspended or revoked rental licenses since 2018, we are not directly aware of any instances. As with complaint procedures noted above, DHCD has not provided guidance on how a tenant or attorney would participate in an administrative process of suspension or revocation of an issued/renewed license.

### ***Problems with Rental License Records and Access to Information***

Public access to rental license information was a key component part of the 2018 legislation. Currently, DHCD provides three methods for the public to obtain rental license information:

1. DHCD website: [Property License and Registration Search](#),
2. DHCD website: [Viewpoint Cloud records search](#),
3. In person, by phone, or by email: Information request to the custodian of records

Method 1 provides registration, inspection date, license issue date, and license expiration date for a property. DHCD also incorporates method 1 above into its [Codemap](#) search tool. The Viewpoint search tool (method 2 above) provides both registration and rental license information in a longer format that allows public users to download a digital copy of the property’s registration or license.

While we commend the variety of access points for rental license information, we find that search results for rental license information have been inconsistent or incomplete at times. A routine challenge for our practitioners is that they request verification of rental license information from the DHCD custodian of records, and despite the timely attestation by the agency that there is no valid rental license, the landlord then produces a copy of their rental license at trial. This type of discrepancy has become so prevalent in Baltimore City’s district court that some judges have, as a personal rule, decided that DHCD records are insufficient to

demonstrate the rental license status of a property.

Details provided about rental licenses may also be inconsistent. For example, if we take the CopyCat building as one example, DHCD's Property License and Registration Search tool shows the following:

Home > Property/Alarm Registration > License Search

### Property License and Registration Search

The address and block/lot search are based on the official tax address of the property. The official tax address may be different from the address posted on the building.

Record Count: 1

Reg#	Date Insp	License Print	Licensed	License Expiration Date	Valid Reg Year	Address	Zip	Block Lot
928452	07/17/2020				2021	01501 GUILFORD AVE	21202	1119-001

This search result indicates that the CopyCat building's registration is out of date (2021), that the property's registration number is 928452, and that although the landlord may have submitted an inspection report on July 17, 2020, no license was ever granted.

However, the Viewpoint Cloud records search produces slightly different information:

Property Registration and Rental Licensing

## 110689

**Applicant**  
John Lankford

**Location**  
1501 GUILFORD AVE  
Baltimore, MD 21202-2837  
[View location details](#)

**Created** Aug 16, 2022      **Status** Complete      **Expires** Dec 31, 2022

**Details**    Files (0)

**Application Information**

Do you have an ACTIVE (unexpired) existing Rental License? \* ⓘ  
No

Property Type \*  
Multi-Family Dwelling

**A Rental License for this property will not be issued due to an outstanding violation notice. Please contact your area inspector to schedule a reinspection.**

Here, the search result shows the CopyCat building under a different registration number, created in August 2022 and quickly expired as of December 31, 2022. It also notes that the property does

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not have an active license due to an outstanding violation notice.<sup>2</sup> Nonetheless, the property’s “Status” is noted in green text as “Complete.”

These variances in information are not simply confusing. They significantly impact a tenant’s legal rights. By putting the publicly available status of a property’s rental license into doubt, these variances impede a renter’s understanding of

- the legality of the landlord’s rental operations,
- their legal obligation to pay the landlord, and
- their defenses to an eviction action or civil action for money damages.

Reliable records of rental licensing are increasingly vital for renters’ navigation of the landlord-tenant relationship. While Art. 13 § 5-4 prohibits a landlord from charging or collecting rent and other costs for occupancy during a period of unlicensed operations, Maryland case law provides that a landlord who violates Art. 13 § 5-4 and receives a tenant’s voluntary payment may keep that payment, unless the tenant demonstrates some other injury caused by the unlicensed operations.<sup>3</sup> In other words, once the tenant becomes aware, from DHCD’s search results, that their landlord is unlicensed, their most responsible course of conduct would be to withhold rent. Yet, if DHCD’s search results prove to be inconsistent or incomplete, this tenant’s lawful withholding of rent suddenly converts into non-payment in violation of their lease. This is an untenable position for Baltimore City renters.

At the same time, with the impending enactment of House Bill 36/Senate Bill 100, landlords will have to prove their valid rental licensing status at the trial of any eviction case, beginning October 1, 2023. The need for timely, reliable records of rental licenses will be greater than ever before. Crucially, this legislation removes loopholes that landlords have routinely used to hop from “Failure to Pay Rent” proceedings over to “Tenant Holding Over” and “Breach of Lease” eviction actions. While the General Assembly clearly plans for this legislation to foil unlicensed landlords who wish to use the courts for debt collection leverage, these bad actors will predictably exploit the narrow exceptions in the bill. Namely, the bill allows an unlicensed landlord to proceed with an eviction case if they can show that the licensing agency itself caused the landlord’s failure to obtain the license. A second exception would allow the unlicensed landlord of a multi-family property to show, in relevant part, that they had made good faith efforts to comply with the licensing agency’s procedures but could not meet all aspects of compliance for the entire building. If DHCD’s records are consistent and complete, these

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<sup>2</sup> Notice Number 2092771A, dated April 4, 2022, cites 54 outstanding violations at the property.

<sup>3</sup> *Assanah-Carroll v. L. Offs. of Edward J. Maher, P.C.*, 480 Md. 394, 419 (2022) (citing *Galola v. Snyder*, 328 Md. 182, 185–86 (1992)).

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exceptions to an important law will remain narrow. If DHCD continues to provide inconsistent and incomplete information, MLA expects to see continued doubt from the judges about DHCD records and the exploitation of that doubt by unscrupulous landlords. In brief time, the narrow exceptions will become wide-open doors.

***Uncertainty around relocation assistance***

Finally, MLA notes that in addition to establishing an expanded rental license scheme, Ord. 18-130 increased the registration fee for rental dwelling units by \$15 per unit and designated this additional revenue to the Affordable Housing Trust Fund. Although unstated in the legislation, we are aware that the intent of this allocation to the Trust Fund was to pay for relocation of tenants from properties for which the landlord cannot or refuses to obtain a rental license.<sup>4</sup> However, the total amount of funds amassed from these increased registration fees is unknown, and it is unclear whether the City has used this revenue for the purpose of relocating renters when it denies, suspends, or revokes a rental license.

We appreciate the opportunity to provide this information to the Committee. If you have any questions, please contact:

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<sup>4</sup> Tre Murphy et al., “Commentary: Collateral damage as Baltimore overhauls its rental property regulations: poor renters,” Baltimore Brew, April 20, 2018, <https://www.baltimorebrew.com/2018/04/20/collateral-damage-as-baltimore-overhauls-its-rental-property-regulations-poor-renters>.