


MEMORANDUM



Joseph L. Smith, Chairman, Board of Commissioners Janet Abrahams, President / Chief Executive Officer

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To: The Honorable President and Members of the Baltimore City Council
 c/o Natawna Austin, Executive Secretary

From: Janet Abrahams, President and Chief Executive Officer 

Date: November 10, 2020

Re: City Council Bill 20-0625, Landlord-Tenant – Right to Counsel in Eviction Cases

The Housing Authority of Baltimore City (HABC) was referred City Council Bill 20-0625, Landlord-Tenant – Right to Counsel in Eviction Cases. Generally, this bill seeks to provide a way for an attorney to represent tenants who are a party to any judicial or administrative hearing, which may result in losing possession of their dwelling unit or termination of housing subsidy.

While HABC supports the idea that renters should have sufficient assistance to know and advocate for their rights, HABC takes no position on the ability of the City of Baltimore to implement or fund such a program. There are several aspects of the bill as drafted we believe should be amended to clarify the legislation. In addition, a study period, that would allow Baltimore City agencies to more fully project the potential impact of the legislation should be required which will be beneficial.

HABC has significant concerns about the effects of this legislation that would slow the pace of legal proceedings and require much higher allocations of staff and resources to address the impact of this bill. HABC has limited resources to handle both civil and administrative hearings, and it is difficult to forecast the effect of how many residents will end up with an attorney. It is reasonable to say that the effect could put a strain on the limited resources of HABC and the courts – one result for instance could be that these cases would take longer to conclude both in the court system and on the administrative side.

This bill would also apply to any renter, and while HABC takes no position on who should qualify, as an organization focused on providing housing opportunities to residents with the lowest of incomes, HABC feels that targeting this legislation to low-income households would channel scarce resources to their best use.

HABC recommends amending the bill as noted below. HABC also recommends that a formal study period be undertaken to allow for amendments to this bill that would target scarce City of Baltimore resources to the core of this problem, maximizing the positive impacts while mitigating unintended consequences as detailed below.

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Who Gets an Attorney

It seems that bill 20-0625 is intended to provide counsel to tenants who are involved in a summary ejection complaint. However, the bill makes it clear that the right to counsel would apply to any proceeding involving loss of a dwelling unit or a housing subsidy. This would include a breach of lease case, some grievance hearings, some rent escrow cases and some wrongful detainer cases.

For public housing residents, a termination of participation for nonpayment of rent is done through the same process as any other renter in what is commonly referred to as “rent court.”

For those renters who receive rental subsidies through the Housing Choice Voucher Program (HCVP), this would also include termination hearings for HCVP residents. For HCVP rental assistance recipients, HABC schedules informal, administrative hearings in accordance with the HCVP Administrative Plan and U.S. Department of Housing and Urban Development (HUD) regulations. These hearings are to consider violations of the family obligations under the voucher agreement with HABC that could lead to the termination of the voucher. When a voucher is terminated, HABC stops making HAP payments to the landlord. While this is not an eviction because HABC does not hold the lease for HVCP unit, this would result in the tenant being responsible for 100% of the unit rent. If the tenant could not pay that amount (which made them eligible for rental assistance in the first place), the landlord could file a failure to pay rent action.

In section 6A-1 (d) Covered Individual (2), the Bill states that any tenant in a building owned, operated or managed by HABC is covered. So, all public housing residents would be covered by bill 20-0625. For renters in units that may have converted under the Rental Assistance Demonstration (RAD), privately managed sites redeveloped under HOPE VI, HCVP, or those living in properties covered under any other federal, state, or private subsidy, there is no specific coverage. If those residents are not included, they would qualify for an attorney simply by being a renter and have priority by being low income.

HABC would recommend an amendment to broaden section 6A-1 (d) Covered Individual (2) to include any renter receiving, federal, state, or private rental assistance. As the Housing and Urban Affairs Committee is also currently considering bill 20-0592, which would among other things establish a Baltimore City administered housing voucher program, it should be considered whether this section should be worded to also explicitly cover that type of rental assistance.

Impact on Legal Resources and Funding

When HABC goes to rent court as the landlord, in the majority of cases (of tenants who appear) tenants do not have an attorney. In many instances, the cases can be worked out before or during court. The HABC attorney and

management staff may spend 15 to 45 minutes speaking with residents prior to court. If each resident has an attorney, the process will take much longer.

HABC staff (non-attorneys) attend rent court to work with residents on resolutions that do not need the intervention of an attorney, but only when the resident is not represented by an attorney. HABC Staff who are not attorneys will not deal directly with an attorney. The inability of HABC staff who are not attorneys to work through these cases to a resolution before the hearing will be curtailed by the presence of an attorney for the tenant. This will have the impact of lengthening the process for resolution and decreasing the number of cases that can be resolved outside of court.

While this Bill may assist tenants, it is unclear what burden it would place on attorneys and the courts, let alone the City of Baltimore, which would have to fund the program. In addition to "Failure to Pay" cases, HABC would be faced with the prospect of all residents having attorneys in Breach of Lease cases and informal or administrative hearings where attorneys are not currently present (for either party). Some non-rent grievance hearings deal with eviction. Under the bill as drafted, it would be likely that HCVP termination hearings would qualify a resident for an attorney, even though these deal with the voucher agreement and not rent court.

Dealing with an attorney in all these matters will put an additional workload burden on HABC attorneys, especially if resident attorneys file motions in cases in which motions are not normally filed. It is impossible to state what degree this burden will be at this time.

Impact on Administrative Process

Another administrative burden on HABC is that HABC will be required to mail a brochure on tenant rights with each notice of lease termination. HABC mails this notice 14 days after the rent is past-due in accordance with HUD regulations. During COVID-19, HABC is not currently mailing these 14 day notices for lease termination according to the suspension of termination for non-payment of rent during COVID-19. During a normal year, HABC mails thousands of these letters every year. Each letter would then need a brochure. The brochure would also have to be mailed for all Breach of Lease and other cases involving termination of subsidy. For all other violations of the lease (except in cases of imminent danger) HABC mails a 30-day notification to the tenant in accordance with HUD regulations. It is unclear if another brochure would have to be mailed if HABC filed a subsequent complaint.

HABC recommends the bill be amended to clearly state that HABC is required to mail one brochure to a resident every year.

Because HABC uses a lease as specified by HUD, adding to the lease as envisioned in this bill would be problematic and potentially not allow HABC to comply with the proposed text of 7-3(a)(1) if it conflicts with federal regulations. An amendment to this section would allow HABC to comply with HUD regulations that govern the use of the public

housing lease while also complying with the spirit of this section of the bill. Any other rental assistance programs that use HUD leases may have similar conflicts between this section of the bill and HUD regulations.

HABC recommends that 7-3(a)(1) be amended to include clear language that would legally allow HABC to add in a separate document from the lease the requirement to have an authorized representative at all court proceedings.

HABC Suggested Amendments

6A-1 (d) Covered Individual (2)

Covered Individual includes any tenant in a building owned, operated or managed by the Housing Authority of Baltimore or any other Federal, State or privately subsidized property.

Subtitle 7-3(a)(1)(iii)

Add – The Housing Authority of Baltimore City is permitted to list the name, address and telephone number of an agent authorized to receive court process in a separate document to the lease.

Subtitle 7-3(c)(3)

Add – The Housing Authority of Baltimore City is permitted to only send one brochure describing a tenant's rights under this law to a tenant for a calendar year. Tenants involved in additional lease termination procedures during the same calendar year will not receive additional brochures.