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HOUSE DEMOCRATIC POLICY COMMITTEE
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HOUSE DEMOCRATIC POLICY COMMITTEE ROUNDTABLE

Topic: Landlord and Tenant Issues

Philadelphia Protestant Home – Philadelphia, PA

February 1, 2018

AGENDA

- 10:00 a.m. Welcome and Opening Remarks
- 10:10 a.m. Discussion with Panelists:
- Rebecca Corcoran Swanson, Esq.
Planning Director, City of Philadelphia Department of Licenses & Inspections
 - Phil Lord
Executive Director, Tenant Union Representative Network
 - Christine Young Gertz, Esq.
Director of Government Affairs, Pennsylvania Apartment Association-East
 - Tom Giles
Board of Directors Member, Diversified Investors Group (DIG),
Member, Pennsylvania Residential Owners Association
 - George Donnelly
Langer, Grogan & Diver Social Justice Fellow, The Public Interest Law Center
 - George Gould
Senior Attorney, Community Legal Services of Philadelphia
 - Paul Cohen
Attorney and Founding Partner, Cohen, Willwerth & Maraccini
- 11:50 a.m. Closing Remarks



**TESTIMONY OF GEORGE D. GOULD
BEFORE THE DEMOCRATIC POLICY COMMITTEE**

FEBRUARY 1, 2018

Good Morning. My name is George Gould and I thank the committee for requesting that I testify regarding landlord tenant issues in Pennsylvania.

I am a Senior Attorney at Community Legal Services in Philadelphia. I have worked in the area of housing for almost 47 years, much of that work being done in the area of landlord- tenant law. Our office sees large numbers of tenants who are having substantial problems with their landlords. These issues range from landlords failing to provide habitable living conditions to unlawfully locking out tenants from their homes.

First, I would like to discuss HB 1785 which is currently pending in the House Urban and Housing Affairs Committee and is scheduled for a vote on February 6th. HB 1875 will cause accelerated evictions in Pennsylvania. It allows a tenant to be evicted within a period of 12 days after a judgment for possession has been entered against the tenant. It is important to note that HB 1875 amends a law that was suspended by the Pennsylvania Supreme Court in 1996.

The provisions of HB 1875 would put tenants and their families in the virtually impossible position of trying to find housing within a twelve-day time period. It would also discourage tenants from challenging the case in court knowing if they lose, they have 12 days to find housing. It would do great harm to the elderly, persons with disabilities

and those that are ill or injured. The accelerated eviction time would place great strain on social service agencies and increase homelessness throughout the Commonwealth. It would also create unique hardships for vulnerable individuals and families, such as senior citizens who need specialized care and children who need special schools or child care.

I would like to present a brief overview of existing landlord-tenant law and how, we believe, the balance of power between landlord and tenant has dramatically shifted toward the landlord. Prior to 1995, Pennsylvania Court Rules provided that a tenant could not be evicted until 30 days after judgment. In 1995, legislation was passed which reduced the time period from 30 to 16 days. (Other provisions in the law reduced the time period for appeal from 30 to 10 days and required tenants to post six months' rent in order to appeal and remain in their home during the appeal.) The Pennsylvania Supreme Court, pursuant to Article 5, Section 10(c), suspended the legislation and promulgated revised court rules. The eviction time period was reduced from 30 to 21 days, the appeal period was reduced from 30 to 10 days and a tenant was required to pay three months' rent or the amount of the judgment (whichever is less) in order to obtain a supersedeas to remain in their home during the appeal. (Tenants are also required to escrow ongoing rent during an appeal.)

It is clear that since 1995, major changes have been made in landlord tenant procedures which drastically change the eviction process and give landlords extraordinary power over tenants. These include:

1. Reducing the eviction time from 30 to 21 days;
2. Reducing the appeal period from 30 to 10 days;

3. Requiring three months' rent or the amount of the judgment (whichever is less) to obtain a supersedeas to remain in the property during an appeal of an eviction case;

4. The right to garnish wages for damages to a property;

5. The right to garnish wages to collect unpaid rent; (Pennsylvania has very limited wage garnishment. Landlord have now been put on a level with student loans, taxes and child support.); and

6. Reducing the time period regarding the notice the landlord gives in terminating or not renewing a lease. (30 to 15 days for breach of the lease and non-renewal of a lease and from 30 to 10 or 15 to 10 days, depending on the season, for nonpayment of rent). The law provides that these time periods can be waived in the lease. (Since most leases are drafted by landlords, the time periods are often waived entirely.)

While landlords have great power under the existing court procedures, the proposed bill would even more severely tip the scales in favor of the landlord.

I would also like to comment on the legislative process concerning evictions and court procedures. Article 5, Section 10(c) of the Pennsylvania Constitution provides that the Pennsylvania Supreme Court has the authority to establish rules for enforcing judgments for all of the courts in the Commonwealth. The Section further provides that "all laws shall be suspended to the extent that they are inconsistent with rules prescribed under these procedures." Simply put, the Supreme Court has the sole authority to

establish court rules, not the legislature. The Supreme Court has made this clear that this rule-making power is exclusive. Laudenberger v. Port Authority, 436 A.2d 147, 152 (Pa. 1981). “The Pennsylvania Constitution grants the Judiciary – and the Judiciary alone – power over rule-making.” In Re 42 Pa. C.S. § 1703, 482 Pa. 522 (1978).

The Pennsylvania Supreme Court has clearly established court rules which set forth the time period for eviction in Pennsylvania. In both the Philadelphia Municipal Court and the Pennsylvania District Justice Courts, a tenant cannot be evicted until 21 days after judgment.

I would also like to briefly mention the need for Good or Just Cause evictions in Pennsylvania. Currently, at the end of the lease term, a landlord does not need a reason to not renew the lease. This is very problematic. If a tenant, for example, complains about the need for repairs or other issues, the landlord, at the end of the lease, can simply not renew and can evict the tenant. Good or Just Cause evictions would remedy this problem. Just as during the lease, the landlord would now need a legal reason not to renew the lease.

I thank you for the opportunity to testify here today and would be glad to answer any questions.

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February 1, 2018

TESTIMONY BEFORE THE HOUSE DEMOCRATIC POLICY COMMITTEE

Good morning, it's a pleasure to be here with the Democratic Policy Committee. My name is George Donnelly and I am an attorney at the Public Interest Law Center here in Philadelphia and I represent low-income tenants in legal proceedings against their landlords.

I want to focus my remarks on the problem of retaliatory evictions. Pennsylvania has an aging housing stock, and many rental properties have dangerous conditions that effect the health, safety, and well-being of the Commonwealth's families. Tenants in Pennsylvania have a right to safe, decent housing, and landlords have a legal duty to make repairs that ensure habitable conditions.

But tenants often choose not to complain about squalid housing conditions or exercise legal rights available to them because they fear retaliation, and for good reason. Landlords often respond to repair requests with eviction notices, and Pennsylvania law does not prohibit most types of retaliatory evictions.

If a tenant on a month-to-month lease complains about a faulty heating system in winter, and the landlord evicts her in response, saying that the lease is over and she must leave, the tenant has no legal recourse to contest that eviction.

Similarly, if a family withholds rent because their first floor is flooded with raw sewage - which happened to my clients -- they can be evicted after the landlord makes the repairs, even if those repairs come seven weeks later.

Pennsylvania's neighboring states -- Ohio, New Jersey, New York, Maryland, West Virginia, and Delaware -- all have statutes protecting tenants against retaliatory evictions. As the General Assembly considers reforming the Landlord-Tenant Act, it should ensure that such reforms include protections for tenants against landlord retaliation.

Summary of retaliatory eviction laws

New Jersey

N.J. Stat. Ann. 2A:42-10.10, 2A:42-10.12 2

Prohibitions: A landlord is prohibited from evicting a tenant in retaliation for:

1. the tenant asserting their rights under the law or lease
2. the tenant complaining about conditions in their house or apartment to a government agency
3. the tenant's involvement with a tenants' association

Remedies available for tenant:

1. *Dismissal of eviction case.* Proof of retaliatory action serves as a defense to an eviction. **Even if only one of the reasons the landlord wants to evict a tenant is retaliation, the tenant is protected from eviction.**
2. *Lawsuit.* Damages and other appropriate relief (including injunctive and other equitable remedies)

Delaware

Del. Code Ann. tit. 25, 5516

Prohibitions: A landlord is prohibited from evicting a tenant, increasing rent, or decreasing services in retaliation for:

1. the tenant asserting their rights under the law or lease,
2. the tenant complaining about conditions in their house or apartment to a government agency
3. the tenant's involvement with a tenants' association

Remedies available for tenant:

1. *Dismissal of eviction case.* Proof of retaliatory action serves as a defense to an eviction.
2. *Lawsuit.* An aggrieved tenant is entitled to recover 3 months' rent or treble the damages sustained by tenant (whichever is greater) and the cost of the suit. Attorney fees excluded

Landlord Defenses: The landlord can defend against a claim of a retaliatory act if:

1. The landlord has given appropriate notice for early termination
2. The landlord seeks to use rental unit for their own residence
3. The landlord seeks to remodel, alter, or demolish the unit
4. The landlords seeks to immediately terminate use of rental unit

5. The tenant's complaint about the conditions of the unit was due to the tenant's lack of care of the unit
6. The rental unit was in full compliance with all codes, statutes, and ordinances when the tenant complained
7. The landlord has contracted to sell the property
8. The tenancy is a periodic tenancy, and the landlord notified the tenant of this prior to the complaint
9. The condition the tenant complained of was impossible to remedy
10. The landlord has become liable for a substantial increase in property taxes, operating costs, etc.
11. The landlord has completed a substantial capital improvement
12. The landlord can prove that an increase in rent is similar to the rent charged of other tenants.

Ohio

Ohio Rev. Code Ann. 5321.02

Prohibitions: A landlord is prohibited from evicting a tenant, threatening to evict, increasing rent, or decreasing services in retaliation for:

1. the tenant complaining about conditions in their house or apartment to a government agency
2. the tenant organizing with other tenants for the purpose of negotiation with the landlord.
3. the tenant complaining to the landlord about a violation of apartment code

Remedies available for tenant:

1. *Dismissal of eviction case.* Proof of retaliatory action serves as a defense to an eviction. Tenant may recover possession of the premises and terminate the rental agreement.
2. *Lawsuit.* Actual damages together with reasonable attorneys' fees.

New York

N.Y. Real Prop. Law 223-b

Prohibitions: A landlord is prohibited from evicting a tenant or altering the terms of the tenancy in retaliation ***within six months*** of the following:

1. the tenant asserting their rights under the law or lease
2. the tenant complaining about conditions in their house or apartment to a government agency
3. the tenant's involvement with a tenants' association

Remedies available for tenant:

1. *Dismissal of eviction case.* Serves as affirmative defense in eviction proceeding. Does not protect tenant from obligation to pay missed rent. ***Does not apply in eviction based on violation by the tenant of the terms and conditions of the lease or rental agreement, including nonpayment.***
2. *Lawsuit.* Damages and other appropriate relief (including injunctive and other equitable remedies) Additionally, if the landlord charges a fee or raises rent in response to a tenant's complaint, the tenant can seek triple the amount of such fee.

Maryland

Md. Code Ann. [Real Prop.] 8-208.1 1

Prohibitions: A landlord is prohibited from evicting a tenant, threatening to evict a tenant, increasing ret, decreasing services, or terminating a month-to-month lease in retaliation ***within six months*** of the following:

1. the tenant complaining about conditions in their house or apartment to a government agency
2. the tenant's involvement with a tenants' association
3. the tenant suing the landlord

Remedies available for tenant:

1. *Dismissal of eviction case.* Serves as affirmative defense in eviction proceeding. ***Does not apply if tenant is not current on rent or if the tenant has been late paying rent more than 3 times in the past year (month-to-month and year-to-year tenancies) or 5 times in the past year (weekly tenancy).***
2. *Lawsuit.* Compensation of an amount of money equivalent to as much as three months of rent, plus reasonable attorney fees and court costs.

West Virginia

Imperial Colliery Co. v. Fout, 373 S.E.2d 489 (1988)

Prohibitions: A landlord is prohibited from evicting a tenant in relation to:

1. the tenant complaining about conditions in their house or apartment to a government agency
2. the tenant's involvement with a tenants' association

Remedies available for tenant:

1. *Dismissal of eviction case.* Serves as affirmative defense in eviction proceeding.