




Isiah Leggett  
*County Executive*

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen  
*County Attorney*

MEMORANDUM

TO: Rosie McCray-Moody, Manager  
Office of Landlord-Tenant Affairs

FROM: Terri A. Jones   
Assistant County Attorney

DATE: October 12, 2011

RE: Opinion on Landlord Standing when a Rental Unit is Unlicensed

A legal opinion was requested regarding whether a landlord has standing to participate in a Commission on Landlord-Tenant Affairs if the rental unit is unlicensed.

Chapter 29 of the Montgomery County Code regulates landlord-tenant relations. This Chapter applies to any rental dwelling unit located in the County (§ 29-4). Pursuant to Section 29-16, the owner of a dwelling unit (the landlord) must obtain a rental housing license before operating the dwelling unit as rental housing. Failure to obtain a license is a class A violation (§ 29-18) which is punishable in a civil action. The Director of the Department of Housing and Community Affairs may revoke, deny, or suspend a rental license (§ 29-25(a)). Any person, including a landlord, who is aggrieved by the Director's action, may appeal that action to the Commission (§ 29-25(c)). Therefore, with respect to rental units which are unlicensed due to a revocation or denial, the landlord has standing to appeal the revocation or denial before the Commission.

The Commission also has jurisdiction over complaints by landlords or by tenants pursuant to §§ 29-36 and 29-37. If County staff are unable to conciliate a complaint, the complaint is referred to the Commission to schedule a hearing to decide whether a violation of Chapter 29 has occurred or whether a defective tenancy exists (§ 29-43). The Commission must

serve on all interested parties a notice of the time and place of the hearing (§ 29-44(a)). There is no restriction in § 29-44 governing standing to participate in the hearing.

Pursuant to Section 29-1, a defective tenancy is “any condition in rental housing that violates a term of the lease, this Chapter, or any other law or regulation.” Licensing of rental housing is required pursuant to Section 29-16, and therefore, failure to license the unit could be grounds for a defective tenancy. The Commission or a panel must determine whether a defective tenancy exists and pursuant to Section 29-46, if a defective tenancy exists that the landlord has not allowed the defective tenancy to continue for an unreasonable amount of time. Further, under Section 29-47, if the Commission or a panel finds that a landlord has caused a defective tenancy, the Commission or panel must still determine whether to award any of the remedies enumerated in subsection (b). These remedies include:

- (1) Immediate termination of the lease, and relief from any future obligations under the terms of the lease
- (2) Return of the party’s security deposit or any part of the deposit that the landlord has wrongfully held;
- (3) An award under Section 29-10(c) of up to three times the amount of any security deposit that the landlord has wrongfully withheld. . . .
- (4) Return of all or part of any rent already paid to the landlord after the landlord was notified of the condition;
- (5) An award of damages sustained by the tenant as a result of the defective tenancy . . . ;
- (6) A reasonable expenditure to obtain temporary substitute rental housing in the area;
- (7) After a retaliatory or illegal eviction as defined in Section 29-32, reasonable attorney’s fees incurred by the affected tenant . . . .

As a result, the Commission or a panel is still required to hold a hearing and to determine the appropriate remedy even if the unit is unlicensed at the time of the hearing. Again, there is nothing in §§ 29-44 or 29-47 which limits standing. On the contrary, Article V of Chapter 29 specifically refers to complaints by landlords and complaints by tenants, and thus either a landlord or a tenant could be the respondent.

Whenever the Office of Landlord-Tenant Affairs discovers that a rental unit is unlicensed, it should take the appropriate enforcement action to ensure that the landlord complies with the law. A citation could be issued pursuant to Section 29-18. Evidence of compliance or non-compliance with the law presented to the Commission may be a factor in assessing the credibility of a party or witness.

The recent case of McDaniel v. Baranowki, 419 Md. 560 (2011), involved an unlicensed rental unit in Anne Arundel County. In that case, the Maryland Court of Appeals held that a landlord who failed to obtain a rental license was not permitted to initiate summary ejection (eviction) proceedings for the tenant's failure to pay rent. Nevertheless, a landlord could still file a lawsuit against the tenant for damages due to breach of contract. The Court of Appeals also held that the tenant must show that the unit was uninhabitable or the rental value was diminished as a result of the lack of a rental license in order to recover rent paid to the landlord, even if the lease is defective.

In conclusion, failure to license a rental unit does not divest the Commission of jurisdiction over a complaint by a tenant or by a landlord. A landlord is not denied standing – to make a complaint or to participate in a hearing – if the unit is unlicensed.

cc: James Savage, Chief  
Public Interest Litigation Division

Edward B. Lattner, Chief  
Division of Human Resources and Appeals

