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RECENT DEVELOPMENTS IN RENTAL HOUSING LAWS IN THE DISTRICT OF COLUMBIA AND MARYLAND

Rental housing laws in the District of Columbia and Maryland have been modified legislatively and through court interpretations of existing laws in a significant manner. This Memorandum summarizes those modifications which are likely to impact the majority of housing providers. You should consult legal counsel to determine how they apply to your specific circumstances

DISTRICT OF COLUMBIA

Rental Housing Late Fee Fairness Amendment Act of 2016

The Late Fee Fairness Amendment Act was enacted in order to standardize what may be charged as a late fee, limiting the amount that may be charged to 5% of the monthly rent. The Act prohibits charging interest on a late fee; deducting any amount of a late fee from subsequent rental payments; imposing more than one late fee on any late payment; evicting a tenant based on nonpayment of a late fee; or imposing a late fee on a tenant for late payment or nonpayment portion of the rent for which a rent subsidy provider is responsible for paying. A late fee may only be deducted from a security deposit at the end of the tenancy. A violation of the Act may subject a housing provider to substantial monetary penalties.

Residential Lease Clarification Amendment Act of 2016

The Residential Lease Clarification Amendment Act imposed numerous obligations on housing providers.

1. In rent stabilized rental units, the Rental Housing Act of 1985 was amended to prohibit charging a separate mandatory fee for any service or facility which is not approved through either a change in services or facilities petition or a voluntary agreement.

2. No housing provider may withhold any portion of a security deposit for the replacement value of apartment items that are damaged by ordinary wear and tear. "Ordinary wear and tear" is defined as deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition, but does not include damage due to negligence of the tenant, an immediate family member, or a guest of the tenant.
3. Notwithstanding any provisions regarding access in a lease, a housing provider may not enter a rental unit without at least 48 hours written notice (which may be given by electronic communication, as well as other means) unless the tenant agrees to a shorter time frame or in the event of an emergency. In the event a tenant alleges that a housing code violation exists in the unit, the tenant may not unreasonably prevent the housing provider from accessing the unit for assessment and abatement of the alleged violation, and must provide access upon receipt of 48 hours notice (usually a holdover tenancy) from the housing provider.
4. The Act has now codified the obligation of the housing provider to mitigate damages after a breach by the tenant of the terms of the rental agreement.
5. Any provision requiring the tenant to give more than thirty (30) days notice of intention to vacate upon expiration of the initial term of the lease is no longer enforceable unless the lease specifically states that the provision expires upon the expiration of the initial term of the lease. Similarly, if a tenant is month to month (usually a holdover tenancy), the tenant may not be required to give more than thirty (30) days notice of intent to vacate expiring on the first day of the month following the date of the notice. Notwithstanding the foregoing, the Act provides that if a housing provider places a provision requiring more than thirty (30) days notice of intention to vacate in a lease, it must also state that it will provide a written notice of any rent increase more than 15 days in advance of the commencement of the period during which a tenant may exercise the tenant's right to terminate the lease so that the tenant may elect to give a notice of intention to vacate before the increase goes into effect, without penalty. The language of the Act therefore appears inconsistent as to the circumstances under which notice longer than thirty (30) days may be required.
6. A housing provider may, in its sole and absolute discretion, prohibit subletting of the premises or assignment of a lease, but now must specifically so state in the lease, using the words "in its sole and absolute discretion."

Fair Criminal Record Screening for Housing Act of 2016

The Fair Criminal Record Screening for Housing Act codifies what information may be considered in screening applicants with respect to arrests and convictions.

1. A housing provider is prohibited from making inquiry about or considering a previous arrest record that did not result in a conviction.

2. Before making a conditional offer to lease a unit, a housing provider may not make an inquiry about or require an applicant to disclose a pending criminal accusation or conviction.
3. Before accepting an application fee, a housing provider must disclose in writing to the applicant: (i) the eligibility criteria including financial, employment, criminal and rent history criteria used in deciding whether to rent to the applicant and (ii) a statement to the applicant that he/she may provide evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors.
4. After making a conditional offer to lease, a housing provider may only consider a pending criminal accusation or conviction which has occurred within the past seven years, when the conviction is for one of fifty specific crimes listed in the Act.
5. If a housing provider withdraws a conditional offer based on criminal accusation or conviction, the housing provider is required to provide the applicant written notification of the reason for withdrawal and that the applicant has a right to file an administrative complaint with the D.C. Office of Human Rights.
6. A HOUSING PROVIDER SHALL HAVE IMMUNITY FROM ANY CLAIMS RELATED TO ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF AN APPLICANT'S PENDING CRIMINAL ACCUSATION OR CRIMINAL CONVICTION OBTAINED AS A RESULT OF INQUIRY UNDER THE ACT; provided that the applicant actually becomes a tenant or occupant of the housing provider's housing accommodation.

Elderly Tenants and Tenants with Disabilities Protection Amendment Act of 2016

The Act provides additional limitations on rent increases to qualified elderly or disabled tenants. With respect to the customary annual rent adjustment, such increase shall be limited to the lesser of the increase of general applicability (i.e., the Consumer Price Index increase as determined by the Rental Housing Commission) or the cost of living adjustment of benefits for social security recipients, but not more than 5%. As to petition based increases, qualified elderly or disabled tenants may not be charged approved increases; instead the housing provider will be entitled to receive a tax credit against real estate property taxes through an application to the Rent Administrator.

NOTE: THIS ACT DOES NOT APPLY UNTIL THE DATE OF INCLUSION OF ITS FISCAL EFFECT IN AN APPROVED BUDGET AND FINANCIAL PLAN FOR THE DISTRICT OF COLUMBIA.

Four Unit Rental Housing Tenant Grandfathering Amendment Act of 2016

This Act provides that a housing accommodation that comes into possession of a housing provider as a result of a transfer pursuant to Section 402(c)(2) of the Rental Housing Conversion and Sale Act of 1980 shall not be eligible for exemption from rent stabilization based on the fact that the owner of the housing accommodation is a natural person owns 4 or fewer rental units. Section 402(c)(2) includes, without limitation, transfers between parents and children, and transfers between spouses based on a notice of transfer which does not trigger an offer of sale to the tenants. However, a transfer pursuant to an offer of sale will not deprive the transferee of the right to claim exemption. NOTE: THIS ACT DOES NOT APPLY UNTIL THE DATE OF INCLUSION OF ITS FISCAL EFFECT IN AN APPROVED BUDGET AND FINANCIAL PLAN FOR THE DISTRICT OF COLUMBIA.

Court of Appeals decision regarding the effect of a consent judgment in landlord/tenant court on the right of a tenant to raise defenses in a subsequent action

In Smith v. Greenway Apartments, the District of Columbia Court of Appeals held that the failure to raise counterclaims based on the presence of housing code violations in a landlord/tenant action where the tenant consented to a judgment based on the tenant's failure to pay rent did not bar the tenant from raising those claims in a later landlord/tenant action. This ruling makes it incumbent upon landlord/tenant attorneys handling actions in the District of Columbia that language be included in any consent judgment acknowledging that the judgment resolves all then pending claims between the parties and acts as a bar to any future claims based on claims or defenses that could have been raised by the tenant in the then pending case.

MARYLAND

Bill 19-15 Landlord Tenant Relations-Licensing of Rental Housing-Landlord-Tenant Obligations(Montgomery County)(effective date-March 13, 2017, except as to utility provisions, which are effective June 10, 2017)

1. An inspection of all rental units in the County is to be conducted within the next three years. Subsequent inspections are to occur anywhere from annually to every three year depending upon the results of the initial inspection. By July, 2019, the Department of Housing and Community Affairs (DHCA) must inspect a sample of each multifamily rental property.
2. If a housing provider does not correct a violation within a specified time, the Director of DHCA may authorize a resident to: (1) have the violation corrected by a licensed contractor

from a DHCA maintained list and (2) deduct the cost of the repair from the tenant's rent (up to a maximum of one month's rent).

3. A housing provider is required to give a resident of minimum of 72 hours notice of an upcoming DHCA inspection. In addition, a housing provider will be required to pay the cost of a third and any subsequent inspection if a violation is not corrected by the time of the second inspection.
4. Housing providers will be required to provide information in each lease, on a form developed by DHCA, certain basic information, including: (1) term of lease; (2) amount of rent; (3) date on which rent is due; (4) resident's responsibility for utilities; (5) list of additional rights and responsibilities; (6) information on DHCA and Landlord Tenant Commission services.
5. Housing providers will be required to offer a minimum initial lease term of 2 years and also will be required to offer a minimum term upon renewal of 2 years.
6. Tenants will be permitted to terminate a lease upon 30 days written notice if (1) a tenant/child is a domestic violence victim; (2) a tenant or spouse who is at least 62 years old can no longer live independently and must move to a nursing home or other senior housing; (3) a resident is incarcerated or declared mentally incompetent; (4) a housing provider is determined to have been harassing a tenant or violates a tenant's right of privacy.
7. If a housing provider does not intend to offer a tenant a renewed lease term, the housing provider must provide 60 days notice of intent to terminate the tenancy on the lease expiration date.
8. For each building constructed before July 1, 1978, and any units not individually metered, housing providers will be required to provide tenants information regarding (1) electric and gas submeters; and (2) energy allocation systems. This provision is not effective for 180 days and the form of notice is being developed.
9. Housing providers will be required to post in a prominent place on the premises in a form approved by the Director of DHCA and in multiple languages information regarding (1) filing a complaint with DHCA and (2) prohibited retaliatory practices.
10. A housing provider may no longer charge a tenant organization or group of tenants seeking to form a tenant association a fee for the use of a meeting room for the first meeting of each month.
11. Notices of rent increase must be given at least 90 days in advance of the date of the proposed rent increase.

Court of Appeals decision concerning right of tenant to withhold rent under Maryland rent escrow statute

In Cane v. EZ Rental, decided on November 29, 2016, the Maryland Court of Appeals issued an opinion holding that, under the Maryland rent escrow statute, a tenant may refuse to pay rent and raise the existence of asserted defects or conditions as an affirmative defense to a summary ejectment action brought by a landlord, rather than filing a separate rent escrow action as a prerequisite to any relief under the statute.

If you should have any questions regarding the foregoing information, then please [CONTACT US](#).

Thank you very much.