

Legislative Analysis



LANDLORD/TENANT REVISIONS RE: UNLAWFUL INTERFERENCE

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House Bill 4613 as reported from committee without amendment

Sponsor: Rep. Margaret E. O'Brien

Committee: Judiciary

(Enrolled as PA 127 of 2013)

First Analysis (5-14-13)

BRIEF SUMMARY: The bill would shorten the statute of limitations during which a tenant could sue the landlord after discovering the landlord unlawfully interfered with the premises and also would establish a process by which a landlord could more quickly take possession of a rental unit after a sole tenant died.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the judiciary, but the fiscal impact would likely be negligible. Any fiscal impact would be the result of a reduction in court costs due to a reduction in the civil caseload.

THE APPARENT PROBLEM:

The death of a tenant who lives alone can be problematic for landlords. If there is no co-tenant, or if no heirs open an estate through the probate court or come to claim the deceased's possessions, landlords are forced to go through a lengthy and costly process before they can take possession of the rental unit, clear out the personal belongings of the deceased, and rent the unit to new tenants. (See *Background Information*.)

The Property Management Association of Michigan has requested that the law be changed to allow for a quicker, less expensive process for landlords to regain possession of a rental unit that would avoid going through the probate court.

In a related matter, an action for damages when a landlord engages in forcible entry or unlawful interference may be filed by a tenant either within one year from the date of the incident, or one year from the date the plaintiff/tenant becomes aware of the incident (for instance, the tenant may have been away for an extended period due to work, illness, or vacation or, in the case of a deceased tenant, the heirs did not have immediate knowledge of the tenant's death). Thus, the one-year extension based on discovery of the landlord's conduct can extend the landlord's liability for an indeterminate amount of time. Some would like this "after-the-discovery-extension" eliminated and simply provide for a one-year statute of limitation.

THE CONTENT OF THE BILL:

House Bill 4613 would eliminate a provision that allows a tenant to sue a landlord up to one year after the discovery of damages relating to the forcible eviction or unlawful interference of the premises by the landlord. The bill would also establish certain

conditions under which a landlord would not be liable in a civil action for damages if the landlord reentered and took possession of a rental unit after the tenant died.

Specifically, House Bill 4613 would amend Section 2918 of the Revised Judicature Act to revise a provision to shorten the statute of limitations for actions by a tenant to recover damages for forceful eviction or unlawful interference. Currently, an action to recover damages (for example, loss of property) under Section 2918 must be begun within one year from the time the cause of action arises (the date the landlord committed the forcible eviction or unlawful interference) or becomes known to the plaintiff. The underlined portion would be eliminated.

(Section 2918 also provides for a 90-day period for a tenant to file an action to regain possession of the premises if forcibly and unlawfully evicted or if the tenant's possessory interest was unlawfully interfered with; the 90-day period begins from the time the cause of action arises or becomes known to the plaintiff. That provision would not be amended.)

House Bill 4613 would also add to the circumstances under which a landlord could reenter and take possession of rental property without being subject to a lawsuit to address the issue of when and under which circumstances a landlord could regain possession of the rented premises and dispose of a tenant's property after the tenant died.

Under current law, a tenant whose possession of a rental unit has been unlawfully interfered with by the owner, lessor, licensor, or their agents (landlord) is entitled to recover the amount of actual damages or \$200, whichever is greater, in addition to regaining possession of the premises if they had been evicted or locked out. Actions by the landlord that constitute "unlawful interference" are contained in statute and include such things as removing or destroying the tenant's personal property; changing the locks on the doors; using force or threats of force; and introducing noise, odors, or other nuisances to drive out the tenant.

However, it is not unlawful interference if the landlord regained entry under a court order; interfered temporarily with possession in order to make needed repairs or inspections (if conducted according to law); or believed in good faith that the tenant had abandoned the premises, and, after diligent inquiry, had reason to believe the tenant did not intend to return and the current rent had not been paid.

The bill would amend these provisions to: (1) clarify that an owner's actions would not unlawfully interfere with a possessory interest of the tenant if any of the exceptions discussed above applied; and (2) add another exception. "Owner" would be defined under the bill to mean the owner, lessor, or licensor or his or her agent.

The new exception would apply to an owner who met all of the following requirements:

- The owner had informed the tenant in writing of the tenant's option to provide contact information for an authorized person the owner could contact in the event

of the tenant's death. The owner would not be responsible for incorrect contact information provided by the tenant or for the tenant's failure to provide contact information.

- Current rent has not been paid.
- The owner believed in good faith that the tenant had been deceased for at least 18 days and that there was no surviving tenant.
- After the 18 days described above have been met, and not less than 10 days before the owner reenters to take possession of the premises and dispose of the property, each of the following occurs:
 - If the tenant had provided contact information, the owner makes a reasonable attempt to contact the authorized person using the contact information provided and to request the authorized person to open a probate estate for the tenant within 28 days after the tenant's death. The owner would not be responsible for the authorized person's failure to respond to the notification before the owner's reentry into the premises.
 - The owner places a notice on the door of the premises indicating the intent to reenter, take possession of the premises, and dispose of its contents after 10 days have elapsed.
 - The owner notifies the county public administrator (or the state public administrator if the county does not have one) that the owner believes that the tenant is deceased and the owner intends to reenter to take possession of the premises and dispose of the contents if a probate estate is not opened. Upon request by the public administrator before the 10-day period described above has elapsed and presentation to the owner of proper credentials and identification, the owner must give access to the premises to the public administrator. The opening of a probate estate by a public administrator under this provision would be at the sole discretion and sole expense of the public administrator.
- A probate estate has not been opened for the deceased tenant by a public administrator, authorized contact person, or any other person in the county in which the premises are located and the owner has not been notified in writing of the existence of a probate estate opened in another county and of the name and address of the personal representative.

BACKGROUND INFORMATION:

The bill is similar to House Bills 5034 (2009-2010) and 4263 (2011-2012). House Bill 5034 was passed by the House of Representatives but failed to see Senate action and

House Bill 4263 was ordered enrolled but subsequently pocket vetoed (meaning the governor did not sign the bill before the allotted time to do so expired).

According to information supplied by the Property Management Association of Michigan during the discussion of both last session's bill and House Bill 4613, if the heirs of a deceased tenant do not open an estate, only a personal representative appointed by a probate court has the authority to enter the apartment, collect personal belongings, or receive service of a landlord/tenant lawsuit. In such cases, landlords must either wait for a creditor to initiate probate or incur the expense of opening probate themselves. Reportedly, these costs can run from a minimum of \$500 to approximately \$1,000. In addition, the landlord incurs the costs of arranging for a court officer to empty the apartment, plus the loss of any unpaid rent and revenue that would have been earned had the landlord been able to rent the unit sooner. Even if the heirs open an estate, it can take up to six months before the process is worked through, the rental unit cleared of the deceased's personal belongings, and the unit turned back over to the landlord.

ARGUMENTS:

For:

Supporters of the bill see it as a mechanism for landlords to recover possession of their rental units within a reasonable time after a tenant dies and to allow for the removal and disposal of unclaimed personal property remaining on the premises without having the expense and delay of having to open an estate in probate court.

According to industry members, especially in the case of lower-income tenants, there either are no heirs; no listing of next-of-kin; or if relatives are located, they are not interested in opening an estate or taking possession of the deceased's belongings. Even when heirs are located, they may not have the same sense of urgency to come and empty the rental unit in a timely manner, and often are unable or unwilling to pay the monthly rent until the unit is cleared out. Each month that the apartment or rental home is off the market, the landlord loses revenue. The time limits placed in the law by the bill and avoidance of probate court proceedings (which require belongings to be inventoried) would decrease the financial burden upon landlords and even allow them to use self-help to clear the rental units instead of paying for court officers to place the belongings on the curb.

However, the bill does require the landlord to notify either the county or state public administrator if there is no known heir or no one has stepped forward to open an estate. The requirement gives the public administrator an opportunity to inspect the property. Should it seem like there may be heirlooms or valuable property, the public administrator would bear the burden of opening an estate, making an inventory of the property, liquidating those assets, and then holding the assets in case an heir does become known. (Public administrators recoup their costs from a percentage of the property's assets when liquidated.) Thus, landlords are able to regain possession of their rental property in a shorter period of time yet more protections are built in to the process regarding the personal property of the deceased.

Awareness of the expedited process that the bill would create could motivate renters to include contact information in lease agreements or with their landlords or to make wills detailing their wishes for the disposal of their possessions. Moreover, the bill's new exception would only be triggered when all of the new listed conditions existed. Thus, the bill balances the interests of tenants and landlords by making clear the obligations of property owners and managers when a tenant passes away.

For:

By allowing an extended time period (one year after discovery of forcible entry or unlawful interference on the part of a landlord) in which plaintiffs can file an action to recover damages, current law unfairly creates an indeterminate period of liability for landlords. The bill would address that.

Response:

The provision shortening the statute of limitations for an action to recover damages would apply to all rental scenarios, not just ones involving a deceased tenant. Most civil actions have a two- or three-year SOL, therefore the current one-year extension to allow for discovery of the landlord's conduct is not unreasonable.

The bill, by eliminating this important protection for tenants or heirs, seems overly protective of landlords, whose liability for their conduct would be reduced. The one-year extension should be preserved for those situations when a tenant was not immediately aware of the landlord's conduct, or for those times when an heir is not immediately located and the landlord regains possession of the unit and disposes of the personal belongings without following the process currently required by law or as proposed by the bill.

Against:

House Bill 4613 contains more protections for the property of the deceased than previous versions in past sessions, but still could do more. For instance, in order to be exempted from unlawfully interfering with the tenant's possessory interests in the case of a deceased tenant, the landlord must take certain actions. However, a strict reading of the bill implies that these actions are not to be initiated before the expiration of 18 days after the landlord has come to believe that the tenant has died. Should the courts uphold such a strict reading, it could result in such things as the public administrator, or contact person/heir not being notified during that 18-day-period and then having only 10 days to respond to the landlord, inspect the property, decide whether to open an estate, and file the necessary petition.

The bill does not specify how the public administrator or heir is to be notified. If the landlord mails the notice after the 18-day-period expired, it would seem the public administrator or heir would have a very short time frame to respond before the landlord could lawfully reenter and dump the deceased's possessions. Perhaps the notification to the contact person/heir or public administrator should be done immediately upon learning of the tenant passing to give a more reasonable time frame for the either to open an estate yet without causing further delays for the landlord.

POSITIONS:

A representative of the Property Management Association of Michigan testified in support of the bill. (5-2-13)

The Michigan Housing Council indicated support for the bill. (5-2-13)

The Apartment Association of Michigan indicated support for the bill. (5-2-13)

The Rental Property Owners Association indicated support for the bill. (5-2-13)

Representatives of the Office of Attorney General offered neutral testimony on the bill. (5-2-13)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.