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Hon. Joan Zeldon, Chair
Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act
District of Columbia Superior Court
515 Fifth St. N.W, Room 219
Washington, DC 20001

RE: Tenant Comments on lssues to be Discussed by Drafting Committee at the November 2O14 Drafting Committee Meeting Concerning the Draft Revised Uniform Residential Landlord and Tenant Act

Dear Judge Zeldon,

I am writing in my continuing role as an observer and tenant advocate regarding the work of the Drafting Committee on a Revised Uniform Residential Landlord and Tenant Act. Thank you and the Drafting Committee for all of your hard work and for your openness to the comments of observers.

Below are my comments on the table entitled lssues to be Discussed by Drafting Committee at the November 2O14 Drafting Meeting. I have consulted with other tenant advocacy observers who concur with my comments.

1. Criminal Activity

The table summarizes a number of comments from the floor at the annual Uniform Law Commission meeting that expressed concern over the scope of the criminal activity sections. We share those concerns. Similar regulations by the United States Department of Housing and Urban Development (HUD) covering public and subsidized housing have led to hundreds of court cases over their scope. Our experience with the regulations and the case we have litigated lead to these comments.

a. Section 102(9) should not equate the terms criminal and illegal. As the latter is more general and broad than the former, the HUD definition has led to litigation over its meaning. For instance, it could be revised to state:

(9) “Criminal act” or “criminal activity” means:
(A) the criminal ~~illegal~~ manufacture ….
(B) any criminal activity …. ~~is illegal under the criminal law of this state~~ that ….

b. Drug-related and non-drug-related criminal activity should be treated the same. General criminal activity as defined in Section 102(9)((B) must threaten the health or safety of other tenants on the premises, the landlord, or the landlord's agents, or threaten the right to peaceful enjoyment of the premises by other tenants. Other the other hand, drug-related criminal activity as defined in Section 102(9)(A) need not have any impact of the property, the landlord or other tenants. While all criminal activity can lead to consequences from the criminal justice system, eviction only should result from criminal activity that affects the property, the landlord, or other tenants. A revision that would equalize criminal conduct is:

> (9) "Criminal act" or "criminal activity" means:
> ~~(A) the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance as defined by law other than this [act] when done by the tenant, an immediate family member, or other individual under the control of or acting with the permission of the tenant on the premises; and~~
> ~~(B)~~
> any criminal activity by the tenant, an immediate family member, or other individual under the control of or acting with the permission of the tenant ~~that is illegal under the criminal law of this state~~ that:
> (1) threatens the health or safety of other tenants on the premises, the landlord, or the landlord's agents; or
> (2) threatens the right to peaceful enjoyment of the premises by other tenants.

c. Some comments from the floor indicated concerns over evicting an entire household over the actions of a family member. We share those concerns. Some states have adopted an innocent tenant defense. An example based on Minn. Stat. § 504B.171 could be part of a revision to Section 601(c)(1)(A):

> (A) the tenant, an immediate family member, or another person invited on the premises by the tenant has committed a criminal act on the premises, except where the tenant did not know or have reason to know of that activity, or

2. Immediate family member, Section 102(19): We have no objection.

3. Prohibited provisions, Section 203(b): We have no objection.

4. Costs, Section 205(b): Costs should be mandatory, as they are in many states.

5. Habitability, Section 303: There should be no exceptions from habitability obligations for certain landlords. Standards for habitability are for the protection of the tenant, so the status of the landlord should be irrelevant. There should be no exceptions for certain landlords unless there will be exceptions from tenant obligations for certain categories of tenants, such as poor, elderly, and disabled tenants.

6. Tenant repairs, Section 401(2)(B): A set time period, such as five days, is better than promptly, which would require litigation and court interpretation to set the time period.

7-9. Tenant grace period, Section 601(b): The tenant should have a grace period for cure breaches similar to the landlord's grace period to complete repairs. Under Section (2)(A), the landlord has 14 days.

In states that have a notice and opportunity to cure provision, we have not seen evidence of abuse by tenants by rushing to cure after the expiration of the cure period. If the tenant cures the breach before the landlord files an eviction action, then the breach should be cured, but if the landlord files after expiration of the cure period and before the tenant takes action to cure the breach, the breach should not be considered cured.

10. Waiver, Section 602: Waiver is a common principle in both statutory and common law landlord and tenant law around the country.

11-13. Retaliation, Section 901: The National Apartment Association (NAA) continues to argue that the retaliation sections are burdensome. It provides no evidence that the provisions of the original Act have been abused. The NAA argues for penalties for tenant retaliation. The NAA provides no evidence of a problem with tenant retaliation. To the extent that tenants or landlords engage in frivolous litigation, most states have laws and rules that authorize imposition of sanctions. Also, the Act already includes a requirement that both parties act in good faith in Section 105.

If any part of the landlord's purpose is retaliation, it should be prohibited. Rebuttal of a presumption of retaliation should require a wholly non-retaliatory purpose. *See Parkin v. Fitzgerald*, 307 Minn. 423, 240 N.W.2d 828 (1976).

Some elements of landlord and tenant law exist for the protection of landlords, while others exist for the protection of tenants. Prohibitions on retaliation are for the protection of tenants. The NAA asserts that lease non-renewals should be exempted from retaliation protections, but gives no rational distinction between term lease non-renewal and monthly lease termination. Refusing to renew a lease based upon retaliation has the same effect on the tenant: retaliatory termination of the tenancy. Retaliation never should be allowed.

14-18 Disposition of tenant property: There should not be a minimum value threshold for protection of the tenant's property unless there would be a similar minimum threshold for property damage to justify security deposit withholding, or a minimum threshold of unpaid rent on which to base an eviction.

Personal property protections for tenants should not be waived. Low-income tenants rarely have any negotiating power with landlord over the provisions of leases.

Eight days to contact the landlord to retrieve personal property is too short. In Minnesota the time period is 28 days, reduced from 60 days a few years ago.

There should be some standard for the landlord's sale of tenant property. If not "commercially reasonable" the sale of the personal property should be in good faith.

19-21. Domestic violence, Sections 1107-1108: We support the separate comments of Sybil Hebb.

22-24. Security deposits, Section 1201: The NAA argues that prepaid rent be removed from Section 1201's security deposit calculation. Removal of prepaid rent would allow the landlord to charge a deposit of two times the rent in addition to any prepayment of rent to secure the apartment. For landlords who require prepayment of a first and last month rent, a deposit equal to two month's rent would add up to four times the rent. For the large number of tenants who pay half of their income for rent, this would amount to a prepayment of two months of income for the new apartment at the same time the tenant is paying rent on the current apartment and awaiting return of the current deposit. Such a high financial cost to moving can make poor tenants captive to their current landlords and the conditions of the property.

Security deposit limits are needed because the market rate does not protect tenants. Some recent studies have found an increase in the percentage of tenants paying one-half of their income for rent. Most tenants preparing to move have to pay to secure a new apartment while paying rent at the current apartment and awaiting return of the deposit for the current apartment. Tenants who cannot afford to move become captive to their current landlord and have much to risk by attempting to enforce their rights. We continue to believe that the deposit limit should not be increased from the original Act.

Providing an exception for lawn service, snow removal, pool, and pest control services would encourage landlords to charge tenants separately for maintenance of the property.

25-27. Security deposits, Section 1202: There should be no exception for certain landlords. As noted above, there are no exceptions to tenant obligation for special classifications of tenants, such as poor, elderly, or disabled tenants.

The transferee of the property and the deposit should be responsible for the deposit. In many states the purchaser of real property takes it subject to claims against it. Some states specifically provide for ownership transferee liability to the tenant for the deposit. *See* Minn. Stat. § 504B.178, Subd. 6.

28-31. Security deposits, Section 1203: We do not object to removing Section 1203(a)(2): "landlord . . . (2) shall notify the bank that maintains the bank account in a signed record that the account is a special account for the purpose of holding security deposits".

There should be some minimum penalty for wilful violation of the deposit law. Many states have penalties for landlord violation of security deposit laws, varying from a set penalty to a multiple of the deposit and interest.

Deposits should be put in interest-bearing accounts with the deposit increasing in value at the rate of interest. If the tenant complies with the lease and does not damage the property or owe rent at the end of the tenancy, the tenant should receive a returned deposit of the same value to the tenant as when the tenant provided it.

32. Security deposits, Section 1204: There should be some minimum penalty for violation of the deposit law. As noted above, many states have penalties for landlord violation of security deposit laws, varying from a set penalty to a multiple of the deposit and interest. Having a landlord penalty here does not make the entire Act unbalanced. There are penalties for tenants in other sections.

Thank you for considering these comments.

Sincerely,

/s/
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