In the

Court of Appeals of Maryland

September Term, 2021

Misc. No. 11

Alison Assanah-Carroll

Appellant

v.

Law Offices of Edward J. Maher, P.C., et al.

Appellees

On Certification of Legal Question from
the United States District Court
for the District of Maryland

No. CCB-20-2376

(The Honorable Catherine C. Blake)

Brief of Appellees

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STATEMENT OF THE CASE

On August 17, 2020, Appellant/Plaintiff Alison Assanah-Carroll ("Tenant"), as tenant, filed a complaint in the United States District Court for the District of Maryland (Case No. CCB-20-2376 (Blake, J.)) against her landlord, Appellees/Defendants E.T.G. Associates '94, LP and Roizman Development Corp. (collectively "Landlord") and against the Landlord's attorneys, Defendants/Appellees Law Offices of Edward J. Maher, P.C. and Edward J. Maher ("Attorney Appellees"). Tenant's First Amended Complaint asserts the following claims against Landlord: Declaratory Judgment; Violation of the Maryland Consumer Debt Collection Act ("MCDCA"); Violation of the Maryland Consumer Protection Act ("MCPA"); and Money Had and Received.[1]

Tenant's claims are based on the central allegation that, after Tenant's lease commenced on August 1, 2019, Landlord's rental license for the property under Baltimore City Code, Art. 13 § 5-4 ("§ 5-4") lapsed and then was renewed during Tenant's tenancy ("Lapsed Period").[2] Although the property was licensed when Tenant commenced her

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[1] Tenant asserts a Fair Debt Collection Practices Act claim against Attorney Appellees only. Tenant also purports to seek to establish a class action on behalf of all tenants.

[2] The parties dispute the duration of the Lapsed Period. Landlord contends it was approximately six months at the longest and that Landlord promptly renewed the license once it discovered the lapse. In 2019, Landlord was in the process of switching on-site property managers, and without the knowledge of anyone at ETG and Roizman, there were apparently one or more violation notices that had to be addressed before the registration could be renewed. Once the issue was brought to Landlord's attention, Landlord promptly arranged for an inspection under the new third-party inspection regime (described below), and the property passed in February 2019. For reasons that are unclear (potentially due to the shutdown resulting from the COVID-19 pandemic) the City did not "issue" the license until July 14, 2020. Apx. 2. The initial two-year license expires on February 19, 2022.

tenancy and was renewed after Landlord realized it had lapsed, and although the premises are habitable and she sustained no actual damages, Tenant contends that, by operation of § 5-4, the rent she paid to and/or that was collected by Landlord during the Lapsed Period constitutes damages under the MCDCA and MCPA. She also contends that payments she withheld during the unlicensed period can never be collected, even though Landlord renewed the license. Tenant further contends that Landlord must refund such rents to her, notwithstanding she had full use and enjoyment of the premises and sustained no damages.

Landlord moved to dismiss, arguing that, in the absence of any actual damages, Tenant cannot sustain MCDCA or MCPA claims and, moreover, she is not entitled to disgorgement of rents because she had full use and enjoyment of a habitable apartment and sustained no actual damages from the absence of the rental license. Stated differently, it is Landlord's position that § 5-4 does not turn rent payments pursuant to a valid lease, for a perfectly habitable rental unit, into legally cognizable damages that can be recovered by a tenant.

On October 26, 2021, before ruling on the motions to dismiss, the federal court issued an Order Certifying Questions to the Court of Appeals of Maryland ("Certified Questions Order"). On October 29, 2021, this Court issued a Notice to Counsel confirming receipt of the certified questions and establishing a briefing schedule.

See Apx. 2. For purposes of the certified questions, whether the Lapsed Period is six or eleven months is immaterial.

I. QUESTIONS PRESENTED AND PROPOSED ANSWERS

Landlord contends that the following certified questions from the federal district court should be answered in the negative:

1. Can a tenant who paid rent to a landlord in Baltimore City who lacked a license pursuant to Baltimore City Code, Art. 13 § 5-4 maintain a lawsuit under either the [MCDCA] or [MCPA] to recover the rent paid without a showing of any damages separate from the rental payment itself?

Proposed Answer: No, actual damages are an element of any claim under the MCDCA or the MCPA, including the claims Tenant makes in this case, and payment of rent during an unlicensed period, without more, does not constitute actual damages.

2. Does a currently licensed landlord violate either the MCDCA or the MCPA by collecting rent from a tenant or pursuing ejectment actions against a tenant who has failed to pay rent during a prior period when the landlord, or a prior landlord, was not licensed under Baltimore City Code, Art. 13 § 5-4, where the tenant does not allege any damages separate from the rental payment itself?

Proposed Answer: No, when the license is restored, the landlord may collect rents due during the unlicensed period. The Baltimore City Code does not render forever uncollectible rent payments originally due during an unlicensed period where the tenant alleges no actual damages. Although a landlord of an unlicensed property may not resort to the courts, once the license is renewed the landlord may again use the summary ejectment process to collect the amounts that were due during the unlicensed period, subject to whatever rent-escrow claims or defenses the tenant may raise.

STATEMENT OF FACTS

I. Facts Pertaining to the Tenancy and Status of the Rental License

Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 12-606, the parties have agreed that the facts that control this Court's determination of the certified questions are set forth in the Certified Questions Order:

- [Tenant] alleges that she leased an apartment in a residential multi-unit building in Baltimore City, owned and operated by [Landlord].

- [Tenant] alleges that, when she began living at the apartment, the property was licensed pursuant to the Baltimore City Code. She alleges that, during part of the time she lived in the building, the license lapsed for approximately one year, and then the property was again properly licensed. [Tenant] alleges that the property is currently properly licensed.

- [Tenant] alleges that she made rental payments during the period when the property's license had lapsed. [Tenant] alleges that she stopped making rental payments when she learned that the property's license was not in effect. [Tenant] alleges that, when she learned the property was again licensed, she resumed making rental payments.

- [Tenant] alleges that [Attorney Appellees] filed ejectment actions in the District Court of Maryland for Baltimore City to collect unpaid rent. [Tenant] alleges that she made a payment for rent incurred during the period the property was unlicensed to redeem her lease pursuant to a final judgment of the Baltimore City District Court.

- [Tenant] alleges that the collection of rent during the unlicensed period violated the Baltimore City Code, and those payments constitute damages under the MCDCA and MCPA and must be refunded.

- [Tenant] alleges that attempting to collect unpaid back rent for months when the property was not licensed, even though the property is currently licensed, violates the Baltimore City Code, and the full amount of the unpaid rental payments constitutes damages under the MCDCA and MCPA that she is never required to pay [Landlord] for the period that the property was unlicensed.

- [Tenant] does not allege that her dwelling unit was uninhabitable or that the value of the lease was diminished by any condition of the property caused by the lack of licensure, separate from the mere fact that the property was not licensed. Instead, [Tenant] alleges that the entire rental payment for any unlicensed period constitutes damages.

App. 154-156.

The foregoing facts are synthesized from the allegations of Tenant's complaint. For additional color and context, the following allegations appear in Tenant's complaint. Md. Rule 8-504(a)(4).

Tenant's apartment is one of many within a large residential multi-unit building at 2601 Madison Avenue in Baltimore City. App. 3-4, 10. When Tenant moved in, the building was licensed pursuant to the Baltimore City Code. App. 7.[3] She alleges that the Lapsed Period is approximately eleven months.[4] App. 6. She alleges she made rental payments during the Lapsed Period. App. 7. Tenant alleges that she stopped making rental payments when she learned that the building's license was not in effect. App. 8.

Tenant does not allege any facts as to why the building's license lapsed, and her complaint only speculates as to the reason. App. 5. There is no allegation that the lapse was due to any condition within her apartment or because the premises were uninhabitable. App. 17, 19-20.

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[3] Although each landlord is required to register, the licensing requirement at issue applies to the building not the owner or operator. Apx. 11. As more fully explained below, the difference between the license covering the property and not the person is a significant one under this Court's precedents. *See, e.g.*, *CitaraManis v. Hallowell*, 328 Md. 142, 162 (1992).

[4] As noted above, Landlord contends it was approximately six months at the longest.

Tenant alleges that the Attorney Appellees filed two separate ejectment actions against her in the District Court of Maryland for Baltimore City during the Lapsed Period. App. 7-8. Tenant did not appear at the December 9, 2019 trial in the first action, and a judgment was entered against her. App. 7-8, 87. She alleges that she made a payment for rent incurred during the Lapsed Period to avoid eviction pursuant to that final judgment. App. 8. Appellant did not appeal the judgment or seek to vacate it, and there has been no determination that it was unlawfully entered. *See Chavis v. Blibaum & Assocs., P.A.*, ___ Md. ___, No. 30, SEPT. TERM, 2020, 2021 WL 3828655, at *12 n.13 (Md. Aug. 27, 2021) ("Our holding in no way means that a judgment debtor may relitigate the validity of a judgment through an MCDCA claim."). Nor did Tenant file a rent escrow action or request to escrow her rents as a defense to the landlord-tenant action. App. 87.[5]

On February 4, 2020, in the second landlord-tenant action, when the absence of the license came to light, the Baltimore City District Court ruled that, based on an open violation notice pertaining to the property, Landlord could not obtain a judgment for the unpaid rent. App. 69. Again, Tenant did not file a rent escrow action. App. 65-70. She also alleges that Landlord sent her a letter demanding payment of her past due rent. App. 9.

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[5] As explained in n.2 above, Landlord does not know exactly what led to the lapse and did not become aware of it until it came to light in the second district court action.

Thereafter, the rental license was reinstated and it remains current. App. 9; Apx. 2. When Tenant learned that the building's license was again currently effective, she resumed making rental payments. App. 9.

Tenant does not allege that there was any change in the condition of her apartment or the building as a whole before or after the reinstatement of the license. She does not allege that the property was uninhabitable or that the value of her lease was diminished by any condition at the property or the lack of licensure. Although Tenant alleges minor defects in the condition of the building (App. 7),[6] she disavows that they have any significance — she says that the rent itself is her only "damages" because she should not have had to pay it at all during the Lapsed Period. Thus, Tenant alleges that the entire rental payment for any unlicensed period constitutes damages by operation of § 5-4(a)(2). *E.g.*, App. 17-20.

II. Baltimore City Code, Art. 13, § 5-4

In 2018, through City Council Bill 18-0185, the Baltimore City Code was amended to extend existing rental licensing requirements for multi-unit buildings to one-unit and two-unit rental properties. Tenant's Br. 4-5. Multi-dwellings, like the subject building, were already required to be licensed. App. 99; *see also* Appellee's Br. in *Aleti v. Metro. Balt., LLC*, No. 39, Sept. Term 2021, at 6 . The amendment also privatized the inspection

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[6] Isolated issues with elevators or rodents are an unfortunate reality of living in a large apartment building in a densely populated area, but Tenant has stipulated that such conditions were not so pervasive that they rendered the premises uninhabitable or resulted in her sustaining any loss or damage. App. 153, 155-156. Had conditions rendered the unit uninhabitable, Landlord does not dispute that Tenant would have a remedy under the Maryland Code and Baltimore City Public Local Laws to escrow rent.

process. *Id.* Before the amendment, City housing inspectors conducted the licensing inspections. The amendment changed the inspection regime to require landlords to hire private home inspectors to conduct the inspections required to obtain the license in compliance with the City's health and safety standards. Appellee's Br. in *Aleti* at 3.

The purpose of the amendments was the same as the existing Housing and Urban Renewal Article of the Baltimore City Code: public health and safety. Tenant's Br. 4-5.

The 2018 amendments also added more detail to the provision prohibiting unlicensed rental for all landlords. Section 5-4(a) now provides that no person may:

> (1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or
>
> (2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

Under § 5-26, violation of § 5-4 is a misdemeanor subject to a $1,000 fine. The City Code does not contain a provision authorizing a private cause of action against a landlord for violating § 5-4(a), and Tenant does not assert one.[7]

Nowhere in the Code's text or in any of the legislative materials is there any reference to or contemplation of a refund or disgorgement of payments collected for rents during an unlicensed period. Nor is there any indication that the Code was meant to change

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[7] Section 5-25 of Article 13 provides for enforcement by environmental citation, but does not preclude other civil or criminal remedies or enforcement actions.

the requirement that rental payments for an unlicensed period are still owed and could be collected upon reinstatement of the license. And, nowhere in the Code's text or in any legislative materials is there any suggestion that § 5-4(a) forever discharges a contractual debt obligation to pay rent for a perfectly habitable rental unit merely because a license has lapsed.

It is particularly important to appreciate that, in a building where there are many rental units (here 146 apartments), the City does not issue a license for each unit, but rather the building as a whole is licensed. Apx. 2, 3. As a result, a condition in one unit may trigger a violation that can cause a licensing suspension or the inability for a landlord to renew a license, notwithstanding that all other units are perfectly habitable and no other tenants are affected. Apx. 4 (Baltimore City inspection form noting that one form must be returned for each unit inspected); Apx. 9 (violation lookup form showing that violation notices are by address only).

To be sure, when a property is not currently licensed, the landlord cannot take advantage of the summary ejectment procedures. *Velicky v. Copycat Bldg. LLC*, ___ Md. ___, No. 1, SEPT. TERM, 2021, 2021 WL 5562319, at *19 (Md. Nov. 29, 2021). In no circumstance, though, does the absence of a license alone automatically trigger a disgorgement of rent payments.

ARGUMENT

Consistent with its prior precedents, this Court should answer the certified questions in the negative, determining that a § 5-4(a)(2) violation, in and of itself, does not replace the requirement of actual damages to sustain claims under the MCPA and MCDCA.

Otherwise, a local public health ordinance will be transmuted into a sweeping private cause of action that creates a new category of legally cognizable damages, cancels valid lease contracts, renders rents forever uncollectible during the unlicensed period, and requires a landlord to disgorge rents collected from a tenant who has occupied a habitable rental unit without incurring any damages. The Baltimore City Council is not authorized to modify the requirement of actual damages for establishing relief under State consumer protection laws, and that was never the Baltimore City Council's intent when it enacted § 5-4(a)(2). Moreover, Tenant's interpretation of how § 5-4(a)(2) operates would be unconstitutional in numerous ways, including by taking private property without just compensation, imposing excessive fines and penalties, interfering with vested property rights, and impairing private contracts.

This Court should avoid that outcome and, instead should hold — consistent with the line of cases discussed below — that a payment of rent for an unlicensed property is not, in and of itself, damages, and actual damages caused by the absence of a license must be proved to recover under any statutory or equitable theory. Consequently, because Tenant alleges no such damages, this Court should hold that she cannot maintain any claims for violations of the MCDCA or MCPA. Accordingly, Landlord requests that this Court answer the certified questions in the negative.

I. A stand-alone § 5-4(a)(2) violation, without actual damages, cannot constitute a cognizable MCPA or MCDCA claim

This Court has already held that it is not a violation of the MCPA for a landlord to collect or attempt to collect rent due pursuant to a valid lease merely because the rental

license was not in place, where the rental unit is habitable and the tenant has sustained no actual damages from the absence of the license. Simply put, the absence of a license does not automatically cause injury or loss to a tenant. That is particularly so in a multi-unit building where a license applies to the entire building and not individual units and, therefore, the licensing failure may be related to a single unit among hundreds of others that are not in any way affected by the violation. In such circumstances, the payment of rent, in and of itself, does not constitute actual damages necessary to sustain a claim under the MCPA. The same principle applies under the MCDCA's similar statutory provisions because actual damages are likewise required to sustain a MCDCA claim.

A. Under the MCPA, lack of a license alone does not constitute damages

For more than 35 years, this Court's precedents have held that paying rent when a property is not licensed, without more — such as diminution in the value of the lease because of the property's poor condition, or expenses incurred by the tenant to obtain alternate livable housing — is not actual damages. This Court has uniformly rejected Tenant's central premise that the absence of a license, without any causal connection to actual damages, excuses the payment of rent or entitles the tenant to restitution. *See Golt v. Phillips*, 308 Md. 1 (1986); *CitaraManis v. Hallowell*, 328 Md. 142 (1992); *Galola v. Snyder*, 328 Md. 182 (1992); *McDaniel v. Baranowski*, 419 Md. 560 (2011). Contrary to Tenant's arguments, the holdings of these seminal cases govern the amended language of § 5-4(a)(2) and, therefore, compel a negative answer to the certified questions.

In *Golt v. Phillips*, 308 Md. 1 (1986), an elderly, disabled retiree agreed to rent a Baltimore City apartment based on the landlord's assurances that certain repairs would be made. *Id.* at 5. He moved in but the repairs were never made, and other defects he identified were not corrected. *Id.* A housing department inspection revealed that the property was not licensed and had numerous habitability defects, "including the lack of toilet facilities in Golt's apartment, defective door locks, and the lack of fire exits and fire doors." 308 Md. at 5–6. In those circumstances, this Court held that the unlicensed rental of such an unlivable property was an unfair or deceptive trade practice. 308 Md. at 11. The damages included restitution of three months of rental payments for the uninhabitable apartment that lacked the most basic health and safety measures, and consequential damages for the tenant's moving expenses and the increased cost of substitute housing. 308 Md. at 13-14.

On the other end of the spectrum is *CitaraManis v. Hallowell*, 328 Md. 142 (1992). In *CitaraManis*, the tenants leased residential property that was never licensed under the Howard County Code. After the tenancy ended, the tenants sued the landlord under the MCPA, seeking restitution of the rents paid during the 18-month tenancy, based purely on the lack of licensure and not any defect in the property. *Id.* at 145. Holding that the absence of a license, standing alone, does not entitle a tenant to rent restitution, this Court recognized that the purpose of the licensing ordinance is "the identification of premises to be inspected in order to determine compliance with housing codes. Determining whether particular landlords or their agents have necessary qualifications to render services as

landlords is not the object of either licensing scheme. In effect, premises and not people are to be licensed." *Id.* at 162. This Court held:

> The approval of dwellings under a rental housing licensing scheme, from a public safety and welfare standpoint, is more like the approval of plans for the construction of buildings than the licensing of service occupations. Inasmuch as the construction manager in *Schloss* [*v. Davis*, 213 Md. 119, 125 (1917)] was permitted affirmatively to recover promised compensation, a fortiori, the [tenants], on the present record, are not obliged to refund rent paid. *On remand in this case, the task of the plaintiffs will be to show the degree of violation of the underlying housing code. The absence of a rental housing license in and of itself does not establish the right to recover rent paid.*

Id. at 163-64 (emphasis added).

Accordingly, this Court remanded the case to the trial court "to determine whether the tenants are able to prove that they suffered 'actual injury or loss,' justifying recovery under § 13–408(a) of the CPA, or that the landlords' loss of all rent would be proportional to the purpose sought to be achieved by the licensing scheme." *Id.* at 164.

Importantly, in reaching that conclusion, this Court distinguished (and clarified) its earlier opinion in *Golt v. Phillips*, 308 Md. 1 (1986). Given the deplorable housing conditions at issue in *Golt*, this Court in *CitaraManis* recognized that the suggestion that the landlord "'may not retain any benefits from the unlicensed lease, and Golt may recover his full damages'" does not apply in all cases. *Id.* at 150. "Because of the obvious actual loss and damage suffered by the tenant in *Golt* who paid rent for what proved to be an uninhabitable apartment, we realize now, for the reasons hereinafter set forth, that we spoke much too broadly in making the statement just quoted." *Id.*

On the same day this Court decided *CitaraManis*, the Court decided the companion case of *Galola v. Snyder*, 328 Md. 182 (1992). *Galola* reaffirmed that a tenant must prove actual loss or injury from the lack of licensure, and voluntary payment of rent pursuant to a lease, even an "unenforceable lease does not entitle a tenant to restitution of that rent unless the tenant can establish that he or she was provided less than she had bargained for in the lease." *Id.* at 186 (citing *CitaraManis*, 328 Md. at 158-59). *Galola* reversed summary judgment for the tenant and remanded for a trial on "actual loss or injury suffered by Snyder because of the defects in the property which would have been disclosed upon inspection." *Id.*

McDaniel v. Baranowski, 419 Md. 560 (2011), reinforced the foregoing analytical framework, again holding that the absence of a rental license must be causally connected to the tenant's actual loss for the tenant to maintain a cognizable MCPA claim premised on the lack of that license. The Court distinguished *Golt*, where the tenant "*demonstrated actual injury, in both the diminution of value of the premises due to defects in the unit, which did not even have toilet facilities, and also in the cost of securing suitable substitute housing*[,]" from *CitaraManis*, where the "tenants had not alleged nor proved that the house they had rented 'was unclean, unsafe, uninhabitable or unsuitable in any regard,' or that they had suffered any diminution of the rental value of the property *as a result of the lack of licensure*." *Id.* at 587–88 (emphasis added). *McDaniel* is "analogous to *CitaraManis* because McDaniel failed to present any evidence that she sustained any actual damages, such as bills for medical treatment, loss of wages, or the cost of securing suitable substitute

housing, for example." *Id.* This Court affirmed the judgment that the tenant failed to prove damages under the MCPA. *Id.*

Here, Tenant has stipulated that she did not sustain any actual damages. App. 156. Instead, Tenant relies on rental payments collected in violation of § 5-4(a)(2) as a proxy or substitute for actual damages. That position is untenable under the *Golt-CitaraManis-Galola-McDaniel* line of cases, which requires a connection between the lack of license and a condition of the dwelling causing actual injury or loss.

In attempting to distinguish those cases from the instant facts, Tenant argues: "[It] is not simply the unlicensed rental — it is the collection and retention of rent in direct violation of § 5-4(a)(2)." Tenant's Br. at 26. Had a landlord collected and retained rent while the property remained unlicensed because of Code violations affecting habitability of the leased premises, the lack of a license might be evidence of unlawful conduct contributing to a loss by the tenant by paying rent under those circumstances. But that is not this case. Here, Tenant stipulated that she "does not allege that her dwelling unit was uninhabitable or that the value of the lease was diminished by any condition of the property caused by the lack of licensure." App. 156.

Nor is there any substantive difference between § 5-4(a)(2)'s prohibitions against charging rent and the broad prohibitions against renting residential property set forth in the earlier Baltimore City Code provision and the local laws at issue in the *Golt-CitaraManis-Galola-McDaniel* line. Contractual rent is not cancelled by this Court's precedents. Rather, a landlord cannot collect and keep rent only so long as the premises remain unlicensed because of Code violations relating to the habitability of the leased premises.

Furthermore, Tenant is incorrect that this Court has not already decided that mere lack of licensure does not constitute damages. Tenant's argument is misleading in that it relies on an incomplete quotation of *CitaraManis*. Tenant's Br. at 27. In *CitaraManis*, this Court did directly address the current situation:

> Here we need not decide whether lack of the required rental housing license, in and of itself and without regard to the condition of the premises, would be sufficient to bar a landlord's claim for unpaid rent or for use and occupation. *It is conceivable that a case could arise in which the public policy is so strong and the degree of violation so great* that one benefitted by services rendered by an unlicensed person would be permitted to recover monies paid for the services, but that is not the situation presented on this record.

CitaraManis, 328 Md. at 158–59 (emphasis added).

The instant case is no different than *CitaraManis*. The public policy is the same under all of the local landlord-tenant laws. The degree of violation (if any), as Tenant admits, caused no actual damage. The violation here is at most a technical one only.[8] There is no dispute that Tenant resumed paying the full rental amount upon reinstatement of the license, without any change in the conditions, without any allegation of what was done or not to get the license back, or any other facts. Tenant also appears to be claiming rent she owes but has not paid as "damages" simply because Landlord has sought to collect that rent since the license was reinstated.

[8] The building was licensed when Tenant entered her lease, so there could have been no unfair or deceptive trade practice in that regard under MCPA § 13-301 sufficient to meet the first element of a MCPA claim. Similarly, Tenant does not allege she remained in the building based on the representation it was licensed at all times. Apparently, her position is that it was deceptive for the landlord to request or accept rent during the Lapsed Period, but she does not articulate how this caused her to incur actual damages.

No provision of the Baltimore City Code or the MCPA allows a forfeiture or refund of contractual rent, or for rents paid while a habitable property is unlicensed to become damages. The Code only provides for a deferral of the ability to collect rent until the property's license is currently effective. Therefore, there can be no MCPA recovery.

B. Under the MCDCA, lack of a license alone does not constitute damages

Tenant incorrectly argues that Landlord and Attorney Appellees violated the MCDCA by: "seeking to collect, collecting, and retaining rent for the period of time where the Property was unlicensed, or pursuant to a lease that was entered into or renewed during that period" and "claiming and attempting to enforce a right with knowledge that it does not exist." App. 16. In the same way that a landlord's stand-alone § 5-4(a)(2) violation does not constitute actual damages under the MCPA, a violation of that provision does not automatically entitle Tenant to recover under the MCDCA.

To establish a claim under MCDCA § 14-202(8), the debtor must prove that the debt collector (1) did not possess the right to collect the amount of the debt sought, and (2) attempted to collect the debt knowing it had no right to do so. *See Chavis v. Blibaum & Assocs., P.A.*, ___ Md. ___, No. 30, SEPT. TERM, 2020, 2021 WL 3828655, at *7 (Md. Aug. 27, 2021).

Importantly, the MCDCA imposes liability for, and therefore the debtor must prove, "damages proximately caused by the violation." Md. Code Ann., Com. Law § 14-203. Thus, actual damages are an element of any MCDCA claim. *See Joy Family Limited Partnership v. United Financial Banking Cos.*, No. ELH-12-3741, 2013 WL 4647321, *12

(D. Md. Aug. 28, 2013) (determining that actual damages are an element of a MCDCA claim by analogy to this Court's holding in *CitaraManis* that the MCPA's similar language made actual damages an element).

Tenant cannot establish actual damages because, as explained above, a § 5-4(a)(2) violation is not *per se* damages. The instant case does not involve the City's revocation of the license because the dwelling was uninhabitable. Nor does this case involve a tenant who claims damages in the form of expenses or legal fees incurred to defend a premature failure-to-pay-rent action filed while the property was still unlicensed. Of course, under *Chavis*, if unauthorized additional charges were sought and recovered by the landlord, those amounts arguably constitute actionable damages. But, Tenant disclaims any amount other than the rent itself. App. 153. Hence, under the stipulated facts of this case, it is inconceivable that Tenant has sustained any actual damages.

Tenant goes a step even further. Under the MCDCA, she seeks to recover the rent she paid during the unlicensed period to satisfy the District Court judgment that Landlord obtained against her. That position is untenable under *Chavis*, where this Court recently reaffirmed that the MCDCA does not allow a challenge to an underlying judgment. 2021 WL 3828655, at *12 n.13 ("Our holding in no way means that a judgment debtor may relitigate the validity of a judgment through an MCDCA claim."). Although she cannot collaterally challenge the judgment via the MCDCA, she did have recourse. She could have appealed or moved for a new trial, to alter or amend the judgment, or to revise or vacate the judgment under Md. Rules 2-533, 534, or 535, but did none of those.

In any event, as a matter of law, Tenant cannot establish the first element of a MCDCA claim because upon reinstatement of the license, Landlord has the right to collect rent due during any past unlicensed period. The Baltimore City Code did not, nor could it, extinguish the debt obligation (as explained more fully below), and neither can the MCDCA. *Chavis*, 2021 WL 3828655, at *12 n.13; *Klein v. Whitehead*, 40 Md. App. 1, 21 (1978) (collateral attack on judgments prohibited).[9]

For the same reasons, Tenant's claim under MCDCA § 14-202(11) for engaging in "conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act" ("FDCPA"), must fail.[10] The rent obligation remains and, therefore, Landlord has the right to collect it. The same goes for any claim under MCPA § 13-301 predicated on a MCDCA violation. The license has been restored and Landlord has every right to collect unpaid rents, regardless of whether those rents have been embodied in a judgment or remain due and owing as a matter of contract.

[9] The federal standard for pleading fraud with particularity, as well as potential factual questions outside the scope of the certified questions as to the knowledge element would still remain. *Chavis*, 2021 WL 3828655, at *13-14.

[10] Moreover, because Landlord is not a "debt collector" under the FDCPA, 15 U.S.C. § 1692a(6), Landlord cannot as a matter of law "violate" the FDCPA. *Austin v. Lakeview Loan Servicing, LLC*, No. CV RDB-20-1296, 2020 WL 7256564, at *4 (D. Md. Dec. 10, 2020) (holding that alleged conduct was exempt from the FDCPA, and "[w]ithout alleging a violation of the FDCPA, the Plaintiff cannot allege a violation of § 14-202(11) of the MCDCA."). To extend the MCDCA in the manner urged by Tenant would raise serious constitutional problems (in addition to all of the other ones discussed below). *Cf. Fiore v. White*, 531 U.S. 225, 228 (2001) (due process precludes state from convicting a defendant for conduct not prohibited by the criminal statute).

C. Summation

This Court should reject Tenant's argument that a Landlord's violation of § 5-4(a), in and of itself and without any showing that Tenant was injured or sustained loss as a result of the absence of a license, can constitute actual damages sufficient to support MCPA or MCDCA claims. Tenant's position is untenable under this Court's prior holdings. Accordingly, this Court should answer the certified questions in the negative.

II. The plain language and legislative history does not support Tenant's interpretation of Baltimore City Code, Art. 13 § 5-4(a)(2)

In addition to running afoul of this Court's precedents on this precise issue, nothing in the plain language of the Code or legislative history supports Tenant's extreme position that rent paid or collected in violation of § 5-4 is *per se* damages even if the property is habitable and she sustained no injury or loss.

To ascertain the purpose and intention of the legislature, this Court looks first to the natural and ordinary meaning of the language, reading the statute as a whole and from a common-sense perspective. *United Bank v. Buckingham*, 472 Md. 407, 423–24 (2021). "[A] provision is not interpreted in isolation. Rather, [this Court] analyze[s] the statutory scheme as a whole and attempt[s] to harmonize provisions dealing with the same subject so that each may be given effect." *Id.* at 424 (citations omitted). Extrinsic sources such as the legislative history can serve as a check of the plain language. *Id.* at 426–27.

A. The Plain Language and Correct Interpretation of § 5-4(a)(2)

Section § 5-4(a)(1)'s plain language makes clear that a landlord may not "rent or offer to rent" a dwelling without an effective license — which likewise means that a

landlord cannot "charge, accept, retain, or seek to collect any rental payment" without a license. *Id.* at § 5-4(a)(2). Although subpart (a)(2) lists those things a landlord may not do without a license, the enumerated items in (a)(2) are merely a subset of activities that are included in the general business activity of renting under (a)(1). In other words, if one cannot "rent" a dwelling without a license (the prohibited activity described in (a)(1)), one may not "charge, accept, retain, or seek to collect any rental payment," as such things are part and parcel of renting a dwelling. All of the enumerated acts in § 5-4(a)(2) — collecting, seeking to collect, or retaining rent without a currently effective license — were already prohibited by the then-existing law applicable to unlicensed multi-dwelling rentals. *See Berlin v. Aluisi*, 57 Md. App. 390, 400 (1984) ("We do not regard the difference in language between the two subsections as particularly significant. . . . We believe we are more likely to find the true legislative intent by examining the statute in the light of the purpose for which it was enacted.").

Consequently, while § 5-4(a)'s language may employ specific examples of what it means to rent, the provision is substantively identical to the other local licensing provisions at issue in the prior holdings of this Court. *See Golt*, 308 Md. at 13 ("The Baltimore City Code, Art. 13, § 1101 (1983 Repl.Vol.), states: 'No person shall conduct or operate ... any ... multiple family dwelling ... without having first obtained a license or a temporary certificate to do so.'"); *CitaraManis*, 328 Md. at 146 n.1 ("No building or structure, or part thereof, shall be leased, rented or let or subleased, subrented or sublet without first obtaining a rental housing license from the department of public works and paying the requisite fee or charge therefor . . . ." (quoting Howard County Code Sec. 13.102)); *Galola*,

328 Md. at 183 (same under Howard County provision); and *McDaniel*, 419 Md. at 562 ("A person may not operate a multiple dwelling or rooming house without a license issued by the Department. A separate license is required for each multiple dwelling or rooming house."). Under those provisions, landlords of unlicensed properties in those cases — just like landlords of unlicensed properties under § 5-4(a) — were likewise not permitted to collect rent. Importantly, however, this Court recognized in those cases that, notwithstanding the landlord's violation of the local licensing provision, the tenants were still required to prove actual damages to recover under the MCPA or to be entitled to a refund of any rent payments under equitable principles.

The new provision of § 5-4(a)(2) was enacted to apply to a new set of landlords and it is not unreasonable for the legislature to use examples to reinforce that renting property without a license is not permitted. The added examples do not change the intent of the Code as applied to the new set of landlords. The City Council merely clarified what activities are prohibited if this new category of properties lacked a license. The property owner cannot pursue collection of rent while the property is unlicensed, but nothing in the Code forfeits for all time the right to contracted-for rent as a penalty. Giving § 5-4(a)(2) its proper meaning does not support the leap Tenant wants to make; that is, to require forfeiture of rent collected for a habitable unit. Under her interpretation — that collecting and retaining rent only became prohibited acts after the 2018 Bill — the prior Baltimore City Code provision would have been impotent and meaningless.[11]

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[11] Also, according to Tenant's interpretation, the rent escrow provisions of the Baltimore City Code and Real Property Article would be rendered surplusage or overruled by giving

Section 5-4(a) did not create a brand new category of legally cognizable damages (*i.e.*, the rent itself) personal to a tenant that — in the absence of any substandard condition with the rental unit or loss of value of the leasehold or consequential damages connected to the absence of a license — can be recovered under State consumer protection statutes.

B. Legislative Purpose and History

If Tenant was correct that the Baltimore City Council intended to create a new class of damages merely by operation of § 5-4(a) and recoverable under State consumer protection statutes, surely such an unprecedented legislative intent would be obvious from the legislative history. But, that is not the case.

The Baltimore City Council's intent in passing and amending § 5-4 is public health and safety — the same general welfare policy that was the foundation for the pre-amendment version of the licensing provision and for the similar licensing provisions at issue in *Golt*, 308 Md. at 13; *CitaraManis*, 328 Md. at 162; *Galola*, 328 Md. at 184; and *McDaniel*, 419 Md. at 582.

As this Court held in *CitaraManis*, the absence of a license, in and of itself, does not entitle a tenant to restitution of rents. That is because the purpose of the licensing ordinance is "the identification of premises to be inspected in order to determine compliance with housing codes. Determining whether particular landlords or their agents

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tenants the absolute right to withhold rent upon any condition affecting the building's license, as opposed to a condition that is "a serious and substantial threat to the life, health or safety of occupants." Md. Code Ann., Real Prop. § 8-211; Balt. City Public Local Laws § 9-9(c)(2). This cannot be. *See Copycat*, 2021 WL 5562319, at *23 (lack of licensure does not preclude use of tenant holding over action, and Court would not judicially alter comprehensive statutory scheme based on lack of licensure).

have necessary qualifications to render services as landlords is not the object of either licensing scheme. In effect, premises and not people are to be licensed." *Id.* at 162.

The same statutory purpose applies to the Baltimore City Code amendments of 2018, which extended the then-existing licensing regime for multi-unit dwellings to one-unit and two-unit rental properties. *See, e.g.*, Tenant's Br. at 4-5 (citing reports of Balt. Development Corp. and Dept. of Housing and Community Development). Given that one license is issued for a multi-unit building (not individual licenses for each of the individual units), it would be factually and legally impossible to infer that the absence of a license has caused actual damage to each tenant. Here, again, Tenant has stipulated that she sustained no damage based on uninhabitability.

Section 5-4(a)(2)'s enumerated examples do not create a new right or a private cause of action for forfeiture of rent. The Code simply does not support Tenant's argument that the examples in § 5-4(a)(2) create a policy of preventing landlords from ever earning rent for any period when a license is not in place.[12] If that was the policy (it is not), it would need to be specifically set forth in the Code, and would require a higher level of constitutional scrutiny, because giving tenants free use and possession of habitable rental dwellings implicates several constitutional protections against such government overreach.

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[12] In advancing her position, Tenant ignores numerous practical concerns. For example, how is the unlicensed period measured? Does a single day without a license make rent uncollectible for the entire month? Are rents prorated? That the Code does not address these issues is strong evidence that the City Council never meant for rent to become forever uncollectible. Under a correct reading of the ordinance, a landlord is temporarily barred from evicting a tenant and seeking payment of rent until the license is restored.

No such windfall can be discerned from the revision of the original provision (prohibiting an unlicensed landlord from renting a multi-unit dwelling) to its current form (prohibiting an unlicensed landlord from renting any dwelling without a license, *i.e.*, *collecting rent without a license*).

Under Tenant's view, § 5-4(a) will have created a new private cause of action available only to City tenants and nowhere identified in the text or contemplated by the legislature. *Baker v. Montgomery Cnty.*, 427 Md. 691, 714 (2012) (legislative silence reinforces the decision not to find that the law implicitly creates a new right).[13] Section 5-4 is not, however, designed to confer any special benefit that could support a private cause of action. *See Aleti*, Appellees' Br. at 7-9, 13-15. Such a new and drastic remedy would be "wholly out of proportion to the public good" where, as here, the tenant admits there was no actual damage, and the absence of a license caused no harm. *Schloss v. Davis*, 213 Md. 119, 125 (1917) (construction manager permitted to recover promised compensation for work begun without required building permit where all public safety and health requirements met).

Nothing in the legislative history indicates that the Baltimore City Council intended to make rent uncollectible forever upon any lapse of a license, or to require disgorgement of rents paid for an unlicensed period, or to grant the tenant the right to reside rent-free in

[13] As explained more fully below in Section II.D, Baltimore City does not have the authority to create such a cause of action. *See Baker v. Montgomery Cnty.*, 201 Md. App. 642, 679 n.29 (2011).

a habitable dwelling. The portions of the Bill File cited by Tenant (Br. 4-5) merely reinforce that all rental properties, not just multi-unit dwellings, must now be licensed.

The only direct statement in the Bill file on the specific subject of rent collection was by the Maryland Multi-Housing Association, which wrote that rent is not collectible without a "currently effective" license. Apx. 10. That statement is hardly an acknowledgment that the rent obligation is forever extinguished; rather, the statement merely expresses the well-established and unremarkable notion that a landlord needs a license before resorting to the summary ejectment process for failure to pay rent, *i.e.*, once a license issue is corrected, the landlord can again collect rent for that property. Apx. 10.[14] Given the Bill's overall intent, and indeed because renting without a currently effective license, including collecting rent, was already prohibited for multi-unit dwellings, § 5-4(a)(2) was simply not the focus of any of the statements supporting or opposing the amendments. The focus was ensuring that all rental dwellings were covered by the Code. The amended provision merely stated more specifically the requirements that would apply to one- and two-unit dwellings for the first time. The drastic effect Tenant advocates was not the subject of significant discussion, and certainly not part of MMHA's statement of

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[14] Testimony by a representative of the Public Justice Center as to the lack of recovery by tenants in actions against landlords plainly referred to rent escrow actions, *see Aleti* App. 152, and not any new refund remedy as the PJC argues for now, Amicus Br. at 16 in *Aleti*. Another Amicus that joined PJC's brief, the Legal Aid Bureau, publicly took the same position as the MMHA, posting its legal analysis of the enacted amendments, that rent can be collected with a currently effective license. *See* Apx. 11-12 ("In other words, the landlord must have a license to lease a place to a tenant as well as when the landlord demands payment of rent under that lease.").

support. No one seriously contemplated that § 5-4(a)(2) created a new category of damages for tenants, or permanently extinguished tenants' obligations to pay rent, or created an automatic disgorgement obligation on landlords to refund rents paid for habitable dwellings.

C. A § 5-4 violation does not automatically render rent forever uncollectible or require disgorgement of rent collected during the unlicensed period when the premises are habitable and the tenant has sustained no losses

The underlying public health and safety policies of the licensing provision — and the protections and remedies that were available to tenants — did not change when the amendments to Article 13 of the Baltimore City Code were enacted. *Copycat*, 2021 WL 5562319, at *8 (delineating the remedies under the comprehensive statutory scheme). Again, the express purpose of the 2018 amendments was merely to extend to multi-unit dwellings the then-existing protections to one- and two-bedroom properties.[15]

Tenants were already protected by the requirement that landlords affirmatively plead and prove licensure when filing summary ejectment actions.[16] Likewise, tenants had and still have the protection of the rent escrow law that allows tenants to deposit rents in the court's registry subject to an adjudication as to whether the conditions at the property warrant any reduction of the tenants' rent obligation. Similarly, tenants are protected by

[15] And to lessen the burden on the City by providing for private inspections at landlords' expense. Appellee's Brief in *Aleti* at 12.

[16] Indeed, Tenant successfully defended one such action on that basis when she identified an open licensing violation at the property. Thereafter, an inspection was promptly scheduled, and the license was reinstated.

anti-retaliation provisions under the Maryland Code and the Baltimore City Code. As explained above, where tenants have sustained *actual injury or loss* resulting from the absence of a rental license, they can bring claims under the MCDCA or MCPA.[17] *Copycat*, 2021 WL 5562319, at *15.

Restoring the license removes the bar against filing summary ejectment actions, and the landlord can bring suit against the tenant for rent that was due during the unlicensed period. The tenant, of course, retains the right to initiate a rent escrow action or to raise a rent escrow defense if conditions at the property affect habitability. Likewise, the tenant retains the right to bring a MCPA claim for any actual injuries or losses.

But, in addition to those protections, Tenant argues that § 5-4(a)(2) created a new, unprecedented right and remedy for tenants in the event of a licensure lapse — the automatic extinguishment, forever, of the tenant's obligation to pay rent for habitable premises *and* of the landlord's right to recover rents paid for those premises during any period of the lapse. Putting aside the constitutional implications (discussed below), § 5-4(a)(2) does not support such a broad, sweeping, and punitively disproportionate result. So long as Landlord renewed the license (which was done), § 5-4(a)(2) does not bar Landlord from collecting rents due during the Lapsed Period. The same goes for any leases that may

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[17] Tenant argues (Br. at 27) that she "and other tenants who paid illegal rent are only required to show how they were injured by paying money that they were not legally required to pay and [Landlord was] not legally permitted to accept or retain." That interpretation would essentially overrule the rent escrow law (by eliminating the requirement that a tenant may not unilaterally withhold rent) and would delete the "actual damages" requirement of the MCDCA and MCPA.

have commenced during the Lapsed Period. Under the holdings of the *Galola* and *CitaraManis* line of cases, rent payments are still due, except that the tenant can recover if the tenant can prove actual damages from the absence of the license.

Section 5-4(a)(2) cannot and should not be read any other way.[18] Otherwise, if during a tenancy of a unit within a licensed multi-unit building the license lapses for any period of time (a day, a week, or longer) for any reason (a pandemic, an administrative error by the landlord, an administrative error or bureaucratic delays by the City, or a condition having nothing to do with the tenant's unit), the tenant will obtain a windfall of getting to live rent free in a habitable unit. "An elemental canon of statutory construction is where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Baker*, 427 Md. at 713 (cleaned up). If that was the legislatively intended result, the provision would have made that expressly clear and there would have been some concrete indication of that legislative intent somewhere in the legislative history.

Moreover, the result would be confiscatory. After all, in this scenario, the tenant has sustained *no harm at all* and the property is habitable. The tenant got the benefit of her

[18] This Court recently summarized the licensing amendments at issue here in just that way. "Under the applicable provisions of the Baltimore City Code, a person may not rent or offer to rent a residential dwelling unit without a rental license issued by the Baltimore City Housing Commissioner. The code provisions also prohibit a landlord from charging, keeping, retaining, or collecting rent payments unless the landlord ***has a rental license***." *Copycat*, 2021 WL 5562319, at *1 (emphasis added, footnote and internal citations omitted). Although collection of rent was not the central issue in the *Copycat* case, Landlord believes the Court's natural reading of § 5-4(a)(2) was correct and should be applied here.

bargain. There is no suggestion that the lapse caused the value of her lease to decrease or that she incurred additional expenses, *e.g.*, moving expenses or alternative housing expenses. *See Golt*, 308 Md. at 13-14 (diminution in value was 100% because of the unlivable conditions, and extra expenses incurred in securing alternative housing were also damages). If she had any such losses resulting from the lack of license, she could seek them in a rent escrow action or a proper MCDCA or MCPA claim.

All of this illustrates that, once the license is reinstated, there is no principled basis to hold that the rent for the prior periods is not due and collectible (again less any damages connected to the lack of license). Section 5-4(a)(2) does not overrule the *Galola*/*CitaraManis* line of cases, which answered this question definitively: there is no automatic refund. The windfall that would result from reading in a disgorgement remedy is constitutionally suspect, "out of proportion," and not consistent with the letter or the intent of the Code.

D. Under Tenant's interpretation, § 5-4 would create a new cause of action, where none is permitted or was intended

The Baltimore City Council, even if it expressly intended to do so (it did not), is not authorized to create a new class of damages under the MCDCA and MCPA by operation of § 5-4(a). *See Baker v. Montgomery Cnty.*, 201 Md. App. 642, 679 n.29 (2011) (counties have no power to enact a new claim for damages, because "the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by [the Court of Appeals] under its authority to modify the common law of this State." (quoting *McCrory Corp. v. Fowler*, 319 Md. 12, 20 (1990), *superseded by statute as stated by Wash.*

Suburban Sanitary Comm'n v. Phillips, 413 Md. 606 (2010))); *see also West v. CSX Corp.*, No. CIV. JFM-05-3256, 2006 WL 373843, at *1 (D. Md. Feb. 16, 2006) ("Article 4 of the Baltimore City Code does not expressly create a private right of action. If it did so, it would be in violation of the Maryland constitution. The Maryland Court of Appeals has long since made clear that Baltimore City has the power to legislate 'only in respect to such subjects as are delegated to it in the legislative grant of powers.'" (quoting *State v. Stewart*, 152 Md. 419, 422 (1927))).

Although she denies advocating that § 5-4(a)(2) has created a private cause of action (as the tenants in *Aleti* expressly argue), Tenant's interpretation depends on the same erroneous premise. If her interpretation prevails (*i.e.*, that she was damaged by a § 5-4(a)(2) violation standing alone), § 5-4(a) will improperly modify (extinguish) the actual damages requirements of the MCDCA and the MCPA. *E.g.*, *CitaraManis*, 328 Md. at 155 (MCPA requires actual damages, and does not, like the laws of some other states, allow for a full refund). Simply put, the Baltimore City Council cannot enact a Code provision that has the effect of deleting the requirement of actual damages under a State statute.

Consequently, § 5-4(a)(2)'s only tenable interpretation is that rent for an unlicensed period is not forever discharged and becomes collectible upon re-licensure, and the tenant is not automatically entitled to have an unlicensed landlord permanently forfeit contractual rent merely because the premises were unlicensed.

E. Tenant's interpretation would render § 5-4 unconstitutional in numerous ways

Tenant's interpretation creates a constitutional thicket. If a statute could be construed in two ways — constitutionally or unconstitutionally — the Court must adopt the constitutional construction. *See, e.g.*, *Berlin v. Aluisi*, 57 Md. App. 390, 397 (1984).[19] Under Tenant's interpretation, § 5-4(a)(2) would be unconstitutional because it would result in an unconstitutional taking and an unconstitutional interference with vested property and contract rights.

1. Unconstitutional Taking

Under Article III, Section 40 of the Maryland Constitution, the City cannot take one person's property and give it to another for public use without just compensation.[20] The same is true under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.[21] *See Neifert v. Dep't of Env't*, 395 Md. 486, 516 n.33 (2006)

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[19] This Court and Maryland's other courts do so routinely in a variety of contexts. *See, e.g.*, *Bond v. Messerman*, 391 Md. 706, 721 (2006) ("Thus, if to exercise specific jurisdiction in a given case would violate Due Process, we construe our long-arm statute as not authorizing the exercise of personal jurisdiction over the defendant."). As does the United States Supreme Court. *See, e.g.*, *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (affirming Court of Appeals' declination to reach constitutional free speech question raised by administrative interpretation by construing statute not to reach the speech at issue).

[20] The more Baltimore-specific provision at Art. III Section 40A prohibits the same kinds of takings, adding additional procedures for paying just compensation.

[21] Landlord is not asking this Court to decide federal constitutional matters outside the purview of the Certified Questions Act, *see, e.g.*, *Piselli v. 75th Street Medical*, 371 Md. 188 (2002), but only to answer the certified questions in a manner that would not cause the Baltimore City Code to run afoul of any constitutional provisions. *See, e.g.*, *Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 141 n.6 (2006) (on certified questions, interpreting the federal Constitution as part of answering the questions of Maryland law regarding personal

("[T]he Fifth and Fourteenth Amendments to the United States Constitution and Article III, § 40, of the Maryland Constitution have the same meaning and effect, and 'it is well established that the decisions of the Supreme Court are practically direct authorities' for both provisions." (citation omitted))).

There are several forms of unconstitutional takings, and it is not necessary for this Court to identify the precise form that would apply. Tenant's interpretation of how § 5-4(a)(2) operates would qualify as an unconstitutional taking in several respects because, most fundamentally, Landlord's property will be given to Tenant to occupy rent-free for the Lapsed Period and with the Landlord having both no ability to collect rent for that period *and* the obligation to disgorge the rents to the extent collected during the period. The transfer of such rents, leasehold rights, and physical property without just compensation would result in an unconstitutional taking.

In this regard, the taking of the entire rental amounts by operation of a § 5-4 violation is an unconstitutional taking tantamount to a permanent physical occupation of tangible property. *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003) (appropriation of interest earned on IOLTA accounts of non-lawyers was akin to occupation of physical real property); s*ee also Willowbrook Apartment Assocs., LLC v. Mayor of Balt.*, No. 20-CV-01818-SAG, 2021 WL 4441192, *4 n.4 (D. Md. Sept. 27, 2021) (although holding that a Baltimore City law that prohibited rent increases during the

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jurisdiction). Contrary to Tenant's argument (Br. at 16), there is no separation of powers issue; answering the certified questions is simply saying what Maryland law is, including whether the Code provision at issue can be interpreted constitutionally.

pandemic did not constitute a physical per se taking, the federal court noted: "This case might be more like *Brown* if the Acts had required the [landlord] Plaintiffs to return money that tenants had already paid to them.").

Moreover, under Tenant's interpretation of § 5-4, a tenant may continue to occupy a habitable rental unit during the unlicensed period without having to pay rents, thus permanently depriving the landlord of all economically viable use for that period — a *per se* taking. Under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992), a regulation that deprives a property owner of all economically viable use of his land is a *per se* taking that requires just compensation without regard to the public interest used to justify the regulation. In *Lucas*, a state law enacted after a property owner purchased beachfront property in a critical environmental preservation area made it categorically illegal to build on the property. 505 U.S. at 1008-09. The Supreme Court determined that the regulation resulted in an unconstitutional taking because the property owner was deprived of all economically beneficial use of the property, and such a categorical ban on building could not be justified by the state's police power. *Id.* at 1027. A subsequent change in the law that allowed the property owner to apply for building approval did not alter the Supreme Court's determination that a permanent taking had already occurred for the period of the prior categorical ban on building. *Id.* at 1012.

The same result would occur here under Tenant's interpretation of how § 5-4(a)(2) should operate. A landlord would never be allowed to collect or retain any rent, ever, for an unlicensed period and, thus, would be permanently deprived of all economic value of the entire rental property for that period. *Belvoir Farms Homeowners Ass'n, Inc. v. North*,

355 Md. 259, 281–82 (1999) ("An unconstitutional taking of property generally is proved when a 'regulation denies all economically beneficial or productive use of land.'" (quoting *Lucas*, 505 U.S. at 1015)).[22] Moreover, the fact that the unlicensed period can end, or that the landlord could eventually use the property for a purpose other than a rental dwelling, does not excuse the permanent taking that already occurs for that uncompensated unlicensed period. *Lucas*, 505 U.S. at 1012.[23]

Tenant's view of § 5-4(a)(2) would also cause the provision to violate the takings clauses under *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978), which analyzes the following factors to determine whether a statute operates as an unconstitutional taking against a property owner: (1) the economic impact of the regulation; (2) interference with distinct investment-backed expectations; and (3) the character of the governmental action.

---

[22] To be sure, even though the Code overall, and the licensing requirement in particular, may be a permissible exercise of police power to prevent substandard rental housing, that interest is not implicated by Tenant's allegations. The so-called "harmful or noxious use principle" stated in *Lucas*, that justifies such health and safety regulations cannot decide the issue because Tenant expressly disclaims any actual damages. *See* 505 U.S. at 1026-27. In other words, even the legitimate interest in public health and safety cannot justify Tenant's interpretation of § 5-4(a)(2)'s categorical taking of the right to receive rent.

[23] Additionally, under Tenant's interpretation, § 5-4(a)(2) would be unconstitutionally confiscatory because precluding landlords from collecting any rent for any unlicensed period is "so unjust as to destroy the value of the property for all the purposes for which it was acquired, and in so doing practically deprives the owner of property without due process of law[.]" *Willowbrook Apartment Assocs., LLC*, 2021 WL 4441192, at *4 (quoting *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989)). The United States District Court in *Willowbrook* held that a new law prohibiting rental rate increases for existing tenants was not unconstitutionally confiscatory in part because those landlords could continue collecting rent at the current rate. *Id.* at *5. In contrast, the prohibition pushed by Tenant is unconstitutionally confiscatory.

First, the economic impact of rendering all rents uncollectible would be severe, depriving owners of the primary use of their property. Second, there would be complete interference with investment-backed expectations of the property owner to receive rental income in return for substantial investment in the acquisition and maintenance of realty, obtaining licensure and registration, and complying with existing regulations. That interference is disproportionate to any legitimate issue connected to the license, particularly considering that the absence of a license can occur for a variety of reasons having nothing to do with the conditions of a tenant's particular unit within a building of hundreds of units. Third, the government's action would be permanent because, under Tenant's interpretation, the rent for an unlicensed period is forever uncollectible.[24]

Moreover, the just compensation that would be owed is substantial. If Tenant's class-action allegations are to be believed, and every tenant in an unlicensed building is entitled to live there rent-free, the amount of just compensation owed by Baltimore City to a landlord would be the full rental value of all units in a building for the entire unlicensed period. Such an irrational result is not what the City intended when it amended the Code.

---

[24] Tenant argues that a single violation notice pertaining to any unit in the building should render rent uncollectible, and refundable to tenants, for all units. This illustrates how Tenant's interpretation of § 5-4 is punitive and would additionally run afoul of the prohibition of excessive fines under the Eighth Amendment and Article 25 of the Maryland Declaration of Rights. Md. Const. art. 25; *see also* U.S. Const. amend. VIII. A fine is excessive if, comparing "the extent of the loss to the relevant factors involved, including the gravity and extent of the illegal activity, the nexus between that conduct and the subject property, and the extent of involvement of the owner-all to determine whether the 'fine' is out of all reasonable proportion to the relevant factors." *Aravanis v. Somerset Cnty.*, 339 Md. 644, 665 (1995) (remanding for consideration of excessiveness of forfeiture) (citing, inter alia, *Austin v. United States*, 509 U.S. 602 (1993)).

2. Unconstitutional Interference with Vested Property Rights

The Maryland Constitution prohibits a statute that abrogates vested property rights. The right to receive rental income under a lease is a vested right under *Muskin v. State Department of Assessments & Taxation*, 422 Md. 544 (2011).

Muskin involved a new statute requiring that all ground rents be registered with the SDAT, for the stated purpose of preventing predatory ejectments. *Id.* at 551. If a ground rent owner failed to register by the deadline (over two years after the enactment of the new statute), the statute extinguished the ground rent and any right to payment, and vested fee simple title in the tenant free and clear of the ground rent. *Id.*

This Court held that the ground rent statute was unconstitutional because it retrospectively abrogated vested property rights, by reaching back in time to extinguish rights to possession and rental income that had vested years ago. 422 Md. at 559-60.[25] However, the registration requirement, as severed from the extinguishment provision, survived as a valid exercise of the State's police powers that only operated prospectively. 422 Md. at 565-66.

Section 5-4(a), as Tenant would have it apply on a class basis, is unconstitutional under *Muskin*, because § 5-4(a) would apply retroactively to any tenant whose lease predates the Code amendments and would alter the contractual obligations that vested before the amendments became effective, thus imposing new duties and changing the

[25] This Court noted that the Maryland Constitution provides greater protection than the federal constitution in this instance. 422 Md. at 556 (citing *Dua v. Comcast Cable of Md. Inc.*, 370 Md. 604, 630 n.9 (2002)).

existing right to receive the agreed rents.[26] Although the 2018 Baltimore City Code amendments were publicized to an extent,[27] and property owners were given time to re-license buildings under the new private inspection scheme, an even longer period of notice in *Muskin* did not change the improper retrospective operation of the extinguishment provision. This Court stated that extinguishment of the right to receive rent was "extreme regulatory overreaching." 422 Md. at 559 (noting that "[a]n example of an alternative statutory approach that would not be impermissibly retrospective in a similar registration scheme might have been one where failure to register a ground lease triggers an interim consequence, such as restrictions on collecting rents prospectively or a denial of access to the courts for enforcement of unregistered ground rents, until registration occurs.").

This Court's statement in *Muskin* applies with equal force here. Under Tenant's interpretation, § 5-4 does not trigger a permissible interim consequence until licensing occurs, but rather an extreme, and unconstitutional, regulatory overreach.

Tenant would have the licensing provision reach back and extinguish a landlord's contractual right to receive rental payments upon any lapse of the license and even if the property is in pristine condition. That interpretation of § 5-4(a)(2) would retroactively interfere with vested property rights, so it must be rejected.

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[26] *See also* Brief of *Amici Curiae* Maryland Multi-Housing Association, *et al.* in *Aleti*, at 16-20 (discussing why § 5-4(a)(2) cannot provide the remedy sought by appellants in violation of vested property rights and contract rights).

[27] Not well, apparently, because the Mayor at the time was found to have violated the amended law by failing to obtain a license for his rental property. *See* Apx. 23-25.

3. Unconstitutional Under the Contracts Clause

For similar reasons, Tenant's interpretation of § 5-4(a)(2) would render the provision unconstitutional under the Contracts Clause. U.S. Const., Art. I, Sec. 10. Whether a law unconstitutionally impairs the obligation of contracts is analyzed under a two-step test: (1) the threshold issue is whether the impairment is substantial; if so, then (2) the Court asks whether the law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. *Sveen v. Melin*, ___ U.S. ___, 138 S. Ct. 1815, 1821-22 (2018) (citations omitted).

With respect to leases entered before the Baltimore City Council amended the Code, the new § 5-4(a)(2) would (as interpreted by Tenant) substantially impair those private contracts and the reasonable expectations of the parties thereto. The total loss of the right to collect the entire rental amount for any licensing lapse for any reason whatsoever is unreasonable and not rationally connected to the public purpose of health and safety. *Willowbrook Apartment Assocs., LLC*, 2021 WL 4441192, at *13 (COVID-19 Renter Relief Act prohibiting rent increases impaired contracts, but was rationally tailored to significant and legitimate public purposes of addressing the state of emergency caused by the pandemic).

Tenant's illogical interpretation would cause § 5-4(a)(2) to fail even the low level of rational-basis scrutiny that applies when analyzing whether a statute that impairs a private contract is unconstitutional. A complete bar on collecting or retaining rent for any lapse in licensure bears no rational relationship to public health and safety. Without any connection

to actual damages stemming from the lack of licensure, Tenant's proposal is completely arbitrary and does not pass rational basis constitutional muster.

*   *   *

Notably, none of these constitutional issues were addressed by the Baltimore City Law Department in connection with the 2018 amendments. Had Tenant's interpretation been contemplated by the Baltimore City Council, one would have expected the Law Department to follow its practice of addressing the constitutional issues that are obviously implicated by such interpretation. After all, the Law Department did exactly that in response to two recent rent-related bills, including the law challenged in the federal *Willowbrook* case. *See* Apx. 15, Bill 20-0526 – Baltimore City COVID-19 Renter Relief Act (Law Department identified multiple constitutional issues and opined that the law would survive Takings and Contract Clause challenges); Apx. 21, Bill 21-0021- Late Fees for Past Due Rent ("The Law Department notes that this bill is applicable only to new leases signed after its effective date. This provision avoids a Contract Clause problem that would arise if the bill purported to regulate existing leases."). Also, in contrast to the Bill that amended § 5-4, the Law Department analyzed whether the COVID-19 Renter Relief Act created a private cause of action, concluded that the City could not provide one, and recommended including an environmental enforcement mechanism (but not a criminal penalty, for reasons of unconstitutionality under the *Ex Post Facto* Clause). Apx. 16. An environmental citation is already a potential consequence of a rental property licensing violation. App. 100.

But here, the Law Department's comments were minor and did not address any of the multiple constitutional issues implicated by Tenant's interpretation, even if only to say why the law could survive a constitutional challenge. App. 141-42. This strongly suggests that the construction urged by Tenant is contrary to the intent of the Code amendment.

In sum, for several overlapping reasons, the construction of § 5-4(a)(2) that Tenant is championing would render that provision unconstitutional. To be clear, Landlord is not asking this Court to declare § 5-4 unconstitutional. Rather, Landlord is simply pointing out that § 5-4 cannot constitutionally be interpreted as Tenant argues. Therefore, this Court should construe § 5-4(a)(2) in a manner that avoids violating the Maryland and Federal Constitutions.

III. Equitable principles do not justify — and, indeed, expose the flaws in — Tenant's interpretation of § 5-4(a)(2)

Tenant argues that she is not in *pari delicto* with Landlord and therefore, according to Tenant, equitable principles mandate that she and other tenants should not have to pay any rent for an unlicensed period and should receive a refund of any amounts already paid.[28]

Under a correct interpretation of § 5-4(a)(2), the bargain is not "illegal" and the rent is not "illegal." Tenant's Br. at 13. Because the license was effective when Tenant entered it, there can be no suggestion that the lease was illegal. App. 7. Although the landlord

[28] Tenant's common law equitable claim for money had and received is not before this Court on the certified questions. In her brief, however, she argues that the rent is uncollectible because she is not in *pari delicto*, relying on cases including *Bourgeois v. Live Nation Entertainment*, 3 F. Supp. 3d 423 (D. Md. 2014), following this Court's answer to a certified question regarding the contours of the money had and received claim.

may have been out of regulatory compliance when the license lapsed, the lease did not become "illegal" upon the lapse. Tenant has pointed to no case that supports the notion that a lease becomes an unlawful instrument that is voided at the instant the license for the property lapses.

The Restatement of Contracts and Restatement of Unjust Enrichment principles cited by Tenant are not implicated by the stipulated facts in this matter. As *Galola* made clear, a voluntary payment pursuant to a lease for an unlicensed dwelling is not damages, and the tenant is not entitled to an equitable refund. 328 Md. at 186 (remanding for a trial on actual damages, as distinguished from mere restitution of rent collected when unlicensed). Having sustained no damages and having received the benefit of her bargain, there is nothing inequitable about both requiring Tenant to pay rent and allowing a landlord to retain the rent. Thus, in that way, the parties *are* in *pari delicto*, *i.e.*, they both equally benefitted and neither is harmed.

Tenant's analogy of an illegal drug transaction (Br. at 18) is, to put it mildly, off base. Tenant leased the apartment for the lawful purpose of living there, and the property was properly licensed when she took occupation. Moreover, Tenant, by her own admission, received the full value and all the benefits of that lawful transaction. She resided in a habitable rental dwelling and incurred no losses from the lapse of the license. The instant transaction is nothing like a drug deal.[29]

[29] Likewise, the case Tenant cites regarding disgorgement of attorneys' fees by a person who is unauthorized to practice law is far afield. Br. at 18. A client who discovers she was being represented by a person without a law license occupies a very different position than that of Tenant. The attorney-client relationship is premised on the client's reliance and

Bourgeois v. Live Nation Entertainment, 3 F. Supp. 3d 423 (D. Md. 2014), illustrates why Tenant has no basis for her position that equitable principles support her request for a refund or disgorgement of rents. In *Bourgeois*, the United States District Court contrasted the fact pattern in *CitaraManis* with the concert ticket transaction at issue in *Bourgeois*. *Bourgeois* rejected Ticketmaster's argument that *CitaraManis* precluded the concert-goer's equitable claim for a refund of an additional fee prohibited by the Baltimore City Code. *Id.* at 454 ("*CitaraManis* might have been on point if Bourgeois [concert-goer] were seeking to recover the *face value* of the ticket solely because of Ticketmaster's failure to obtain a license."). Unlike the concert-goer in *Bourgeois*, Tenant *is* seeking a refund of the "face value" of the ticket (*i.e.*, the full rental amount) while expressly stating that there was nothing about the concert (*i.e.*, the apartment during those months) that entitles her to a refund. The alleged licensure lapse alone, without any actual damages, does not render the rent uncollectible under equitable principles.

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fundamental understanding that the purported professional is in fact who he holds himself out to be. Entrusting one's confidential legal problem to an unlicensed lawyer is wrongful in and of itself and is nothing like the instant case, where the license applies to property and not to a person. The principles of disgorgement of fees from an unlicensed professional are not applicable here. To the extent that situations involving the license of a person, rather than a property, have any relevance, a closer analogy is to the contractor in *DeReggi Constr. Co. v. Mate*, 130 Md. App. 648 (2000) (citing *Harry Berenter, Inc. v. Berman*, 258 Md. 290 (1970)). The Court of Special Appeals held that the contractor's substantial compliance with the licensing law allowed him to maintain a mechanics' lien despite an unlicensed period, the lack of licensure did not make the contract unenforceable, and the customer had no MCPA or restitutionary claim without actual damages. *Id.* at 660, 665.

CONCLUSION

For the foregoing reasons, the Court should answer both certified questions in the negative.

Maryland Rule 20-201(h) Certificate

I hereby certify that this filing does not contain any restricted information.

/s/ *David J. Shuster*
David J. Shuster

Verbatim Text of Constitutional Provisions and Statutes Not Included in Appellant's Brief

Md. Const. art. III, § 40

The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Md. Const. art. III, § 40A

The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation, but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof by the State or by the Mayor and City Council of Baltimore, or into court, such amount as the State or the Mayor and City Council of Baltimore, as the case may be, shall estimate to be the fair value of said property, provided such legislation also requires the payment of any further sum that may subsequently be added by a jury; and further provided that the authority and procedure for the immediate taking of property as it applies to the Mayor and City Council of Baltimore on June 1, 1961, shall remain in force and effect to and including June 1, 1963, and where such property is situated in Baltimore County and is desired by Baltimore County, Maryland, the County Council of Baltimore County, Maryland, may provide for the appointment of an appraiser or appraisers by a Court of Record to value such property and that upon payment of the amount of such evaluation, to the party entitled to compensation, or into Court, and securing the payment of any further sum that may be awarded by a jury, such property may be taken; and where such property is situated in Montgomery County and in the judgment of and upon a finding by the County Council of said County that there is immediate need therefor for right of way for County roads or streets, the County Council may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into court, such amount as a licensed real estate broker or a licensed and certified real estate appraiser appointed by the County Council shall estimate to be the fair market value of such property, provided that the Council shall secure the payment of any further sum that may subsequently be awarded by a jury. In the various municipal corporations within Cecil County, where in the judgment of and upon a finding by the governing body of said municipal corporation that there is immediate need therefor for right of way for municipal roads, streets and extension of municipal water and sewage facilities, the governing body may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into court, such amount as a licensed real estate broker appointed by the particular governing

body shall estimate to be a fair market value of such property, provided that the municipal corporation shall secure the payment of any further sum that subsequently may be awarded by a jury. This Section 40A shall not apply in Montgomery County or any of the various municipal corporations within Cecil County, if the property actually to be taken includes a building or buildings.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

15 U.S.C. § 1692a. Definitions

As used in this subchapter--

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which

is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term “location information” means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

Md. Code Ann., Cts. & Jud. Proc. § 12-603

The Court of Appeals of this State may answer a question of law certified to it by a court of the United States or by an appellate court of another state or of a tribe, if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State.

Md. Code Ann., Cts. & Jud. Proc. § 12-606

Contents of order

(a) A certification order shall contain:

(1) The question of law to be answered;

(2) The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) A statement acknowledging that the Court of Appeals of this State, acting as the receiving court, may reformulate the question; and

(4) The names and addresses of counsel of record and parties appearing without counsel.

Disagreement about facts

(b) If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

Baltimore City Code, Art. 13 § 5-25. Enforcement by citation.

(a) *In general.*

In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of an environmental citation as authorized by City Code Article 1, Subtitle 40 {"Environmental Control Board"}.

(b) *Process not exclusive.*

The issuance of an environmental citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

Baltimore City Code, Art. 13 § 5-26. Penalties.

(a) *In general.*

Any person who violates any provision of this subtitle (including any offense listed in § 5-15 of this subtitle as potential cause for a denial, suspension, or revocation of a license) or any provision of a rule, regulation, or order adopted or issued under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than $1,000 for each offense.

(b) *Each day a separate offense*.
Each day that a violation continues is a separate offense.

Certification of Word Count and Compliance With Rule 8-112

1. This brief contains 12,923 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ *David J. Shuster*
David J. Shuster

Dated: January 19, 2022

Alison Assanah-Carroll	*	IN THE
Appellant	*	COURT OF APPEALS
v.	*	OF MARYLAND
Law Offices of Edward J. Maher, P.C., et al.	*	Misc. No. 11
	*	September Term, 2021
Appellees	*	

* * * * * * * * * * * * *

Certificate of Service

I hereby certify, pursuant to Rule 20-201(g)(3), that on January 19, 2022, I served the Brief of Appellees electronically by the MDEC system on all persons entitled to service. I further certify that two paper copies of each filing will, in accordance with Rule 20-406(a)(2), be mailed within one business day by first-class mail, postage prepaid to:

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Appendix to Brief of Appellees
E.T.G. Associates '94, LP and Roizman Development, Inc.

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RENTAL PROPERTY LICENSE

Registration No: **003418** **License Expiration Date:** **02/19/2022**

OWNER
E. T. G. ASSOCIATES 94, LP
832 GERMANTOWN PIKE SUITE 5
PLYMOUTH MTG, PA 19462

OPERATOR
SHNIR APARTMENT MANAGEMENT COR
832 GERMANTOWN PIKE STE 5
PLYMOUTH MEETING, PA 19462
6102781733

Property Address: **2601 MADISON AVE** **Block/Lot:** **3420/017**

Inspection Date: **02/19/2020**	License Issue Date: **07/14/2020**

DWELLING UNITS COUNT	ROOMING UNITS COUNT	OTHER UNITS COUNT	LICENSED UNIT COUNT	RENTAL LICENSE EXPIRATION DATE
146	0	0	146	02/19/2022

FOR MULTIPLE-FAMILY DWELLINGS OR ROOMING HOUSES, THIS LICENSE MUST BE PROMINENTLY DISPLAYED IN THE VESTIBULE, LOBBY, OR OTHER PUBLIC PLACE ON THE PREMISES

FOR A 1- OR 2-FAMILY DWELLING, THIS LICENSE MUST BE LOCATED IN AN AREA OF EACH DWELLING UNIT THAT IS ACCESSIBLE TO THAT UNIT'S OCCUPANT AND TO HOUSING INSPECTORS

Detach and post as instructed above, keep top portion for your records

BALTIMORE CITY
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

OWNER
E. T. G. ASSOCIATES 94, LP
832 GERMANTOWN PIKE SUITE 5
PLYMOUTH MTG, PA 19462
6102781733

OPERATOR
SHNIR APARTMENT MANAGEMENT CORP., SI
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DWELLING UNITS COUNT	ROOMING UNITS COUNT	OTHER UNITS COUNT	LICENSED UNIT COUNT	REGISTRATION NUMBER	INSPECTION DATE	RENTAL LICENSE EXPIRATION DATE
146	0	0	146	003418	02/19/2020	02/19/2022

RENTAL PROPERTY LICENSE

Home > Property/Alarm Registration > License Search

Property License and Registration Search

The link below will allow you to search license and property registration records by address, block/lot, or by zip code. The address and block/lot search are based on the official tax address of the property. The official tax address may be different from the address posted on the building.

☑ By Address — House Number: 2601 Dir: Street Name: madison

☑ By Block/Lot — Block: 3420 Lot: 017

☐ By Zip Code

Search

Record Count:1

	Reg#	Date Insp	License Print	Licensed	License Expiration Date	Valid Reg Year	Address	Zip	Block Lot
	003418	02/19/2020	07/14/2020	Y	2/19/2022	2021	2601 MADISON AVE	21217	3420-017

For additional information, questions or concerns please contact the Property Registration and Licensing Office by email or by calling 410-396-3575. If you would like to report an unlicensed or unregistered property, please contact the Code Enforcement Legal Section by email.

Mayor Brandon M. Scott - Alice Kennedy, Acting Commissioner

All pages of this inspection report must be uploaded within 30 days of the inspection to the property registration portal for 1 & 2 family dwellings (90 days for multi-family dwellings) or a new inspection report must be obtained.

BALTIMORE CITY RENTAL LICENSE INSPECTION FORM

One form must be returned for each unit inspected.
(The checklist should be completed at the time of inspection.)

Note: Please refer to the Inspector Guidance document before you begin the inspection.

Inspector Information:

Name: ____ Email: _______________________________

Address: ____ Phone: __________________

Company Name: ____

State License #: ______________________________

Authorization: I certify that I am a Maryland State Licensed Home Inspector who is registered with Baltimore City's Department of Housing and Community Development.

Interest: I certify that neither I, nor any partner, director, officer employee or agent of mine, or my business has any financial interest in: the rental dwelling unit inspected; the owner or operator of the rental dwelling unit; or any owner, partner, director, officer, employee, or agent of the rental dwelling unit's owner or operator.

Certification of Satisfactory Compliance: I confirm that the following is the result of the inspection I have performed.

The unit passed the Rental Inspection Checklist and Addendum, where applicable. ☐Yes or ☐No

Signature: _____________________________________ Inspection Date: _______________

Property Information:

Physical Address: ____ Unit #: _________

Home Type: ☐1-2 Family Detached ☐1-2 Family Rowhome ☐1-2 Family Semi Detached
☐Multi-Unit Rowhome ☐ Multi-Unit High Rise ☐ Multi-Unit Garden Style Apts.
☐ Condo

Number of bedrooms in unit: __________ Number of units in building: ______________

Requestor Information:

Name of person requesting inspection: Name: ____
Address: ____
Email: ____ Phone: _______________________

Check one: ☐Owner ☐Manager ☐Resident Agent ☐Other (specify)_______________________

RENTAL INSPECTION CHECKLIST

Item		Inspection		Re-inspection (if necessary)	
		Pass or Fail	Date	Pass or Fail	Date
A.	Railing is present for interior & exterior steps with more than 3 risers.				
B.1	Gas service is metered and active.				
B.2	Electric service is metered and active.				
C.	Electrical live wires are not visible in living areas.				
D.1	Electrical outlets are protected by cover plates.				
D.2	Lighting fixtures are functional and switches protected by cover plates.				
E.	Smoke Detectors are properly installed and operational.				
F.	Carbon Monoxide Alarms are properly installed and operational. (Enter N/A if not applicable)				
G.1	There is both hot and cold running water with the hot water having a minimum temperature of 110°F.				
G.2	Plumbing fixtures do not leak.				
G.3	All toilets properly flush.				
H.	Property appears to be free of interior leaks from water supply and waste lines.				
I.1	Windows, which are designed to do so, open and close and have a working locking mechanism.				
I.2	All entry doors to individual units close and have a working locking mechanism.				
J.	Exterior walls and interior ceilings, are free of openings that will allow the entry, into the home, of weather elements such as rain, snow, etc.				
K.	Exterior gutter and downspout system is installed and designed to channel water away from the property.				
L.	The property has an operable heat supply system.				

Rental Address:____ Unit #: _______ Inspector's Initials: ___________

Items in the area below may receive a result of "Refer" if the Inspector determines that the circumstances do not warrant a Pass, but instead require the Rental Inspector to notify Baltimore City Department of Housing and Community Development for further review. Please refer to the "Inspector Guidance" document for more information on circumstances that could meet these criteria. Note: Any referrals will be subject to a complete re-inspection by a Housing Code Enforcement Inspector.

	Item	**Pass or Refer**	**Date**
M.	The interior of the property is clean and sanitary.		
N.	The exterior is free of rodent burrows.		
O.	In the course of conducting the rental license inspection I observed evidence suggesting a potential infestation of rodents, insects or other pests. My inspection is not a "pest control consultation" as defined under Maryland Law. I recommend that the property owner consult with a licensed pest control professional.		
P.	If there is a bedroom in the basement, there is proper egress in case of fire. (Enter N/A if no basement bedroom)		
Q.	Are there any other readily observable problems that in an inspector's opinion represent an immediate threat to the health and safety of occupant? If "yes" please describe.		
311 Report # (*for Referral's only)*:			

For Use by Property Owner/Manager Only

REQUEST FOR A "PROPERTY OWNER INSPECTION REVIEW"

A request can be submitted for Baltimore City's Department of Housing and Community Development to perform a review of failed result(s) of the Inspection with which you disagree.

Only Checklist Items A through L are eligible for review.

Requests must be received by the Department of Housing and Community Development within 15 business days of the inspection being completed.

How to submit a request:

1. Message Board feature in your Registration Account
    - Upload this Inspection Form
    - Attach a letter containing the details of the items you would like to have reviewed, including any additional information (e.g. photos, etc.).
2. Mail to the address provided at the bottom of this form
    - Mail in this Inspection Form
    - Include a letter containing the details of the items you would like to have reviewed, including any additional information (e.g. photos, etc.).

Rental Address:_______________________________________ Unit #: _______ Inspector's Initials: ___________

NOTE:

1. Property owners utilizing this form agree to hold the inspector and inspection company harmless for any use or interpretation of this form other than herein stated: This report is provided solely for property licensing purposes and may not be used as the determining factor regarding property conditions. Property owners and occupants must use additional means to determine conditions and to maintain and use the property in compliance with applicable laws and requirements and in a safe, sanitary and habitable manner.
2. This inspection is limited to the checklist items set forth by the Baltimore City DHCD as required under Article 13 Subtitle 5 of the Baltimore City Code.
3. This inspection shall not be construed as a “home inspection” as defined under Maryland law.
4. This inspection shall not be construed as a “pest control consultation” as defined under Maryland law (COMAR Title 15 Subtitle 5). A Maryland licensed pest control professional should be consulted to identify pest issues, develop treatment plans and exterminate pests.
5. The Inspector completing this report may not repair, or recommend any person to repair, any of the items listed above that fail.
6. If scanning multiple forms please keep them in one pdf.
7. Photographs are not required.
8. The Inspector Guidance document provides additional guidance on these checklist items.
9. The Property Owners should note that the correction of some of the items identified as a “Fail” may require permits. Visit http://www.baltimorehousing.org/permit_resources to determine if a permit is required for the work.
10. Inspections performed are valid, and will only be accepted within 30 days of completion for 1-2 unit dwellings and within 90 days of completion for multi-family dwellings.

Note: All pages of this inspection report must be uploaded to the property registration portal within 30 days of the inspection for 1 & 2 family dwellings (90 days for multi-family dwellings) or a new inspection will be required.

This form must be uploaded to the property registration portal within 90 days of the inspection for all multi-family properties or new inspections must be obtained.

V5. 2/4/21

CHECKLIST ADDENDUM FOR COMMON AREAS IN MULTI-FAMILY DWELLINGS, ROOMING HOUSES and HOTELS

Note: Please refer to the Inspector Guidance document before you begin the inspection.
(The checklist should be completed at the time of inspection.)

Inspector Information:

Inspector Name: ____________________ State License #: _______________

Property Information:

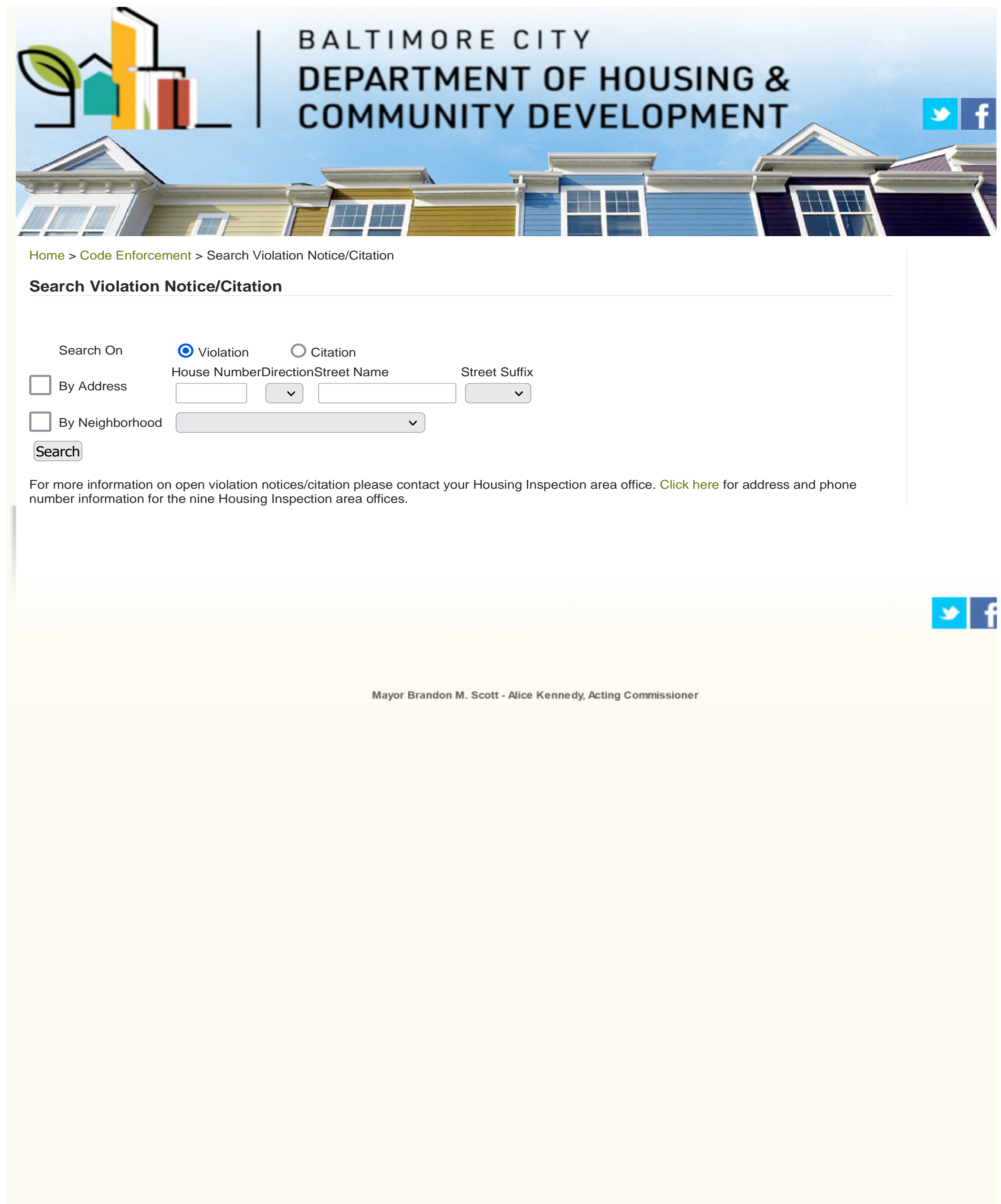
Physical Address: ______________________________

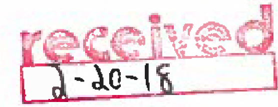
Number of buildings in complex: ________ Number of units in this building: ________

Total number of units in complex: ________ Number of units inspected (incl. this one): ________

Item		Inspection		Re-Inspection	
		Pass / Fail	Date	Pass / Fail	Date
A.	Public hallways and stairways are free of obstructions.				
B.	Public hallways and other common areas are well lit.				
C.	Fire separation is intact between dwellings, hallways, and stairways.				
D.	Fire alarm system is in working order. (Enter N/A if not required.)				
E.	Fire doors are present, free of defect and closures work.				
F.	Exit signs are installed and clearly visible.				
G.	Mechanical room (furnace, boiler) has proper clearance and is not used for storage.				
H.	Electrical room (meters, wires) has proper clearance.				
I.	The multi-family license is posted in a common area.				
J.	HOTELS & MOTELS Only – Prominently display a sign stating that the facility has provided training to all employees on how to identify human trafficking activities and human trafficking victims.				
K.	Are there any other readily observable problems that in the inspector’s opinion represent an immediate threat to the health or safety of the occupant(s)? (If so, “yes” please describe on a separate sheet and submit with this Inspection Form.)				

Baltimore City Department of Housing and Community Development
Licensing and Registration Office
417 E. Fayette Street, Room 100, Baltimore, MD 21202
410-396-3575


BALTIMORE CITY
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT
Home > Code Enforcement > Search Violation Notice/Citation
Search Violation Notice/Citation
Search On
Violation
Citation
House Number
Direction
Street Name
Street Suffix
By Address
By Neighborhood
Search
For more information on open violation notices/citation please contact your Housing Inspection area office. Click here for address and phone number information for the nine Housing Inspection area offices.
Mayor Brandon M. Scott - Alice Kennedy, Acting Commissioner



Bill Title: **City Council Bill 18-0185, Non-Owner Occupied Dwelling Units, Rooming Houses, and Vacant Structures – Rental Dwellings – Registration and Licensing**

Committee: **Judiciary and Legislative Investigations**

Date: **February 20, 2018**

Position: **Favorable**

This testimony is offered on behalf of Maryland Multi-Housing Association (MMHA). We are a professional trade association established in 1996, whose members consists of owners and managers of more than 190,000 rental housing homes in over 800 apartment communities, **43,800 rental housing homes in Baltimore City** . In addition, MMHA represents companies that manage over 35,000 condominium and home owner associations in over 250 communities. Our members house over 556,000 residents of the State of Maryland.

Under this legislation, non-owner occupied one and two family dwellings will be added to the licensing, inspection and requirements that currently exist for all other rental dwellings, including multi-family and rooming house dwellings. Additionally, this bill:

- Requires notification of new identity and contact information to the Commissioner of Housing and Community Development within 10 days of any changes to the owner or property manager.
- An owner must have a currently effective license in order to rent and collect rent.
- to renew a license or an application for renewal, it must be submitted to the Commissioner no less than 30 days nor more than 60 days before the license expires
- Prior to applying for a license or renewal, the dwelling must be inspected within 90 days before the application is completed.
- If a property has 9 or fewer units, all must be inspected. In a multi-family environment with 10 or more units, the number of units inspected will be determined by the rules and regulations adopted by the Commissioner. The owner or manager is required to submit evidence that the premises passed its periodic inspection.
- Provides for a staggered licensing term based on specific factors.
- Defines nuisance properties and allows for denial, suspension or revocation of the license.
- Following approval by the Commissioner, provide a sanitation guide to be disbursed to each dwelling and prominently posted in each collection room.
- Does not subject the Housing Authority for Baltimore City to the same rules as all others.

MMHA supports a reasonable registration and licensing requirement if it eliminates property owners who fail to maintain rental units and provides the City with appropriate contact information. However, despite this support, MMHA is extremely concerned with the implementation and enforcement of this bill, should it pass. As a stakeholder, we remain willing and interested in working with Housing and Community Development and others to ensure that this legislation is effective.

MMHA therefore respectfully requests a **favorable** report on City Council Bill 18-0185.

English (/baltimore-city-rental-dwelling-license-law)

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> Landlord/Tenant - Local Laws (/cat/housing/landlordtenant-local-laws) > Baltimore City Rental Dwelling License Law

Baltimore City Rental Dwelling License Law

For decades, Baltimore City has required multi-family dwellings and rooming houses to have a license to operate from the Department of Housing & Community Development (DHCD). Effective August 1, 2018, Baltimore City expanded its license law to cover 1- and 2-family rental dwellings. In addition, Baltimore City tied the effectiveness of a license with the collection of rent. Beginning on January 1, 2019, landlords must have a license to operate their premises or else lose their right to collect rent.

Read the law: Baltimore City Code, Article 13, Subtitles 4 and 5 (https://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf)

Applicability and License Requirements

The license law covers multi-family dwellings, rooming houses, and non-owner-occupied 1- and 2- family dwellings units. The law does NOT apply to:

- owner-occupied properties that are suited for 1 or 2 families; or
- properties owned and operated by the Housing Authority of Baltimore City.

A landlord may obtain a license from DHCD if the landlord:

- registers all dwelling units and rooms as required by Article 13, subtitle 4 of the Baltimore City Code;
- pays all registration fees (including any related interest and late fees);
- passes an inspection by a third-party home inspector;
- is in compliance with all Federal, State, and City lead paint laws and regulations;
- for premises that include a hotel or motel subject to article 15 of the Baltimore City Code, complies with the training, certification, and posting requirements of Article 15, Subtitle 10 of the code; and
- is not subject to a violation notice or order that:
  - has been issued under the City's Building, Fire, and Related Codes Article; and
  - Notwithstanding the passage of more than 90 days since its issuance, has not been abated before the license issuance or renewal.

Read the law: Baltimore City Code, Article 13 § 5-6 (https://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf)

Prohibitions on Rent Collection

Unless otherwise exempted, landlords cannot:

- Rent or offer to rent to another all or any part of any dwelling without a currently effective license; OR
- Charge, accept, retain, or seek to collect rent or other compensation from a tenant for the occupancy of all or any part of a dwelling unless the landlord was licensed at both the time of offering to provide and the time of actually providing the dwelling.

In other words, the landlord must have a license to lease a place to a tenant as well as when the landlord demands payment of rent under that lease. This does not apply to housing owned and operated by DHCD or owner-occupied property that are suited for 1 or 2 families.

Read the law: Baltimore City Code, Article 13 § 5-4 (https://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf)

Effect on Failure To Pay Rent Cases

Landlords must affirmatively plead and demonstrate to the court that the landlord has a currently effective license to succeed in a Failure To Pay Rent action. Landlords must indicate the license number in the Failure To Pay Rent Complaint.

If a tenant suspects the landlord does not have a license, then contact DHCD for certification to confirm whether there is a license. Tenants may offer the certification as proof as to whether the landlord has a license and if the landlord has the right to collect rent.

Verification - Visit the DHCD website (http://cels.baltimorehousing.org/reg/Reg_MFD_Search.aspx) to verify whether a landlords has a license for their dwelling. For additional information, questions or concerns, contact the Property Registration and Licensing Office by phone 410-396-3575. The Property Registration and Licensing Office also offers certifications of licensing status and may receive reports of unlicensed or unlicensed properties.

Penalties

If you violate the license law, you may receive an environmental citation among any other civil and criminal enforcement actions. Any person who violates any provision of the licensing law or any rule, regulation, or order adopted or issued under the law may be guilty of a misdemeanor and, on conviction, subject to a fine of not more than $1,000 for each offense.

Read the law: Baltimore City Code, Article 13 § 5-26 (https://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf)

Source: Douglas Nivens II, Esq., Maryland Legal Aid

Last Updated: Thu, 10/15/2020 - 2:32 pm

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- Rent Court and Eviction Cases (/rent-court-eviction)

- Baltimore City Rental and Housing Laws (/baltimore-city-rental-and-housing-laws)

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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor

DEPARTMENT OF LAW
DANA P. MOORE, ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

May 6, 2020

The Honorable President and Members
of the Baltimore City Council
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Mayor and City Council Bill 20-0526 – Baltimore City COVID-19 Renter Relief Act

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0526 for form and legal sufficiency. The bill would add language to Subtitle 8 (Rent Increases) of Article 13 (Housing and Urban Renewal) of the City Code, which contains the existing City Code provisions that prevent certain rental fee increases in retaliation for housing code violations. The bill would prohibit a landlord from increasing a rental fee of an existing tenant if that increase would occur during an emergency, and prohibit charging any late fees during the emergency or within 90 days after it. The bill also attempts to require a landlord to cancel any notice of a future increase in rent sent prior to the enactment of this ordinance, if the rental increase will happen during the emergency.

General Authority

The City is authorized to enact rent control ordinances by virtue of its police powers and reasonable measures taken to limit increases in rent during a declaration of emergency will be upheld as long as the legislation is not in conflict with either the federal or Maryland Constitutions or a Maryland law. *Heubeck v. City of Baltimore*, 205 Md. 203, 206 (1954) (Baltimore City is authorized to enact rent control legislation during an emergency, but it cannot conflict with state law regarding evictions). However, as Maryland's highest court explained over fifty years ago, local rent control laws cannot conflict with state laws.

State Preemption

On its face, there is no conflict in the language of this bill and any landlord tenant law enacted by the General Assembly, either codified in the Real Property Article of the Maryland Code or codified in the Baltimore City Pubic Local laws. Md. Code Real Prop. Art., §§ 8-101 – 8-604 (governing evictions, prohibited retaliatory actions like rent increases in response to a tenant complaint, notice of rent increase for renewals, demands for back rent, rent escrow, liability of tenant for rent, etc.); Public Local Laws of Baltimore City, Subtitle 9 (govern retaliatory rent increases, deaths of tenants, warrants of restitution and rent escrow). This is because there is no current state law governing rent increases during an emergency. Nor do any of the recent

Governor's Executive Orders cover rent increases or interest on late rent payments during this emergency. *See* Maryland Governor's Executive Order 20-04-03-01 (suspended evictions during the emergency for tenants suffering a loss of income due to the pandemic). Since none of these state laws expressly permit rent increases, the City would not be preempted by conflict or expressly preempted from implementing a rent freeze during the pandemic.

However, conflict and express preemption are only two of the three types of preemption possible; the other is field preemption. *See, e.g., Worton Creek Marina v. Claggett*, 381 Md. 499, 512 (2004) (citations omitted) (explaining preemption can occur by intended to occupy an entire topic, not merely by conflict or expressly). Field preemption would exist if a Court determines that the state intended to occupy the entire field of landlord/tenant laws during this emergency. Although there is no guarantee, a Court would probably not find field preemption because these state laws and the Governor's orders are silent as to rent increases and late fees during an emergency. Thus, there is no clear barrier to the City's exercise of its police power to enact a rental increase prohibition during this pandemic. *See, e.g., Montgomery Co. v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 710 (2019) (holding that the state law sets a floor, not a ceiling, and local laws can go further in their restrictions (citing *Mayor and City Council of Baltimore v. Hart*, 395 Md. 394, 396-97 (2006) (upholding the City's more stringent standard for emergency vehicles)).

Federal Preemption

Parts of this bill could be considered preempted by federal law. The short amount of time between introduction of this bill and its hearing did not leave enough time to review the impact of this law against the backdrop of federal housing laws. However, it is clear that the provisions on interest in the bill are preempted as applied to federal housing by the federal CARES Act, which was signed into law on March 27, 2020. 134 Stat. 281 (2020). In addition to preventing a tenant from being served with an eviction notice before July 25, 2020, and requiring such notice to give the tenant 30 days to quit the property, the Act also prevents the landlord from charging late fees, penalties or any other charges for late payment of rent. *Id*. at 493, 494. Thus, wherever the federal law governs, this bill is preempted. Similarly, should the state decide to take up the topic of late fees, this law would then by superseded by those state laws. However, since the City's bill covers more renters than those covered by the federal CARES Act, the Law Department does not recommend an amendment to the language of the interest portion of the bill.

Constitutional Challenges

This bill should survive a constitutional challenge because similar legislation has survived various federal constitutional attacks including Due Process, Equal Protection, Contracts Clause and takings challenges. *See, e.g., Tyler v. City of College Park*, 415 Md. 475, 509 (2010) (rent control ordinance upheld in face of Equal Protection challenge); *Westchester West v. Montgomery Co.*, 276 Md. 448, 460 (1975) (price control measures like rent control are unconstitutional only if they are arbitrary, discriminatory or irrelevant to the policy goals of the legislature); *Block v. Hirsh*, 256 U.S. 135, 157-58 (1921) (temporary rent control measure of District of Columbia upheld during emergency against Due Process, Contracts Clause and takings challenges).

Enforcement

The bill does not contain any language about enforcement. There is a provision in the current Subtitle 8 of Article 13 that a "tenant may seek relief from an appropriate court to restrain or enjoin any violation of the provisions of this law." City Code, Art. 13, § 8-5. This Section appears to have been enacted in 1981. Since that time, the Maryland Courts have made clear that without specific authorization by the General Assembly, local governments have no right to create a private cause of action. *See McCrory Corp. v. Fowler*, 319 Md. 12, 20 (1990) ("In Maryland, the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by [the Maryland Court of Appeals] under its authority to modify the common law of this State."); *accord Baker v. Montgomery County*, 201 Md.App. 642 (2011); *Shabazz v. Bob Evans Farms, Inc.*, 163 Md.App. 602, 636–37 (2005); *Edwards Sys. Tech. v. Corbin*, 379 Md. 278, 287–94 (2004); *H.P. White Lab., Inc. v. Blackburn*, 372 Md. 160, 167–71 (2002). In other words, it is not clear that tenants can go to Court to enforce this City law.

However, Section 8-5 of Article 13 may be deemed by a court to provide a tenant with a cause of action against the landlord for the original purpose for which it was enacted: retaliatory evictions and rental increases due to property defects. Since state law prevents the rental of residential properties that do not meet local building and housing code requirements, a court may interpret Section 8-5 of Article 13 of the City Code as being authorized by state law in accordance with the requirements of the cases cited above. Md. Code, Real Prop., § 8-211; Baltimore City Code of Public Local Laws, § 9-9(b).

There is no indication, however, that Section 8-5 of Article 13 of the City Code would be interpreted by a court to allow enforcement of the rental increase and interest provisions that are the subject of this bill. Therefore, the Law Department recommends an amendment to the bill to enforce this bill with an Environmental Control Board citation. Suggested draft language is attached to this bill report. The draft amendment is written to provide an Environmental Control Board citation at the maximum penalty of $1,000 for any violation of Subtitle 8 of Article 13, not just the new language added in this bill. The Law Department does NOT recommend making the rental increase a crime because that would make Section 8-4(D)(2) violate the *ex post facto* prohibition of the United States Constitution by criminalizing an action that was done prior to the passage of this bill. *Calder v. Bull*, 3 U.S. 386, 390-91 (1798).

Retroactivity

Assuming that the enforcement mechanism chosen by the City Council is not criminal, a Court should not invalidate the intended retroactivity of Section 8-4(D)(2) of the bill, which would effectively bar rental increases that a landlord has already undertaken prior to the bill's passage. *See, e.g., Waters v. Montgomery Co.*, 337 Md. 15, 28-29 (1994). Maryland Courts follow a three step analysis to determine if a law is *ex post facto*: 1) legislature intended retroactivity, 2) the legislature had the power to enact the ordinance, 3) the retroactive application of the statute or ordinance would interfere with vested rights. Here, the City Council clearly intends that this law be retroactive and seeks to bar any rental increase that would go into effect during the emergency, even if the landlord had given notice of that increase prior to the enactment of this law. Assuming the City has the power to enact rent control laws, then the question becomes whether the

retroactivity impacts the landlord's vested right. *Id.* Since the Supreme Court has held that a landlord's right to charge rent can be modified in an emergency, the law will likely survive an *ex post facto* challenge, so long as the enforcement mechanism is not criminal. *Block*, 256 U.S. at 157 ("the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the public interest be established the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled.") (citations omitted).

Duration of the Law

Next, the validity of this law depends on exigent circumstances which permit certain constitutional rights to be partially impaired, at least temporarily, due to the increased and significant government interest of protecting the public health during a pandemic. After enactment, the law would be in effect through the 121st day after the expiration of the emergency. There is authority which suggests that the authority of the City to enact this law depends on the emergency itself, and may not be enforceable once the emergency ceases. *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924). Thus, while there is no clear prohibition on having this law in effect for that length of time, it is important to note that a Court may not consider it to be valid past the end of the state of emergency.

Title of the Bill

The short title of the bill— Baltimore City COVID-19 Renter Relief Act— is arguably misleading as it suggests that the law relieves renters of their liability for rent. The Law Department recommends amending the title to reflect that the legislation prohibits rent increases, not liability for rent during the emergency. A suggested amendment is attached to this report.

Final Comments

There has been discussion in Annapolis of expanding an existing Governor's Order or creating a new one to include a freeze on residential rents, limits in residential rent increases, or prohibitions on late increases. If that happens, any terms of that Order that conflict with any City law will prevail. Furthermore, when the Governor issues transition direction, such as an Order specifying how evictions will take place after the emergency declaration has ended, anything in the City Code that is in conflict with that order will be superseded.

Subject to the foregoing comments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

Ashlea Brown
Hilary Ruley

cc: Dana P. Moore, Acting City Solicitor
Matthew Stegman, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervala, Chief Solicitor

AMENDMENTS TO COUNCIL BILL 20-0526
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1

On page 1, after line 8, insert:

ARTICLE 1 – MAYOR, CITY COUNCIL AND MUNICIPAL AGENCIES
SECTION 40-14(E)(1) (SUBTITLE 8)
BALTIMORE CITY CODE
(EDITION 2000)

On page 3, in lines 8 and 9, delete "the provisions of this law" and substitute "SECTIONS 8-2 AND 8-3 OF THIS SUBTITLE, IN ACCORDANCE WITH STATE LAW."

On page 3, after line 9, insert:

"§ 8-7. ENFORCEMENT BY CITATION

(A) ANY VIOLATION OF THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF AN ENVIRONMENTAL CITATION AS AUTHORIZED BY CITY CODE ARTICLE 1, SUBTITLE 40 {"ENVIRONMENTAL CONTROL BOARD"}.

(B) PROCESS NOT EXCLUSIVE. THE ISSUANCE OF AN ENVIRONMENTAL CITATION TO ENFORCE THIS SUBTITLE DOES NOT PRECLUDE PURSUING ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW. SUBJECT TO A FINE OF $1,000 PER DAY.

(C) SEPARATE OFFENSE. EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE."

Baltimore City Code

Article 1. Mayor, City Council and Municipal Agencies

Subtitle 40. Environmental Control Board

(1) ***Article 13. Housing and Urban Renewal***
Subtitle 4. Registration of Non-Owner-Occupied Dwellings,

. . .

§ 5-15. {Offenses there listed as cause for} Denial, suspension, or revocation of license $750

SUBTITLE 8 RENT INCREASES $1,000

All other provisions $500

Amendment No. 2

On page 1, in line 2, delete "Renter" and substitute "RENT INCREASE"

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor

DEPARTMENT OF LAW
JAMES L. SHEA
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

February 5, 2021

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 21-0021- Late Fees for Past Due Rent

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0021 for form and legal sufficiency. The bill requires a lease to have a provision regarding a 10-day grace period and to have provisions regarding the amount of money landlords may charge for late fees. The bill also establishes when landlords may charge late fees for tenants receiving public assistance as a condition precedent to the tenant's right to redeem, and the types of fees landlords may recover.

The nonpayment of rent is the subject of Maryland's Landlord-Tenant law found in the Real Property Article, Title 8. The non-payment of rent is specifically addressed in § 8-401 of that Article. In addition, the Public Local Laws of Baltimore City regulate landlord-tenant relations. PLL, Subtitle 9. We note that contrary to Paragraph (V) on pages 2 and 3 of the Council Bill 21-0021 which permits, under certain circumstances, the right of redemption when a tenant has experienced three adverse judgements for possession for rent due, both the State Law and the City's Public Local Law prohibit redemption under those circumstances. *See* Md Code, Real Property, § 8-401(e) and PLL § 9-5(b)(2). Thus, these provisions are preempted and must be struck from the bill.

Council Bill 21-0021 also establishes limits on when a tenant can be charged a late fee and the amount of late fees that are chargeable. Both State law and the City's Public Local Law allow the charging of late fees, but neither establish when a late fee can be charged or the amount that might be chargeable. *See* Md Code, Real Property, § 8-401(b) and PLL § 9-5(b)(1). Thus, there is no conflict arising from State law or the City's Public Local Law for the bill's inclusion of these provisions.

The Law Department notes that this bill is applicable only to new leases signed after its effective date. This provision avoids a Contract Clause problem that would arise if the bill purported to regulate existing leases.

If Paragraph (V) on pages 2 and 3 is struck from the bill, the Law Department is prepared to approve the bill for form and legal sufficiency as drafted. To that end, the Law Department notes that the sponsor may be submitting amendments to this bill. The Law Department would approve the bill as provided in the amendments it viewed on February 5, 2021.

Sincerely,

Victor K. Tervala

Victor K. Tervala
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Nikki Thompson, Director of Legislative Affairs
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor

Mayor Young didn't register his home under rental law that he supported

by Bryna Zumer
Tuesday, December 17th 2019

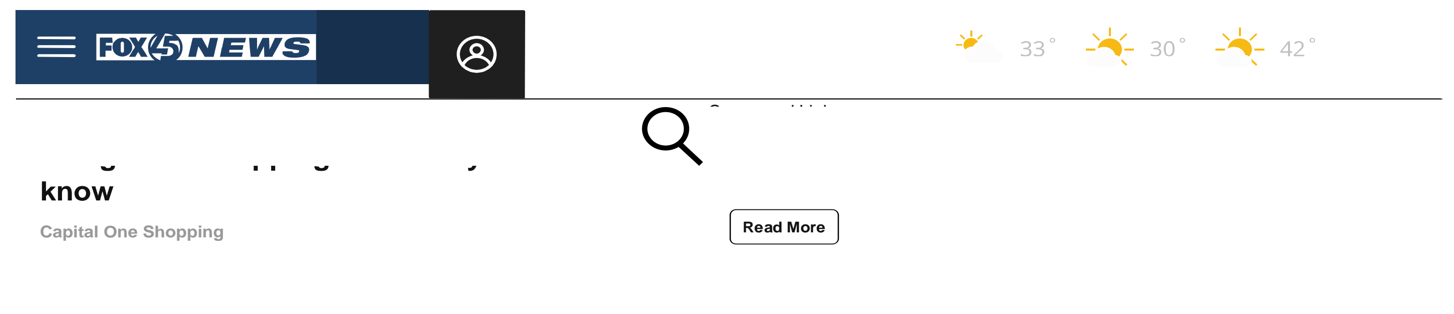
Records show Mayor Young didn't register his home under city law that he supported

BALTIMORE (WBFF) - Tax records show Baltimore Mayor Jack Young failed to register his home under a new rental law that he himself supported.

It's the latest question being raised about Young's East Baltimore home and how it's registered.

The rental law, which went into effect last year, requires all residential rental properties in Baltimore to be registered, inspected and licensed.

If it's a rental but not owner-occupied, it still must be registered annually, according to the city's Department of



Young signed off on the law when he was City Council President.

The mayor's home on East Madison Street is classified as a rental. (He said his daughter lives there.) But there's no record of the mayor filing the required registration paperwork with the city, reports FOX45's Keith Daniels.

Today, the mayor's staff told Fox45 he is filing rental registration for the home and working on new ethics forms with a property on Central Avenue that is listed as his primary home.

His staff says it was an oversight.

Young is apologizing, after it was learned he no longer lives at the East Madison home full-time. He is also returning a homestead tax credit that he got on that property.

The mayor called that a simple oversight.

His spokesperson, Lester Davis, said the Madison Street home "has been his historical, primary residence."

Stay with FOX45 for updates to this story.

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