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Written Testimony of Donald Marritz
Concerning House Bill 1714, Printer's No. 2397

My name is Donald Marritz. I am a staff attorney with Regional Housing Legal Services, a statewide non-profit legal aid program which is part of the Pennsylvania Legal Aid Network (PLAN). Thank you for the opportunity to address the issues raised by HB 1714.

I am here representing ACTION-Housing, a Pittsburgh-based non-profit whose mission is to "empower people to build more secure and self-sufficient lives through the provision of decent, affordable housing, essential supportive services, asset building programs, and educational and employment opportunities."

Included in ACTION's activities are the ownership and operation of about 1,800 rental units occupied primarily by lower-income persons and families, including seniors with supportive housing needs, formerly homeless individuals, persons with disabilities, and other vulnerable populations. Similarly, RHLS itself represents the interests of both tenant, but also those of non-profits like ACTION-Housing that develop and manage affordable rental housing. In other words, both ACTION and RHLS care about the interests of both residential rental property owners and their tenants.

There is no demonstrated need to change current law about abandoned property, Act 129 of 2012, 68 P.S. § 250.505a

Although RHLS is statewide program, I am located in rural Adams County, where I practiced law for 35+ years as an attorney with a regional legal aid program (MidPenn). I started my law career in Gettysburg in 1974, when we had just one judge, the dockets were written in longhand, and papers were 8 ½ x 13 inches and filed, folded into quarters, in skinny metal boxes. I've been around for a very long time.

One of the main areas of my practice has been residential landlord-tenant cases. During that entire period, I cannot remember a single matter in which a landlord or his attorney had a substantial complaint or problem with a tenant having abandoned his/her property. For that reason and, more importantly, based on the only existing hard, non-anecdotal evidence, we believe that HB 1714 addresses a problem which does not exist.

The lack of problems may be traced, at least in part, to the recent enactment of Act 129 of 2012, which became effective on September 4, 2012, a mere 18 months ago. Act 120 was not the product of a fast-track process but rather the result of back-and-forth negotiations between landlord and tenant interests that took place over a period of five years. Even so, a mere four months after Act 129 became law, efforts to change it began. It's not clear why this happened. Certainly, there is no track record that Act 129 has not been effective. It demeans the legislative process and the history of negotiations leading to Act 129 to consider changing it now. There is no demonstrated need to do so.

In fact, all of the existing evidence is to the contrary. The apparent assumption behind HB 1714 is that in a substantial number of cases, when tenants physically move from a rental property, they leave behind so much personal property that that the houses or apartments remain vacant for extended periods of time, while the landlord goes to court to regain possession.

If this were a correct assumption, then the occupancy rate of rental housing would be low. The only available evidence of which we are aware show that such an assumption is not correct. One report concerning a significant number of rental housing units in a program monitored by the Pennsylvania Housing Finance Agency found a median physical occupancy rate of 97%[1]--just the opposite of what one would expect if the apparent assumptions behind HB 1714 were correct. To our knowledge, this report represents the largest data base in the state for privately-owned residential rental housing that is independently monitored for housing quality.

This is borne out by ACTION-Housing's own experience. Since the passage of Act 129 of 2012, it has not experienced any material change in its operating expenses attributable to the new law. It has not noticed any material changes in occupancy attributable to the changes effected by Act 129.

Moreover, since the passage of Act 129, ACTION-Housing and other organizations with which RHLS works have continued to receive multiple offers of both equity and debt on residential rental properties they are developing under the Low-Income Housing Tax Credit (LIHTC) program administered by PHFA. RHLS has examined the PHFA evaluations of investor proposals for the initial round of 2014 LIHTC allocations—proposals which were made after the enactment of Act 129 and which presumably take its effects into account.. These proposals are at or near historic highs, meaning the investors in residential rental property are willing to pay more for LIHTC equity now, post-Act 129, than at almost any time in the history of the LIHTC program. If Act 129 were having an adverse impact on portfolio performance, then one would expect to see investors pulling by from Pennsylvania, and that their equity

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[1] *The Low-Income Housing Tax Credit Program at Year 25: An Expanded Look at Its Performance,* CohnReznick LLP, December 2012, http://cohnreznick.com/sites/default/files/cohnreznick-lihtc-2012-fullreport.pdf last accessed October 7, 2013.

commitments would be reduced to take lower performance into account. That has clearly not been the case.

Pennsylvania's existing statute concerning abandoned property—Act 129—is working well. It was adopted less than 24 months ago, after five years of negotiations. No cogent reason to change it has been offered.

HB 1714 Would Undermine the Implied Warranty of Habitability Created by the Pennsylvania Supreme Court.

In the landmark decision of *Pugh v. Holmes*, 405 A.2d 897 (Pa. 1979), the Pennsylvania Supreme Court held that in every residential lease, there is an implied warranty of habitability which requires that the landlord provide a safe, secure, and habitable premises to the tenant, whose obligation to pay rent may be relieved if the landlord breaches that duty. In addition, a "tenant may vacate the premises where the landlord materially breaches the implied warranty of habitability," such as by not providing heat. *Pugh*, 405 A.2d at 907. The implied warranty is so important that it cannot be waived, even by contrary language in a written lease. *Fair v. Negley*, 390 A.2d 240 (Pa. Super 1978). The adoption of HB 1714 would undermine this vital protection in some circumstances, where the landlord does not live up to his responsibilities.

For instance, assume that the heat has gone out in an apartment in Johnstown, Pa., in the middle of a cold spell, like the many we've suffered this winter. The tenant has notified the landlord right away about this, but the problem is not fixed within 36-48 hours. The temperature in the apartment is under 45° F. and falling. The tenant and his wife have two young children. They decide to leave the home and go stay with relatives in North Carolina. They take some personal property with them—mostly clothing—but leave the majority behind, since their future

plans are uncertain. The property isn't all that valuable, but it's all they have and they can't really afford to replace it.

They call the landlord to let him know they are leaving and are not sure of when they will return, since their life is in turmoil. They are already a few days late with the rent and can't afford to pay it now, with the expenses of going to live temporarily in North Carolina. They don't know when or whether they will return. Things are totally up in the air and uncertain. It is unrealistic to require such a tenant to communicate an unconditional "intent to return" to the landlord. At best, the tenant might say he'll return when the problem is fixed. There is no indication in any current proposed language that a conditional intent to return would suffice.

This story represents a credible scenario that certainly might take place and would put the tenant family in jeopardy of having an unsympathetic landlord—whether an individual or a corporate landlord—declare the apartment "abandoned" under HB 1714 and subject the personal property they've left behind to being disposed of in their absence. For every anecdotal incident of a landlord being inconvenienced by having to deal with a tenant who may have left property in a rental residence under uncertain circumstances, there is a story like the one of this hypothetical tenant, whose situation is no less dire than that of a victim of domestic violence.

The existing law—in Act 129 of 2012, 68 P.S. § 250.505a—represents a reasonable solution to these knotty problems and competing interests, a solution reached after five years of negotiations. HB 1714 would upset the balance reach in Act 129 and tip the scales in an unfair and unreasonable way, a way that would undermine the protections that the Pennsylvania Supreme Court has mandated in the implied warranty of habitability created in *Pugh v. Holmes*..

The adoption of HB 1714 would authorize and encourage self-help measures by landlords.

Act 129, 68 P.S. § 250.505a, established a process which ensures that the determination of whether a tenant has abandoned his residence and personal property is done fairly, either a) by a clear written statement of abandonment by the tenant, or b) by a judicial process in an impartial tribunal. HB 1714 would chance that give the landlord—an interested party—the sole and absolute arbiter the question of relinquishment of the premises and abandonment of the tenant's property.

If HB 1714 were adopted, it would result in some self-help evictions. If a tenant left the home and ceased paying rent because of habitability violations, HB 1714 would allow the landlord to enter and remove all of the tenant's property. While the tenant might not be technically "evicted" by this process, that would be the practical result. A person who comes home to find it emptied of his personal property has been evicted, just as surely if he has been dragged out by the sheriff or a constable.[2] To hold otherwise would be elevating form over substance. With all respect, the statement in the Chair's Memorandum dated February 26th that HB 1714 has no effect on eviction and distinguishes between real property and person property is not correct.

Although there has been no dispositive, appellate ruling on self-help eviction, every Court of Common Pleas which has considered the issue has disapproved of such a one-sided self-help process. See, e.g, *Wofford v. Vavreck*, 22 Pa. D & C 2d 444 (CP Crawford 1981) and

[2] This might be considered to be a "constructive eviction," which occurs "where a landlord "deprives a tenant of the beneficial enjoyment of the demised premises and which manifests an intention to hold adversely to the tenant" such as by withholding heat or removing all of a tenant's personal property. *Walnut-Juniper Co. v. McKee, Berger & Mansueto, Inc.*, 344 A.2d 549, 551 (Pa.Super. 1975). See also, *Kuriger v. Cramer*, supra 498 A.2d at 1338.

Kuriger v. Cramer, 498 A.2d 1331, 1337 n. 14 (Pa. Super. 1985). In *Kuriger*, the Superior Court pointed out that self-help evictions

- are disfavored by public policy
- have been held to be improper by sister courts in Pennsylvania and elsewhere
- have been universally disapproved of and "effectively laid to rest."
- tend to undermine the implied warranty of habitability in *Pugh v. Holmes.*

The MDJ rules about evictions also show that an orderly and fair judicial process, and not self-help, is the public policy of this Commonwealth. The rules make it very clear that there can be no default judgments in landlord-tenant actions. The landlord "must appear and give testimony to prove the complaint even the defendant fails to appear for the hearing."[3] This insistence on proof for a landlord to get an eviction shows a strong public policy in favor of a fair process that will prevent wrongful evictions by insistence on a hearing before an impartial tribunal, not an *ex parte* determination by the landlord alone, leaving a tenant without a day in court.

HB 1714 would also raise difficult constitutional issues like those involved in the practice of distraint—the seizure of one person's property, the tenant's, because of an alleged debt to another, the landlord. See *Allegheny Clarklift, Inc. v. Woodline Industries*, 514 A.2d 606 (Pa. Super. 1986). Even though HB 1714 would not involve state action, the fundamental issue in both it and *Allegheny Clarklift* is the loss of property by one party due to the *ex parte* determination of another party, one with opposing interests.[4] The enactment of HB 1714 in the face of the decisions in *Allegheny Clarklift* and *Smith v. Coyne* would be a slap in the face of the courts and an insult to the core principles of due process—the right to have a dispute settled by a disinterested and impartial third party.

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[3] Official Note to MDJ Rule 512 http://www.pacode.com/secure/data/246/chapter500/s512.html.

[4] Accord, *Smith v. Coyne*, 722 A.2d 1022, 1024-5, Pa. 1999) (Under the Landlord and Tenant Act, a landlord's common law remedies to regain possession of his property are "severely limited.... remedies [such as] self-help, distraint, and confession of judgment. . . ."

Going to court to get an eviction order involves reasonable costs and a reasonable length of time.

People who are landlords are in a business, one in which they expect to make a profit. As with any business, there may be expenses they would rather not have to pay and inconveniences which they would rather not face. We believe that the expenses and time involved to evict a tenant are a reasonable cost of doing business, especially given the countervailing legitimate interests of residential tenants, who are, in effect, a landlord's customers.

Here is information about the expenses and time involved in getting a judgment for possession of residential real property, a process which, under current statutes and rules, is already faster and easier than getting a judgment against commercial real property.[5]

Costs
Filing and services by mail - $152.00 to $202.00, depending on amount of rent sought
Personal services - $60.00
Execution on a judgment - $45.50 (if no eviction required), $135.50 (eviction required)

Time
Notice to quit (rent due) 10 days or 15 days (no rent due) – 68 P.S. 250.501
Time of hearing – 7-15 days after complaint filed – MDJ Rule 504
Request for order of possession – On or after 11th day following judgment - MDJ Rule 515
Eviction- On or after the 11th days following service of the order for possession – MDJ Rule 519

Conclusion

HB 1714 would authorize a procedure universally disapproved by our courts—self-help evictions—and would likely increase the incidence of homelessness in the Commonwealth. That result would have the effect of placing additional pressures on the already overburdened shelter

[5] The information about costs is from those in MDJ District 51-3-01 in Gettysburg, Adams County. See http://www.adams county.us/Dept/CourtofCommonPleas/DC51-3-01/Pages/feeschedule.aspx1

system, supported by state and local governments and the charitable sector, including organizations like Action Housing, to deal with these homeless families.

For that and the other reasons mentioned here, the legislature should not attempt to change the current balance between the rights of landlords and tenants established in Act 129, which it passed less than 24 months ago.

Respectfully submitted,

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