

**Testimony of George Gould**  
**Before The PA House Urban Affairs Committee On HB 1714**  
**March 10, 2014**

Good afternoon. My name is George Gould and I thank the Committee for giving me the opportunity to testify on HB 1714.

I am the Managing Attorney of the Housing and Energy Units at Community Legal Services in Philadelphia. I have worked in the area of landlord/tenant law for almost 40 years. Our offices provide legal assistance and advice to over a thousand tenants each year involving issues regarding their tenancy, many of them elderly and disabled.

HB 1714 would repeal Act 129 of 2012 which created a fair and balanced process for both landlords and tenants for dealing with personal property left when a tenant relinquishes the possession of their home. The law came about after 5 years of negotiation and compromise between advocates for landlords and tenants. The bill as passed into law was supported by both groups in writing. Both groups agreed that they would not seek further amendments to the bill. The issues raised in HB 1714 were raised and thoroughly discussed before Act 129 became law.

We believe that HB 1714 is fundamentally flawed. It would give the landlord the sole and complete authority, without judicial process, to determine that a tenant relinquished the property. Act 129, the current law, gives a clear definition of when a tenant has relinquished the property:

- (1) Execution of an order for possession in favor of the landlord.
- (2) If a tenant has physically vacated the premises, removal of substantially all personal property and the providing of a forwarding address or written notice stating that the tenant has vacated the premises.

Once the property is relinquished the current law provides a procedure for both the landlord and tenant to follow regarding the personal property remaining on the premises.

HB 1714 changes this. It provides:

- (a) Upon the termination of a lease or relinquishment of possession of real property, a tenant shall remove all personal property from the leased or formerly leased premises. Abandoned personal property remaining on the premises may be disposed of at the discretion of the landlord.

HB 1714 clearly gives the landlord discretion to determine if a tenant has relinquished the premises because there is no definition in the bill. Termination of a lease is not relinquishment of a property in Pennsylvania. A landlord can terminate a lease by simply sending a letter to the tenant. A tenant has a legal right to challenge a termination of a lease through the court process.

The bill goes further and states that once the premises is relinquished (as determined by the landlord) or the lease has been terminated, the personal property may be deemed abandoned if the rent is more than 15 days past due and the tenant has physically vacated the property.

Again these determinations are made by the landlord. There is no court determination. The tenant may have "vacated" their home to travel for work, take care of a sick out of town relative. The tenant may be in the hospital due to an emergency or have no heat and be forced to live somewhere else. . The rent may be more than 15 days late because the tenant is legally withholding rent because the landlord has failed to make repairs. Yet under HB 1714 no court hearing is required, the landlord makes the determination.

By authorizing the landlord to make these determinations the bill will allow unscrupulous landlords to use self help to evict the tenant.

On November 20, 2013, the Philadelphia Bar Association passed a resolution opposing HB 1714 and other similar bills. The resolution stated:

- The bill would eviscerate the terms of Act 129 and would give landlords the sole and complete authority to determine that tenants have relinquished their property, without judicial determination; and
- If enacted, the Bills would undermine the judicial process created with the enactment of the Landlord and Tenant Act, and would usurp the City of Philadelphia's ability to enforce the Anti-Lockout Ordinance; and
- If enacted, the Bills would eliminate due process protections established under the Landlord and Tenant Act, and would further permit landlords to use self-help actions to evict tenants, even when tenants are exercising their legal right to withhold rent under the doctrine set forth in *Pugh v. Holmes*, 486 Pa. 272, 405 A.2d 897 (1979).

Attached to my testimony is a copy of the Bar Resolution.

Philadelphia, as stated in the Philadelphia Bar Association Resolution has an

ordinance that makes it a summary, criminal offence to use self help eviction.

Philadelphia Code Section 9-1600. HB 1714 would seriously undermine this

ordinance as a landlord could assert to the police, who enforce the ordinance, that

they are acting under the provisions of HB 1714.

We are aware that several amendments have been proposed to the bill. These amendments do not correct the basic problems with the bill. The landlord makes the sole determination ,without judicial involvement, that the tenant has relinquished the premises and the personal property is "abandoned" . They can then follow the process to dispose of the personal property.

We urge you to oppose this bill.

Thank you,

George Gould

**RESOLUTION OPPOSING HB 1713, 1714 AND 1715, AND SB 48 AMENDING THE LANDLORD AND TENANT ACT OF 1951**

WHEREAS, the right to be secure in one's residence, whether it is a home or an apartment, without interference except by due process of law is a fundamental right recognized in both the United States Constitution, Fourth Amendment and in Pennsylvania law; and

WHEREAS, the Commonwealth of Pennsylvania has a long tradition of balancing the rights and responsibilities of landlords and tenants in Pennsylvania, as reflected in the Landlord and Tenant Act of 1951, 68 P.S. §§ 250.101 – 250.602 (the "Landlord and Tenant Act"); and

WHEREAS, the Landlord and Tenant Act balanced these rights in part by eliminating common law notions in Pennsylvania of a landlord's right to self-help actions for nonpayment of rent, including constructive eviction and self-help eviction (illegal lockout). See *Wofford v. Vavreck*, 22 D&C3d 444 (Craw. Co. 1981), see also *Lenair v. Campbell*, 31 Pa. D. & C.3d at 237, 242 (Phila. C.P. 1984) (finding Landlord and Tenant Act of 1951 to be exclusive source for landlord remedial rights); and

WHEREAS, the Landlord and Tenant Act established judicial process as the exclusive remedy for redress of grievances by landlords and by tenants, thereby incorporating fundamental concepts of due process and access to the courts; and

WHEREAS, the Landlord and Tenant Act provides landlords the right to recover possession through eviction or ejection; and

WHEREAS, the Landlord and Tenant Act was amended by Act 129 of 2012 ("Act 129") to establish a fair and equitable process for governing when landlords may remove tenant belongings, providing that such actions may be taken only when landlords have evicted tenants through judicial process or when tenants have provided written notice stating they have vacated the rented home; and

WHEREAS, Act 129 recognized that tenants may, for any number of reasons be temporarily absent, such as moving out for lack of heat or due to a hospital stay without intending to give up their leases or abandon the property; and

WHEREAS, Pennsylvania law provides tenants with an implied warranty of habitability, which allows tenants to withhold rent under certain conditions. *Pugh v. Holmes*, 486 Pa. 272, 405 A.2d 897 (1979); and

WHEREAS, in 1988, the Council of the City of Philadelphia, recognizing that thousands of Philadelphia tenants were subjected to actual or threatened self-help evictions, enacted the Philadelphia Anti-Lockout Ordinance to prohibit such practices and impose fines for such actions. See Philadelphia Code § 9-1600, et seq.; and

WHEREAS, House Bill No. 1713, Printer's No. 2396, House Bill No. 1714, Printer's No. 2397, House Bill No. 1715, Printer's No. 2398 and Senate Bill No. 48, Printer's No. 17 (collectively, the "Bills") have been introduced in the Pennsylvania General Assembly which would amend the Landlord and Tenant Act to permit landlords to engage in self-help evictions; and

WHEREAS, the Bills would eviscerate the terms of Act 129 and would give landlords the sole and complete authority to determine that tenants have relinquished their property, without judicial determination; and

WHEREAS, if enacted, the Bills would undermine the judicial process created with the enactment of the Landlord and Tenant Act, and would usurp the City of Philadelphia's ability to enforce the Anti-Lockout Ordinance; and

WHEREAS, if enacted, the Bills would eliminate due process protections established under the Landlord and Tenant Act, and would further permit landlords to use self-help actions to evict tenants, even when tenants are exercising their legal right to withhold rent under the doctrine set forth in *Pugh v. Holmes*, 486 Pa. 272, 405 A.2d 897 (1979).

NOW, THEREFORE, BE IT RESOLVED that the Philadelphia Bar Association opposes House Bill No. 1713, Printer's No. 2396, House Bill No. 1714, Printer's No. 2397, House Bill No. 1715, Printer's No. 2398 and Senate Bill No. 48, Printer's No. 17, or any similar legislation, as violative of basic due process rights as defined in the Landlord and Tenant Act, the Philadelphia Anti-Lockout Ordinance and other provisions of state and local law;

AND BE IT FURTHER RESOLVED that the Chancellor and/or the Chancellor's designee(s) communicate the Philadelphia Bar Association's position on House Bill No. 1713, Printer's No. 2396, House Bill No. 1714, Printer's No. 2397, House Bill No. 1715, Printer's No. 2398 and Senate Bill No. 48, Printer's No. 17 and any similar legislation to the Governor, the General Assembly and the public and take whatever action is necessary to effectuate this resolution.

PHILADELPHIA BAR ASSOCIATION  
BOARD OF GOVERNORS  
ADOPTED: November 20, 2013