

IN THE
SUPREME COURT OF MARYLAND

SEPTEMBER TERM, 2023
SCM-REG-0004-2023

WESTMINSTER MANAGEMENT, LLC, *et al.*,

Petitioners/Cross-Respondents,

v.

TENAE SMITH, *et al.*,

Respondents/Cross-Petitioners.

On Appeal from the Appellate Court of Maryland (September Term, 2019, No. 2508) and Circuit Court for Baltimore City (24-C-17-004797)

BRIEF OF MARYLAND LEGAL AID, THE PRO BONO RESOURCE CENTER, MARYLAND VOLUNTEER LAWYERS SERVICE, CIVIL JUSTICE, INC., ECONOMIC ACTION MARYLAND, THE HOMELESS PERSONS REPRESENTATION PROJECT, INC., AND DANIEL L. ROSENBERG AS AMICI CURIAE IN SUPPORT OF RESPONDENTS/CROSS-PETITIONERS

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STATEMENTS OF INTEREST

Maryland Legal Aid is a non-profit, 501(c)(3) law firm that provides free legal services to low-income Maryland residents from 13 locations across the state. Maryland Legal Aid and its subsidiary the Maryland Center for Legal Assistance serve over 100,000 Maryland citizens annually. Maryland Legal Aid handles civil cases involving housing, public benefits, child custody, consumer law, children in need of assistance, and other issues of fundamental importance to Maryland residents. Representing tenants is one of Maryland Legal Aid's highest priorities. Maryland Legal Aid has an interest in this case because it represents thousands of clients every year who face threats to their housing security, including via summary ejectment proceedings and allocation clauses in leases like the one at issue in this case.

Maryland Volunteer Lawyers Service ("MVLS"), is a non-profit legal aid organization based in Baltimore that has provided free civil legal services to low income Marylanders for over four decades. With a panel of more than 1,600 volunteer attorneys and specialized professionals across the state, MVLS has assisted over 100,000 clients since its establishment in 1981. To meet this goal, MVLS provides free legal services to low-income Marylanders, spreads awareness of inequities within the legal system, and advocates for equitable laws that remove barriers to justice. MVLS represents clients in the areas of housing, consumer, family law, criminal record relief, income tax controversy and estate planning and administration. MVLS has an interest in this case because MVLS frequently sees landlords unfairly attempting to shift the responsibility onto tenants for damage or repair charges that should be the responsibility of the landlord.

Civil Justice, Inc (“CJ”) is a non-profit, public interest organization founded in 1998 for the purpose of increasing the delivery of legal services to individuals of low and moderate-income while supporting a statewide network of solo, small firm and community-based lawyers who share a commitment to increasing access to justice. Through its litigation efforts and other advocacy, CJ challenges predatory practices that threaten the stability of neighborhoods and prevent under-resourced families from achieving economic success. CJ has represented hundreds of Maryland consumers individually and thousands in public interest litigation who have been victimized by predatory practices in violation of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-101 *et seq.* and other state and federal statutes designed to protect tenants and other consumers. CJ has acted as *Amicus Curiae* numerous times in the Maryland Court of Appeals. *See, e.g., Andrews & Lawrence Professional Services, LLC v. Mills*, 467 Md. 126 (2020); *Ben-Davies v. Blibaum & Associates, P.A.*, 457 Md. 228 (2018); *Cain v. Midland Funding, LLC.*, 452 Md. 141 (2017); *CashCall v. Md. Comm’r of Fin. Regulation*, 448 Md. 412 (2016); *Allstate Lien & Recovery Corp. v. Stansbury*, 445 Md. 187 (2015); *Monmouth Meadows Homeowners Ass’n., Inc. v. Hamilton*, 416 Md. 325 (2010). CJ has a strong interest in protecting moderate-income tenants from abusive practices and ensuring that tenants and other consumers are able to collectively enforce their rights.

The Pro Bono Resource Center of Maryland (“PBRC”) was founded in 1990 as an independent 501(c)(3) non-profit organization to serve as the statewide coordinator, thought leader and clearinghouse for volunteer civil legal services to enhance access to justice in Maryland. PBRC provides training, mentorship, and pro bono service

opportunities to members of the private bar. PBRC also responds to acute legal needs identified in areas across the state by piloting and operating innovative direct legal service projects targeting specific legal problems or populations. For more than 15 years, affordable and stable housing has been a priority for PBRC. Our Tenant Volunteer Lawyer of the Day (TVLD) Program established in 2017 was the first in the state to offer day-of-court representation to tenants in eviction proceedings. TVLD now provides day-of-court representation at Baltimore City and Baltimore County Failure to Pay Rent court dockets and takes on other long-term representation in other pro se housing cases as appropriate. This means that with new access to counsel support, a strong contingent of PBRC staff attorneys, volunteers and paralegals are available and present in court daily to observe and assist tenants. Over the last six years we have represented thousands of tenants and have a significant interest in the outcome of this case. PBRC has witnessed first-hand both the imbalance of power in rent court and the potentially devastating impact of allowing landlords to define “rent” as described by Petitioners in this action. In our experience, a consistent definition for rent will enable more equitable outcomes for the public, instill greater confidence in the judicial system and improve judicial efficiency. The outcome of this litigation will have a wide-reaching and direct impact on our clients as well as our staff as we navigate ever-increasing rent court dockets.

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide, nonprofit organization founded by consumer advocates in 2000. Economic Action Maryland champions economic rights and housing justice through research,

education, advocacy, and direct service. Our 10,000 supporters press for systemic policy change on a wide range of consumer protection and economic rights issues including debt collection, high-cost lending, unfair and deceptive practices, and more. We provide clients with advice, education, and assistance on tenant-related issues, fair housing, fraud prevention, digital privacy, tax credits, and more. Over the last 20 years, Economic Action Maryland has assisted thousands of Marylanders through our Securing Older Adult Resources (SOAR) program, Fair Housing, and Tenant Advocacy programs. We've kept our clients housed by preventing tax sales, saved our clients thousands of dollars in earned benefits, and empowered homeowners and renters faced with discrimination. Economic Action Maryland provides direct assistance today while passing legislation and regulations to create systemic change in the future.

The Homeless Persons Representation Project, Inc (“HPRP”), founded in 1990, is a non-profit organization whose mission is to end homelessness in Maryland by providing free legal services and advocacy for low-income persons who are homeless or at risk of homelessness. HPRP’s housing practice focuses exclusively on tenants and prospective tenants of affordable rental housing, both private rentals and those subsidized by federal, state, and local programs. HPRP has represented hundreds of Maryland tenants in eviction and subsidy termination actions and acted as *Amicus Curiae* and counsel in the Maryland appellate courts. *See, e.g., Montgomery Cty. v. Glenmont Hills Assocs.*, 402 Md. 250 (2007); *Grady Mgmt. v. Epps*, 218 Md. App. 712 (2012); *Matthews v. Hous. Auth. of Balt. City*, 216 Md. App. 672 (2014); *Foghorn v. Hosford*, 455 Md. 462 (2017); *McDonell v. Harford Cty. Hous. Agency*, 462 Md. 586 (2019), and *Tenae Smith et al. v. Westminster*

Management, LLC., et al. 257 Md. App. 336 (2023). HPRP has a strong interest in ensuring low-income tenants are not subjected to unlawful lease provisions, excessive rent collection charges, or lease terminations based upon unlawful landlord practices.

Daniel L. Rosenberg is a tenant advocate, currently serving as the director of the University of Maryland Francis King Carey School of Law’s Eviction Prevention Clinic. Prior to that, he worked at Maryland Legal Aid in Baltimore City, focusing on representing tenants in Baltimore City District Court. He is participating as part of this collective *Amici Curiae* brief in order to provide his experience in working with residential tenants, and to explain the harm that comes to tenants who have “additional rent” or “allocation” clauses in their leases.

Mr. Rosenberg’s participating in this Brief represents his personal opinions and is based on his knowledge and experience. This participation may not represent the position of the University of Maryland Carey School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

CONSENT OF THE PARTIES

This amicus brief is filed with the consent of the parties, confirmed in writing, in compliance with Maryland Rule 8-511(a)(1).

STATEMENT OF THE CASE, QUESTIONS PRESENTED, STATEMENT OF FACTS, AND STANDARD OF REVIEW

Amici Curiae adopt by reference the Statement of the Case, Questions Presented, Statement of Facts, and Standard of Review set forth in the brief of Respondents/Cross Petitioners.

ARGUMENT

Introduction

Amici represent low-income tenants in summary ejectment actions across Maryland. *Amici* believe that the reality of rent court, which they have seen through representing tens of thousands of tenants, bears on the issues before this Court. They believe too that Westminster’s proposed resolution of the housing issues before the Court – specifically Westminster’s view that “rent” in a § 8-401 action can mean anything a landlord wishes it to and that a landlord can allocate a tenant’s rent payment to non-rent claims against the tenant – are both socially destructive and legally prohibited. *Amici* offer this brief to highlight the contrast between Westminster’s requested relief and the reality of the proceedings and applicable law in rent court.

- I. **Westminster’s “additional rent” analysis is defeated both by the reality of rent court and by applicable law.**
 - A. **“Overreaching and coercion” cannot be litigated in rent court.**

Westminster argues that “rent” in a residential summary ejectment proceeding can, in the absence of overreaching or coercion, include any sum the landlord defines in its lease as “additional rent.”¹ Westminster would have “the definition of ‘rent’ in the residential context under RP § 8-401 [] be determined on a case-by-case basis after an evaluation of the provisions in the lease and the attendant circumstances.”²

Westminster’s assertion that overreach or coercion can be determined on a case-by-case basis in rent court is unrealistic. In the first six months of 2023, 211,509 failure-to-pay-rent cases were filed in Maryland District Courts, an average of 35,251 per month.³ In 15,013 of those cases, the defendant appeared.⁴ In Baltimore City, more than 1,000 cases may appear on the rent court docket in a single day.⁵ That volume of cases does not allow for trials at which a potentially complex factual question – whether the landlord overreached or coerced the tenant – can be resolved.

Rent court is not a forum for the resolution of complex factual disputes because rent court offers the parties neither time nor discovery.⁶ This Court has recognized that reality:

¹ Petitioner’s brief at 11. “[A]dditional-rent clauses can be proper in residential leases unless the circumstances indicate overreaching or coercion.”

² Petitioner’s brief at 14.

³ As reported by the District Court of Maryland on its website under “Statistics” at <https://mdcourts.gov/district/about#stats>

⁴ *Id.*

⁵ “In Baltimore City, where trials are typically scheduled fourteen (14) days after the cases are filed despite having three Rent Court dockets daily: at 09:00 am, 10:45 am and 1:30 pm, there are currently a maximum of 1,100 cases that can be scheduled per day.” Rent Court Summer Work Group Report: District Court of Maryland for Baltimore City, December 8, 2016, available at <https://www.ubalt.edu/academics/prelaw/Rent%20Court%20Summer%20Work%20Group%20Report%20FINAL.pdf>

⁶ Md. Code Ann. Real Property § 8-401.

The determination of the amount of rent due is often (although not always) a relatively straightforward calculation, and its recovery is not inconsistent with simple and speedy adjudication. It would be contrary to the purpose of the summary ejectment statutory scheme to allow recovery of general contract damages, with possible complexities of proof, in a summary ejectment action.

Shum v. Gaudreau, 317 Md. 49, 60 (1989). This Court has previously excluded non-fixed-sum claims from the summary ejectment process on this very ground. *Law Offices of Taiwo Agbaje v. J LH Props., II, LLC*, 169 Md. App. 355, 370 (2006)(rejecting a landlord’s request for attorney’s fees in a § 8-401 proceeding on the ground that “such a complex factual inquiry would frustrate the expedited design of the summary ejectment statute”). It should do the same here.

Summary ejectment proceedings in Maryland courts are not only “expedited,” they occur at an extraordinarily high volume. Rent court is a summary process used by landlords as a routine collection tool. As former Attorney General Brian Frosh put it, “[Landlords] use our courts as a collection agency. It costs \$15. Why wouldn’t they?”⁷ Maryland’s offer of inexpensive access to the threat of eviction generates rent court cases at a volume not seen in other jurisdictions. Former Attorney General Frosh reported to the Senate Judicial Proceedings Committee on February 3, 2022, that between April 2020 and November 2021, Pennsylvania had 89,269 summary ejectment filings, Virginia 72,486,

⁷ Baltimore Banner August 31, 2022, “For Some Maryland Landlords, Filing for Eviction is a Monthly Routine,” *available at* <https://www.thebaltimorebanner.com/community/housing/for-some-maryland-landlords-filing-for-eviction-is-a-monthly-routine-tenants-pay-the-price-HSUABD736VAUZOKX7VZDTR2L3A>

Delaware 11,323, and Maryland 488,492.⁸ Frosh highlighted that “We had five and a half times the filings that Pennsylvania did during the same period,” although Pennsylvania’s population is more than twice Maryland’s.⁹

The National Academy of Sciences (NAS) has likewise found that Maryland landlords use summary ejectment proceedings at a rate unmatched in other states. According to the National Low Income Housing Coalition’s summary of a study by the NAS, “[i]n 2018, Maryland’s eviction rate was 69.6% – an extreme outlier rate compared to the national average of nearly 8%.”¹⁰ In the NAS study, “eviction rate” meant the number of eviction filings per renting household.¹¹ Like former Attorney General Frosh, the Academy attributed Maryland’s “extreme outlier” use of eviction proceedings to Maryland’s low filing fee – \$15 to \$25. Maryland’s filing fee was the lowest of any state in the United States, matched only by the District of Columbia.¹²

⁸ As reported in Maryland Matters, February 4, 2002, “Frosh Urges Maryland Lawmakers to Raise Eviction Filing Fees,” *available at* <https://www.marylandmatters.org/2022/02/04/frosh-urges-lawmakers-to-raise-eviction-filing-fees/>

⁹ *Id.*

¹⁰ National Low Income Housing Coalition, May 23, 2022, “New Research Finds 2.7 Million Households Receive Eviction Filings Annually,” *summary available at* <https://nlihc.org/resource/new-research-finds-27-million-households-receive-eviction-filings-annually>

¹¹ “We calculated eviction filing rates by dividing the number of filings by total renting households in each county year.” .See subsection entitled: Bayesian Estimation of Eviction Filings and Households Threatened with Eviction, of the article found in Proceedings of the National Academy of Sciences, May 16, 2022, “Estimating Eviction Prevalence Across the United States,” *available at* <https://www.pnas.org/doi/10.1073/pnas.2116169119>.

¹² See page S-46

The Academy also cited Maryland’s lack of a pre-filing notice requirement as a reason for its “outlier” status.¹³ Although Maryland imposed a 10-day notice requirement effective October 1, 2021, the notice requirement has apparently failed to reduce the frequency of failure-to-pay-rent filings. According to the Maryland Access to Justice Commission’s Housing Data Dashboard, there were 305,401 eviction filings in 2020, 344,437 in 2021, and 325,344 (annualized from data on dashboard) in 2022.¹⁴ The Maryland Judiciary reports 211,509 eviction filings in the first six months of 2023, for an annualized estimate of 423,018 in 2023. The trend is up, not down.

In the experience of *Amici*, a rent court trial typically consists of a landlord’s agent reading from a document (that the tenant has either never seen or saw for the first time in the hallway outside the courtroom) to advise the court the amount allegedly due by the tenant. The trial lasts a few minutes, and the tenant has no opportunity to challenge the validity of the sums shown on the landlord’s document, beyond showing payment receipts.¹⁵ Even if the trial court allowed the tenant the time to litigate validity of the landlord’s claim, Maryland Rule 3-711 precludes the tenant from obtaining discovery to effectively do that. This Court has recognized this reality, too: “we have characterized

¹³ See pages S-30 and S-46

¹⁴ Maryland Access to Justice Commission’s Housing Data Dashboard, Updated February 1, 2023. Available at <https://public.tableau.com/app/profile/yates.bi.consulting/viz/HousingDashboardJul10/HousingDashboard>

¹⁵ Summary ejectment trials have apparently always been short. As reported in “The Rise and Fall of the Implied Warranty of Habitability,” 99 Cal. L. Rev. 389-463 (2011) note 243, the average length of a rent court trial in Detroit in the mid-1970s was 9 minutes, and the average length of trial in Chicago rent court during that period was 2 minutes.

summary ejectment proceedings as substantively and procedurally limited, precluding complexity.” *McDaniel v. Baranowski*, 419 Md. 560, 585 (2011).

In the experience of *Amici*, determining the accuracy of landlords’ documents cannot be accomplished in a “substantively and procedurally limited” proceeding.

Consider, for example, the Memorandum Opinion and Order filed by the District Court of Maryland for Baltimore City in *Dominion Management v. Reid*, Case No.: 2020014100100231 (“Dominion Order”).¹⁶ The Dominion Order demonstrates the complexity of litigating a landlord’s rent court claim when the claim includes “court costs, agent fees, and work order charges ranging from maintenance to inspection costs-combined into one charge of ‘rent’ due and owing.” Dominion Order at 3. After two hearings and two rounds of briefing – an extraordinary process that would stop rent court cold were it routinely applied – the court found that the landlord’s claim improperly included “maintenance” charges for ordinary wear and tear that resulted in the tenant being wrongly charged late fees, filing fees, and court costs “when the tenant in fact had a credit balance.” *Id.* at 5. Had her case been decided by a “simple and speedy adjudication,” *Shum, supra* at 60, the tenant would have been evicted even though she “had a credit balance on the day of filing of this instant case.” Dominion Order at 7.

The extraordinarily high volume of summary § 8-401 proceedings in Maryland, coupled with the inherently short and expedited treatment each case receives, renders summary ejectment proceedings appropriate, if ever, only for the resolution of fixed-sum

¹⁶ The Order, of which this Court may take judicial notice under Rule 5-201(b), is attached to this brief as an appendix.

claims governed by bright-line rules—not the case-by-case approach Westminster suggests. As the United States District Court for the District of Maryland acknowledged, “[Summary ejectment] proceedings are strictly limited to the ‘relatively straightforward’ calculation of rent due.” *Sager v. Housing Comm’n of Anne Arundel Co.* 957 F.Supp.2d 627, 636 (2013)(quoting *McDaniel v. Baranowski*, *supra*, at 586).

The Appellate Court’s holding in this case, that “rent” in a residential § 8-401 proceeding means “the periodic charge for use of occupancy of the premises,” establishes a bright line rule that produces a fixed-sum claim. The holding squares with the reality of rent court. Westminster’s proposed case-by-case determination of overreaching or coercion would do just the opposite, requiring complex factual inquiries that this Court has already found are not the appropriate subjects of a summary ejectment proceeding. *Shum*, *supra* at 60; *McDaniel*, *supra* at 586.

B. “Additional rent” is now both expansive and non-negotiable.

Westminster’s “rent is whatever I say it is” approach is particularly troubling given landlords’ increasingly expansive concept of “additional rent.” While “additional rent” once included a late fee, landlords now include as “additional rent” shares of the landlord’s regular, and discretionary, business expenses. For example, landlords charge as “additional rent” a share of the landlord’s own cost of liability insurance, trash collection, routine pest control, and even compliance with statutory obligations such as sending a “10-day” notice letter.¹⁷ And these “additional rent” terms are not negotiable:

¹⁷ See Real Property § 8-401(c)

Residential leases are more likely to be provided on a take-it-or-leave-it basis and, as here, to be provided after the tenant has already agreed to lease the premises and to be signed by the tenant without being read.

Lockett v. Blue Ocean Bristol, LLC, 446 Md. 397, 419 (2016).

The “take-it-or-leave-it” basis of affordable rental housing is not surprising, as the supply of affordable housing in Maryland does not meet the demand.¹⁸ As a result, low-income tenants do not shop among multiple housing options seeking favorable lease terms beyond fixed rent amounts, and landlords do not compete by offering favorable terms. Westminster’s premise that landlords and residential tenants should be free to contract as they chose has no connection to the reality of low-income rental market. *See Lockett, supra* at 419 (“It is unlikely that parties to a residential lease actually negotiate the definition of “rent.”)

This “take it or leave” lease-term environment will only get worse. While residential renters already face little likelihood of negotiating the scope of “deemed as rent” clauses, the changing rental market is eliminating opportunities to negotiate lease terms altogether. Landlords increasingly use property management software services, valued at \$3.15 billion in 2022 and projected to grow to \$4.85 billion by 2030, for digitalization and automation of traditionally in-person facets of leasing.¹⁹ This trend is most prevalent in the residential

¹⁸ As of May 2016, 37,134 families in Baltimore City were on the waiting list for public housing or a housing voucher. “The Double Crisis: A Statistical Report on Rental Housing Costs and Affordability in Baltimore City” The Abell Report, May 2016; available at <https://abell.org/wp-content/uploads/2022/02/cd-doublecrisis516.pdf>

¹⁹ Grand View Research, Property Management Software Market Report, 2022-2030: Report Summary (March 2022), available at <https://www.grandviewresearch.com/industry-analysis/property-management-software-market>.

market.²⁰ By its nature, electronic leasing tenants are forced to take lease agreements as they are offered. Popular software services offer landlords “a frictionless process from lead-to-lease,” streamlined by natural language processing, machine learning, and artificial intelligence.²¹ The “frictionless process” for landlords results in a powerless role for tenants. In short, low-income tenants have no say in the terms of their lease, and landlords know it.

C. Westminster’s approach would tear the social fabric.

Westminster’s suggestion that any landlord-generated charge may qualify as “rent,” coupled with the § 8-401 summary eviction process for failure to pay “rent,” is a prescription for homelessness, housing insecurity, and the myriad follow-on effects that unstable housing creates. The research of the National Academy of Sciences confirms the common-sense conclusion that evictions lead to homelessness: “Court-ordered eviction and displacement due to eviction are primary causes of homelessness”²² HUD’s research agrees that evictions led to homelessness.²³

²⁰ *Id.*

²¹ AppFolio Property Manager, “How AppFolio Property Manager Handles Leasing Management,” Available at: <https://www.appfolio.com/our-software/leasing-management>; see AppFolio, AppFolio Launches New AI Leasing Assistant and Utility Management Offerings (June 27, 2019), <https://www.appfolioinc.com/news/appfolio-launches-new-ai-leasing-assistant-and-utility-management-offerings>; see also Yardi, Yardi Introduces RentCafe Chat IQ (August 12, 2020), <https://www.yardi.com/news/press-releases/yardi-introduces-rentcafe-chat-iq>

²² Estimating Eviction Prevalence Across the United States, Proceedings of the National Academy of Sciences, available at <https://www.pnas.org/doi/10.1073/pnas.2116169119>.

²³ According to HUD’s research, “The study finds that housing factors, such as rental costs, crowding, and evictions, are most consistently associated with higher rates of community-level homelessness.” Market Predictors of Homelessness – HUD Office of

The devastating downstream effects of summary ejection are not limited to housing instability itself. The Petrie Flom Center at Harvard University School of Law's examination of the effects of eviction on American families highlights the consequences:

For children, eviction functions as a major life event that has damaging effects long after they are forced to leave their home. It negatively affects emotional and physical well-being; increases the likelihood of emotional trauma, lead poisoning, and food insecurity; leads to academic decline and delays; and could increase all-cause mortality risk.

U.S. Eviction Policy is Harming Children: The Case for Sustainable Eviction Prevention to Promote Health Equity - Bill of Health (harvard.edu) ²⁴ (emphasis in original).

The life altering effects of eviction are not restricted to children.

An eviction makes it more difficult and more expensive to find housing, obtain or maintain employment, borrow money, or purchase a home. Families attempting to recover from an eviction are often pushed to the outskirts of the rental market and into substandard housing in communities with higher rates of crime, poverty, and under-resourced schools.

Id.

The stakes for a tenant in a summary ejection proceeding are, in a word, grave. Moreover, even if the action does not end in eviction, the constant threat of it looms over Maryland families. Landlords repeatedly hauling *Amici's* clients into court often means that those people must miss work or pay for extra childcare, putting them further behind on rent, food, and childcare. In such an unrelenting system, fairness in the process is

Policy Development and Research, August 28, 2019. Available at

<https://www.huduser.gov/portal/publications/Market-Predictors-of-Homelessness.html>

²⁴ Available at <https://blog.petrieflom.law.harvard.edu/2022/11/02/pandemic-eviction-policy>

critical. The extraordinarily high use of eviction proceedings in Maryland, coupled with the potentially devastating consequences of eviction, argue strongly against Westminster's "whatever the landlord wishes" definition of "rent" in § 8-401. Westminster's suggested approach is dangerous to Maryland's low-income citizens.

II. Westminster's request to allocate a tenant's payments as it sees fit is the equivalent of an "additional rent" clause and is improper for the same reasons.

Westminster's allocation clause, which allows it to apply a tenant's payment of fixed monthly rent to any obligation Westminster alleges to be due, is simply an illegal "additional rent" clause by a different name. The clause allows Westminster to apply a tenant's payment of fixed monthly rent to any unproved "obligations other than rent (if any) due Landlord" at Westminster's sole discretion.²⁵ As a consequence, the clause permits Westminster to seek the eviction of a tenant through the summary ejectment process even though the tenant is current on "rent," as that term is generally understood. *Lockett, supra* at 421 ("Rent" ordinarily means the periodic sum paid for the use or occupancy of property. This is the typical dictionary definition."). If Westminster elects to allocate a tenant's rent payment to an unproven "repair" charge,²⁶ it can then assert in an

²⁵ It bears noting that Westminster's allocation clause acknowledges here that "rent" means the fixed monthly charge for occupancy by characterizing other alleged obligations as "obligations other than rent," although paragraph 8 of its form lease states that "All payments from Tenant to Landlord required under the term of this Lease, including, but not limited to, [c]ourt costs, shall be deemed rent." Like the landlord's lease in *Lockett*, "An examination of [Westminster's] lease reveals that it does not speak with one voice." *Lockett, supra*, at 419.

²⁶ Westminster's lease provides at paragraph 17 that "Tenant agrees to pay the costs of [all repairs caused by] Tenant, Tenant's family, employees, [and] invitees."

§ 8-401 proceeding that the tenant has failed to pay rent. For all the reasons that “additional rent” clauses must not apply in a § 8-401 summary proceeding, allocation clauses must likewise be invalid.

The federal district court in *Sager* described succinctly the effect of allocation clauses:

It is always in a tenant's interest to have her payments applied first to rent, and then to maintenance or other fees. No rational tenant would *knowingly* choose to allow [the landlord] to divert her rent payment—essentially volunteering for a summary ejectment proceeding and potential eviction for nonpayment of rent. This is a “gotcha” provision that deprives [the landlord’s] tenants of the protection of the law with no identifiable counter balancing benefit to the tenant.

Sager, 957 F.Supp.2d at 633–34 (emphasis in original).

Allocation clauses deprive tenants of the protection of RP § 8-402.1(b), which limits evictions for a breach of lease to breaches that are “substantial and warrant[] eviction.” By transforming a failure to pay for a broken window, for example, into a failure to pay rent, an allocation clause can strip the tenant of § 8-402.1(b)’s protection against eviction for a minor breach. Correctly forecasting this Court’s analysis in *Smith v. Wakefield*, 462 Md. 713 (2019), the *Sager* court held an allocation clause to be void under R.P. § 8-208(d) because “[u]nder state law a tenant has the right not to be summarily evicted except for failure to pay rent.” *Sager*, 957 F.Supp.2d at 636.

Against the backdrop of *Lockett*’s holding that “rent” is limited to the fixed periodic payment for occupancy under § 8-208(a) and *Sager*’s recognition that under Maryland law “a tenant has the right *not* to be summarily evicted except for failure to pay rent,” *Smith v.*

Wakefield further compels a finding here the “additional rent” and allocation clauses in Westminster’s form lease are barred by § 8-208(d). Like the waiver of limitations in *Wakefield*, Westminster’s “additional rent” and allocation clauses have “the tenant agree to waive or to forego [a] right or remedy provided by applicable law,” in violation of § 8-208(d).

In sum, both the practical realities of rent court and applicable law defeat Westminster's effort here to extract maximum advantage from its superior bargaining power. Through its “additional rent” and allocation clauses it seeks to use Maryland’s summary ejectment process to force tenants to immediately pay non-rent charges, the accuracy of which cannot be determined in rent court. This Court has recognized in *Shum*, *McDaniel*, *Lockett*, and *Wakefield* that tenants must be protected against unreasonable lease provisions such as those Westminster now asks the Court to endorse. The Court should reject that request.

CONCLUSION

Amici urge the Court to consider the consequences of Westminster’s position in the context of the reality of Maryland rent court and the legal issues argued by Respondents and to affirm the decision of the Appellate Court of Maryland.

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**CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH MARYLAND RULE 8-112**

1. This brief contains 4,638 words, excluding the portions of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements of Rule 8-112

Lee H. Ogburn

CERTIFICATE OF SERVICE

I certify that on this 24th day of August, 2023, two copies of this Brief of Maryland Legal Aid, The Pro Bono Resource Center, Maryland Volunteer Lawyers Service, Civil Justice, Inc., Economic Action Maryland, The Homeless Persons Representation Project, Inc., and Daniel L. Rosenberg as Amici Curiae in Support of Respondents/Cross-Petitioners were served by first class mail, postage pre-paid, and by MDEC on:

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