

Important Changes Regarding Water Bill Collection in Baltimore City

Reference: Lockett v. Blue Ocean Bristo

We are writing to let you know about new case law in Baltimore City regarding water bills owed by tenants that impacts our process for collection on your behalf.

The Changing Legal Environment:

For decades, landlords in Maryland have been able to file failure-to-pay-rent actions that threaten eviction not just for delinquent rent, but also for overdue water bills.

In 2016, the State Court of Appeals concluded that rent "denotes the periodic charge for use or occupancy of the premises, but not the various other payments that the tenant may owe to the landlord from time to time, even if the lease characterizes them as 'deemed rent' or 'additional rent.'"

The decision has drawn different interpretations from different judges.

Increasingly, judges are siding with the interpretation that nonpayment of water bills does not constitute a failure to pay rent, regardless of existence of statements to that effect in the lease. As a result, actions that threaten eviction are for delinquent water bills and filed as failure-to-pay-rent are no longer permitted.

Historically, PropertyWize has been successful in collecting unpaid water bills using the failure-to-pay-rent court filings coupled with the allocation of payments clause included in our lease agreement. Beginning January 2020, some overzealous judges are abating and, in some cases where the tenant is section 8 and doesn't have a rental portion, dismissing any failure-to-pay-rent cases that include water bill charges.

Action Plans:

As a result of these changes, we have come up with some several approaches to help investors like yourself incorporate these collection restrictions into your investment business.

The only legal way to collect water bill charges from tenants in Maryland is through the small claims court process. While you can be awarded a money judgement for the amount due, the threat of eviction is no longer an option. The tradeoff, however, is that water bill late fees are no longer restricted to the 5% cap that exists for rent. Additionally, late fees, professional processing fees, and legal fees can be added to the amount due when the case is filed. Another consideration is that, with the money judgement, garnishment of wages is an option. And although this may limit the tenant's

ability to pay the rent, it could ultimately be a path (though longer and more complicated) to evicting tenants for non-payment of water bills.

Recommended Approaches:

The following process changes are optional and can only be implemented with approval from you, the owner, and even then, only on lease renewals or new leases. Further, these options are not mutually exclusive; they can be combined to provide you with a reasonable balance of marketability and security. If you are not sure which option(s) to choose for your property, let us know and we can design and implement a plan for you.

Option A:

Increase the rent and include water as part of the rent. This option will effectively allow you to evict for non-payment of the water bill, but only up to the amount built into the rent, as you would be solely responsible for paying the actual water bill. And it is important keep in mind that the amount of rent increase should be dependent on the local rental market. You do not want to price yourself out of the market; and many market tenants (those who are not subsidized) primarily look at the amount of the rent before deciding whether to call about a prospective rental unit. This is clearly a limiting factor on the amount the rent can be raised. Another risk involved in this option is that disgruntled, nefarious, or simply inconsiderate tenants could dramatically increase their water usage once they know it is “free.” Therefore, if you choose this option, we suggest making it clear in the lease that there is a limit to amount of “free” water, e.g. up to \$150/month, and any water usage that exceeds this amount would still be billed to the tenant and, if left unpaid, would be subject to the small claims court process.

Option B:

Lease your property on a month-to-month basis. The positive side of this is that you can send a tenant notice of non-renewal of the lease at any time and the tenant is required to vacate the premises within 60 days. If the tenant does not vacate with the allotted time, eviction can be sought for tenant-holding-over. The negative aspect is that the tenant can leave at any time with the same 60-day notice. And since turnover tends to be costly, increasing the frequency is not in your best interest. Therefore, we recommend this option for tenants who have a history of late or non-payment of water bills over the current 1-year lease.

Option C:

Include a water bill deposit as a supplementary incentive for historically late or high-risk tenants. It is important to note this deposit is not subject to the limitations or interest accruals legally placed on security deposits, nor does the amount of a water bill deposit reduce the amount legally charged for a security deposit. We believe a reasonable amount would be the greater of \$500 or the average

amount of the water bill for one quarter (3 months). We also suggest this deposit be fully refunded to the tenant after the tenant has made full and timely water bill payments for the last 12 months. This refund of the water bill deposit encourages responsible behavior on the part of the tenant.

Option D:

Maintain your current leasing strategies and simply follow the standard small claims court process for unpaid water bills. If your current tenants are paying water bills satisfactorily, this is the simplest option.

Water Bill Collections Fees

The fees for collecting unpaid water bills covers filing and handling the Small Claims Court suit and the process of pursuing legal collections.

Legal Fees:

Our attorney estimates the minimum collection fees to be roughly between \$300 and \$500. These fees may be higher if the case becomes complicated. An additional percentage of the amount collected is also part of the total legal fees.

Management Processing Fees:

PropertyWize fee for managing the Small Claims Court process and Collections is \$250.

A water bill late fee will be charged to the tenant for each month for each unpaid water bill in an amount to be specified in new and updated leases. PropertyWize shall retain 40% of late fees collected.

Please note that attorney fees, professional fees, and late fees can be applied to the amount sought for judgement in Small Claims Court. However, attorney fees and professional fees are charged to the client's account and billed accordingly. If the money judgement and collections are successful, late fees are charged to the client's account and the tenant will ultimately pay these fees.

Minimizing Fees

It is also worth noting the small claims court process should only be used once the water bill(s) and all associated fees have accumulated to a total of at least \$750.00. Below that amount, it is unlikely to be cost effective to involve property management or attorneys.

Therefore, on the advice of our attorney and to minimize costs, we suggest the following process for water bill collections.

Send notices of non-payment to the tenant for each unpaid water bill including the amount due.

Add all water bill charges, including fees, to the tenant's ledger.

When the tenant vacates the property or within the 3-year statute of limitations starting with the last date a water bill was paid by the tenant, subtract the amount owed on water bills and related fees from any Water Bill Deposit collected and from the security deposit (but only if the lease requires payment of the water bill) and file the Small Claims Court suit for the remaining balance.

Action Item: We ask that you make a decision about which option(s) you would like to use no later than March 1st, 2020 by simply putting the request in your owner's portal.

Multi-Family Properties Not Individually Metered

We highly recommend that all multi-family properties be individually metered for utilities (including, but not limited to water) or to include all commonly-metered utilities in the rent. However, we realize there are some situations where the rental market and regulatory environment supports charging for utilities that are not sub-metered and we are equipped to handle these situations.

In general, utilities include gas, heat, electricity, water and sewer—anything that comes out of a pipe or outlet. In some rental units, utilities include telephone, cable, and high-speed Internet. In municipalities and properties where the municipality does not handle trash and recycling pickups for residents, these should also be considered. As a general rule, utilities are paid by the tenant unless otherwise stated in the lease. However, in the State of Maryland, water is an exception because it is explicitly tied to the property in a way that can lead to foreclosure for non-payment to the municipality. That means payment is ultimately the responsibility of the property owner, even if it is contractually the responsibility of the tenant. Regardless, your lease or rental agreement should specify who (landlord or tenant) pays what utilities and it should spell out how the water bill is allocated for each tenant. Please note: Section 8 agencies are not allowing tenants to be charged for water that is not sub-metered.

Other Important Changes:

Effective immediately, we are required to add the attached addendum to all new move ins and on renewals or our rent cases will be dismissed. Please find the enclosed Addendum for your information.

We are committed to advocating on your behalf to ensure we work to increase your ROI, and because the local government is steadily making it challenging for us to do our job, we encourage you to get involved and be aware of new bills proposed by State and local governments that directly impact your bottom line. We must work together to prevent needless regulation designed to harm landlords.

Please let us know if you have any questions.

Thank you for your Partnership with PropertyWize!

Water Bill Processing

Reference: Lockett v. Blue Ocean Bristo

Dear Valued Rental Owner,

We are writing to let you know that changes in the municipal water billing process over the past year have increased our labor and ancillary costs for processing water bills for our clients. We have, up to now, resisted transferring these costs to our clients and have been paying the additional costs ourselves. However, it has become necessary for us to share a small part of these costs with you.

New Fee Schedule for Processing Water Bills effective April 1st, 2020

As a result, for single-family properties and separately metered multi-family properties, we will be charging \$5.00 per water bill for processing starting April 1, 2020.

For multi-family properties that are not separately metered, this fee will be \$20.00 per water bill and will cover up to 4 units. There will be an additional charge of \$5.00 per unit above 4 units.

This fee includes protecting owner information by removing it from the water bill, correspondence and communication with the tenant about the water bill and tracking the water bill charges and payments in the tenant ledger.

You do not need to do anything in order to have us continue processing water bills as usual. If you would prefer to handle water bill processing on your own, please let us know. It is important to note that we will be unable to add water bill charges to the tenant ledger that are not processed by PropertyWize.

Thank you for your consideration. We appreciate your business.