



436 S. Saginaw St., Suite 400 • Flint, Michigan 48502-1829  
Toll-free: (800) 724.7441 • Phone: (810) 244.8044 • Fax: (810) 244.5550

## Statement to the House Judiciary Committee in Opposition to House Bill 4587

Monday, March 2, 2020

On behalf of the Center for Civil Justice, Chairman Filler and members of the House Judiciary Committee, thank you for this opportunity to express our views on House Bill (HB) 4587, a bill which will result in extreme and unreasonable late fees and increased evictions, and which severely limits judicial discretion in rental and land contract disputes.

Center for Civil Justice (CCJ) is a law firm that focuses on addressing legal and policy issues surrounding the programs, services and opportunities that are intended to help low-income people.

House Bill 4587 would amend Michigan's summary proceedings act to require a judge or jury, regardless of the facts of a case, to add late fees in a judgment of possession in the amount of \$50.00 or 10% of the rent amount, whichever is greater. The changes proposed by HB 4587 would apply in all non-payment of rent and land contract forfeiture actions.

### HB 4587 Would Result in Unreasonable Late Fees

**Current law:** A lease provision that sets an agreed-upon fee that a tenant or land contract purchaser must pay in the event that the tenant pays his or her rent late is referred to as a "liquidated damages" clause. Current law requires that liquidated damages, such as a late fee, cannot *punish* the party who violates rental agreement or land contract. Instead, damages are intended to compensate the landlord or land contract seller. In other words, late fees must be reasonable in relation to the possible "injury" that a landlord or land contract seller would suffer as a result of the late rent payment.

House Bill 4587 would allow for extremely excessive late fees. **For example:**

*A tenant pays her landlord \$1,000.00 in monthly rent. Under the lease agreement, the tenant's rent is due no later than the 5<sup>th</sup> of each month. Their lease agreement also contains a provision that permits the landlord to assess any late fee allowed by law for rent payments received after the 5<sup>th</sup> of each month. The tenant tenders her rent payment for February 2020 on February 6<sup>th</sup> -- one day late. House Bill 4587 would permit the landlord to assess the tenant a late fee of \$100.00. By any standard, this would be excessive and entirely unrelated to the actual injury the landlord suffers as a result of the late rent payment.*

## **HB 4587 Would Eliminate All Judicial Discretion in Assessing A Reasonable Late Fee**

Moreover, HB 4587 would not permit a judge presiding over a summary proceedings action to exercise any judicial discretion whatsoever in determining a reasonable late fee. The language of the bill provides that “a jury or judge **shall** . . . [a]dd any fee for late payment of rent specified in the lease, but not more than a monthly fee of the greater of \$50.00 or 10% of the rental amount . . .”

The word “shall” is mandatory language. A judge could determine that a landlord suffered no actual injury as the result of a rent payment that is one day late, yet he or she would be required by law to impose a late fee of \$50.0 or 10%, whichever is greater. It forces the judge or jury to assess a late fee through an artificial, mechanical calculation, without regard to the particular circumstances of the case.

### **Low-Income Individuals and Families Would Be Disproportionately Impacted**

Tenants whose rents are subsidized through governmental programs and other low-income tenants or land contract purchasers would especially be susceptible to the dangers of unreasonable late fees. These individuals and families struggle as it is to meet their monthly obligations, including rent. The imposition of unreasonable late fees only serves to exacerbate their financial woes and would likely lead to more evictions.

### **Conclusion**

HB 4587 would result in over-assessing tenants and purchasers for late fees while creating a windfall for landlords and sellers, while precluding a judge or jury from using a common sense approach to late fee assessments. We urge members of the House Judiciary Committee to vote “no” on HB 4587. Thank you for your consideration of these comments. Please do not hesitate to contact me with any questions or concerns.

Greg Abler  
Housing Law Attorney  
Center for Civil Justice  
[gabler@ccj-mi.org](mailto:gabler@ccj-mi.org)