



**Testimony before the House Financial Institutions, Housing & Urban
Development Committee**

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Chairman Dever, members of the Financial Institutions, Housing & Urban Development Committee, thank you for the opportunity to testify on House Bill 390.

I'm the Affordable and Fair Housing Coordinator for the Coalition on Homelessness and Housing in Ohio, an organization that works with hundreds of local organizations and partners to fight homelessness and promote safe, decent, fair, affordable housing. We feel strongly about our work because, without a safe place to call home, Ohioans cannot fully participate in the opportunities afforded by this great state.

I have been an attorney for more than 30 years. I spent most of them working for Legal Aid, including managing the Housing team at Columbus Legal Aid. I have represented over 1,000 tenants and have supervised attorneys who represented thousands more. I have handled dozens of cases involving the question of what rule(s) govern the counting of the three days in the Notice to Leave Premises (aka the 3 day notice), the subject of HB 390.

House Bill 390 would define how we count days in the notice that must precede the filing of every eviction required by Revised Code 1923.04.

We oppose this legislation for several reasons, but primarily because it could ultimately cause more evictions to be filed, which in turn would lead to more homelessness and greater housing insecurity for Ohio families. Tenants comprise one-third of Ohio's total of 4.5 million households. While middle-class Ohioans have increasingly gravitated to the rental market in recent years, lower-income Ohioans still represent the vast majority of these 1.5 million households.

It's important to note that many tenants struggle to meet their rent obligations. This is not surprising when one understands that the average household income for Ohio renters is only \$12.87/hour. But tenants need to earn at least \$19.86/hour to be able to afford the cost of rent for a modest three-bedroom apartment in Ohio. Statewide, 48 percent of Ohio's renter households spend at least 30 percent of their income on rent and utilities, and more than a quarter of the state's tenants - 400,000 households – spend over half their income on housing costs.

The sponsor is correct that courts are divided on how to count. However, the case he cited in his testimony, *Daugherty*, provided no rationale for its decision and merely relied on another case that contains the most convoluted/tortured explanation one can imagine. No one I know has been able to explain what the court is trying to say. We should not be fashioning statutes on the basis of cases that use incomprehensible reasoning.

In addition, many more cases that have examined this question found that in counting the three days, it made more sense to **not** count intervening weekends and holidays. Of the cases we know, the split is 15-5, in favor of excluding weekends and holidays. Most likely that is because the courts believe that the purpose of the rule is “to afford the tenant an opportunity to leave the premises on his own volition avoiding the necessity of the initiation of an eviction action.” (*Midtown Apartments v. Davis*, Ohio App. 10th

District, 1985). This bill defeats that purpose by ensuring as little time as possible is provided.

Let's look at an example using this bill. A family leaves Friday afternoon, December 22nd, to celebrate Christmas with their family across the state for the long weekend. The landlord serves a 3 day notice after they depart. Saturday is day 1, Sunday is day 2, and Monday, Christmas, is day 3. They come back home Monday night and discover a "Merry Christmas note" from their landlord in the form of a 3 day notice. They are now tasked with moving out Christmas night before the landlord can file an eviction complaint on Tuesday morning when the court opens, if they wish to avoid having an eviction on their record. An impossible task.

Certainty can be provided. The bill could make explicit that intervening weekends and holidays shall NOT be counted. This approach provides certainty as well as fulfilling the purpose of the notice: to allow the tenant time to avoid an eviction action being filed.

As a final matter, I want to address a point made by the sponsor in his testimony. Representative Merrin stated that his bill also provided "protection for tenants" by clarifying that the date of service shall not be counted as day one. There is no need for a clarification here. No court, and I counted 11 who have directly addressed the question of whether one counts the day of service, has found that the date of service counts as day one. No court or authority has ever suggested that the date of service be counted. The notion that this bill provides balance for tenants is illusory.

Thank you for this opportunity to testify. I am happy to answer any questions you may have.