



April 12, 2021

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Superior Court of the District of Columbia  
500 Indiana Avenue, N.W., Room 6715  
Washington, D.C. 20001

**VIA ELECTRONIC MAIL:** [laura.wait@dcsc.gov](mailto:laura.wait@dcsc.gov)

**Re: Comments on the Initial Filing Fee for Landlord-Tenant Action**

Dear Ms. Wait:

Our organizations—Bread for the City, the Council for Court Excellence, the D.C. Bar Pro Bono Center, the Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly, Neighborhood Legal Services Program, Rising for Justice, and the Washington Council of Lawyers—submit these comments in response to the Court’s Request for Public Comment on the Initial Filing Fee for Landlord-Tenant Action. Our comments are directed to the impact that the proposed filing fee increase could have on low-income tenants in the District. We appreciate the opportunity to provide stakeholder input on this important matter.

The pandemic has created enormous hardship for District residents, particularly residents of color. Even before the pandemic, serial eviction filings and displacements disproportionately harmed communities of color.<sup>1</sup> In the wake of the pandemic, the District is likely to see a significant number of new eviction cases filed.<sup>2</sup>

Both the Council and the Court have used this time to consider new ways to address concerns about serial eviction filings and to prevent landlords from using the court system to pressure tenants in ways that lead to lasting harms.<sup>3</sup> These efforts are laudable, and we support

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<sup>1</sup> See Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability*, Georgetown University (Fall 2020), at 17-18, <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap> (demonstrating a “strong, positive correlation between the share of Black residents in a census tract and the eviction filing rate”).

<sup>2</sup> The Eviction Lab has tracked eviction filings in 5 states and 27 cities since the beginning of the pandemic and has found hundreds of thousands of evictions in jurisdictions that allowed filings, including dramatic spikes in filings when moratoria were lifted. See *The Eviction Tracking System*, Eviction Lab (Mar. 27, 2021), <https://evictionlab.org/eviction-tracking/>.

<sup>3</sup> See Section I.C, *infra*.

them. Acting together, these measures will provide important protections to tenants that can protect them from becoming trapped in the cycle of poverty that can result from eviction filings, even filings that do not result in displacement.

It is possible that increasing the eviction filing fee may deter some eviction filings. However, under the current legal framework, it will also harm tenants as those higher fees will be passed onto them and increase the amount that a tenant must pay to stay in their home. Any increase in filing fees must be preceded by or coupled with protections for tenants, such as providing that filing fees are not recoverable in eviction actions and cannot be included in the redemption amount. These protections must be passed by the Council. The Court should not raise filing fees unless and until the Council has enacted these protections.

## **I. Background**

### **A. Evictions in the District**

As the Court noted in its Request for Public Comment, the eviction filing rate in the District is high: approximately 30,000 eviction cases are filed each year.<sup>4</sup> This adds up to more than 15 eviction filings for every hundred households each year. Filing rates are even higher in Wards 7 and 8. In Ward 7, one in five renter households had at least one filing in 2018, and in Ward 8, that number was nearly one in four.<sup>5</sup> Ninety-three percent of eviction filings in D.C. were for nonpayment of rent.<sup>6</sup>

Despite the high filing rates, most eviction cases do not result in a judgment for possession. In 2018, 69% of cases filed for nonpayment of rent were dismissed, 18% resulted in a settlement agreement or a consent judgment, and only 12% resulted in a judgment for the plaintiff.<sup>7</sup>

A number of factors help explain why more than two thirds of filed cases are dismissed. This section focuses on two primary reasons. First, many landlords use eviction filings as a debt collection tool rather than a means to actually evict tenants. Second, many tenants respond to an eviction action by moving out, rather than dealing with the time, stress, and cost of a lawsuit.

First, many landlords use eviction filings as a debt collection tool. This is particularly true of serial filings: “The literature suggests that serial filings are aimed less at removing the tenant and more at disciplining the tenant through state-sanctioned threat of removal. What has also become clear is that many landlords file evictions frequently but without a clear intention to remove the tenant.”<sup>8</sup> Results of a recent study about evictions in D.C. “support previous research

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<sup>4</sup> District of Columbia Courts, Statistical Summary (2019), at 5, <https://www.dccourts.gov/about/organizational-performance/annual-reports>.

<sup>5</sup> McCabe & Rosen, *supra* note 1, at 16.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> Dan Immergluck et al., *Multifamily Evictions, Large Owners, and Serial Filings: Findings from Metropolitan Atlanta*, 35 Housing Studies 903, 903 (2020) (collecting studies).

that finds many landlords file for eviction as a tactic to collect rent, rather than to remove a tenant.”<sup>9</sup> This research comports with our experience representing tenants in eviction actions.

Second, in response to learning of an eviction action against them, many tenants just leave. Attorneys at each of our organizations regularly speak with tenants who have either already moved out because they were sued for eviction or are considering moving instead of defending themselves in court. Tenants who have already moved out often tell us they thought they did not have any choice. Tenants who are considering moving out often explain that they do not have the time to go to court, that they have been to court in prior cases and did not think the process was fair, that they do not want to make trouble for their landlords, or that they simply do not know they have any other options. A recent study of eviction in the District noted that the number of executed evictions “does not account for informal evictions, where landlords threaten eviction and use intimidation to get tenants to leave the home informally.”<sup>10</sup>

Displacements have profoundly harmful consequences. One study examined the effect of “forced moves,” a category that includes moves “initiated by landlords or city officials . . . and involved situations in which tenants have no choice other than to relocate (or thought as much).”<sup>11</sup> Nearly half of these forced moves were informal evictions.<sup>12</sup> This study found that tenants with forced moves were 25-35 percentage points more likely to have long-term housing problems in their next unit, such as lack of heat, broken appliances, or exposed wires.<sup>13</sup> Other research has found that families who are displaced may lose many of their possessions, especially larger items that are costly to move.<sup>14</sup> Displacement also harms tenants’ physical and mental health and substantially increases their material hardship.<sup>15</sup>

Even when eviction filings do not result in eviction judgments or displacements, they are still very harmful to tenants. Eviction filings “result in a legal record that affect[s] tenants’ future

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<sup>9</sup> McCabe & Rosen, *supra* note 1, at 29.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 *Social Servs. Rev.* 227, 237 (2015).

<sup>12</sup> *Id.* at 244.

<sup>13</sup> *Id.* at 249-51.

<sup>14</sup> Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 *American Journal of Sociology* 88, 119 (2012).

<sup>15</sup> Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015) (studying the impact of involuntary displacement, including formal and informal evictions, on the health of mothers and children).

housing options.”<sup>16</sup> On top of making it more difficult to get future housing, eviction filings can result in significant stress and social withdrawal.<sup>17</sup>

## B. Georgetown Report

In 2020, Georgetown professors Brian J. McCabe and Eva Rosen released a report that analyzed eviction in D.C., specifically focusing on racial and geographic disparities.<sup>18</sup> Among its many findings, this report found that eviction filings are common, impacting about 11 percent of renter households each year, including 20 percent of Ward 7 households and 25 percent of Ward 8 households.<sup>19</sup> Evictions fall most heavily on D.C. residents of color: both eviction filings and executed evictions were most heavily concentrated in majority Black neighborhoods.<sup>20</sup> Most households face not one eviction, but “serial evictions,” meaning that the same landlord files more than one eviction filing against them.<sup>21</sup> The overwhelming majority (93%) of eviction filings are for nonpayment of rent, but the amount of unpaid rent is relatively modest—just \$1,207 on average.<sup>22</sup>

The authors of the Georgetown Report made a number of policy recommendations based on their findings, including “landlord-side interventions” that deter landlords from filing eviction actions.<sup>23</sup> These suggested interventions include: increasing the filing fee for eviction actions, banning evictions for nonpayment of rent below \$600 or another monetary threshold, banning lease language that would waive the tenant’s right to the 30-day notice of eviction filing, implementing an eviction diversion program, and sealing tenants’ eviction records.<sup>24</sup>

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<sup>16</sup> McCabe & Rosen, *supra* note 1, at 8; *see* Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, *Social Forces* 1, 3-4 (2020) (“Because the loss of housing is significantly costlier than paying fines and fees associated with the eviction process, tenants are incentivized to pay these costs and remain in place. That incentive grows each time a property owner files for eviction, as each filing generates a court record that can limit tenants’ future housing options. In screening prospective tenants, property owners tend to view recent eviction records as disqualifying, even in cases where the court process did not render an eviction judgment.”) (internal citations omitted); Immergluck et al., *supra* note 8, at 906 (“In most places, where eviction filings are easily accessible, perhaps the greatest cost to the tenant is the scar that the filing leaves on the tenant in an already difficult search for affordable housing. Tenants with serial filings are likely to be relegated to a segment of low-end rental housing that is a form of housing of last resort, where they have even less power and their new landlords have even more.”).

<sup>17</sup> Immergluck et al., *supra* note 8, at 905-06.

<sup>18</sup> *See* McCabe & Rosen, *supra* note 1.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.* at 18, 20-21.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 11, 23.

<sup>23</sup> *Id.* at 29.

<sup>24</sup> *Id.* at 29-32.

### C. Recent Action by the D.C. Council

In response to the hardship caused by the COVID-19 pandemic, the Council enacted temporary legislation that implemented a number of protections recommended by the Georgetown report. This legislation prohibited landlords from filing an eviction action seeking repossession for a nonpayment amount of less than \$600.<sup>25</sup> The legislation also required landlords to provide a tenant with a notice at least 30 days before filing any eviction action, including for nonpayment of rent, in effect prohibiting the common practice of leases waiving this right.<sup>26</sup> Finally, the Council also required the Superior Court to seal a significant number of eviction records and provided new discretion to seal others.<sup>27</sup> Altogether, this legislation provided important protections for tenants by both preventing the filing of certain eviction actions and by sealing a substantial number of records, reducing some of the collateral harms of the eviction process.

These protections are very recent and were enacted at a time when eviction filings are prohibited by a local moratorium. There has not yet been an opportunity to evaluate the impact that these measures will have on filing rates. While these recent legislative changes are temporary, Councilmembers have introduced legislation to make the same changes permanent, and those bills remain pending before the Council and could be subject to further amendments that might impact eviction filing rates.<sup>28</sup>

In addition to enacting these protections, the Council expressed that “[i]t is the sense of the Council that the Superior Court should raise filing fees for eviction cases to \$100 so that serial filers seeking small sums of money from their tenants are deterred from using eviction filings as a mechanism to collect rent from their tenants.”<sup>29</sup> However, the Council has not yet taken steps to ensure that these fees do not get passed on to tenants. The current statutory scheme provides that landlords who are successful in eviction actions shall be awarded their costs.<sup>30</sup>

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<sup>25</sup> Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 3 (codified at D.C. Code § 16-1501(c)). This \$600 threshold aligns with the Georgetown Report’s findings that about 12% of D.C. households who are sued for eviction owe less than \$600. McCabe & Rosen, *supra* note 1, at 30.

<sup>26</sup> Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 2(a) (codified at D.C. Code § 41-3505(a-1)).

<sup>27</sup> The legislation provided for mandatory sealing of eviction records that do not result in a judgment for possession 30 days after the case is resolved and for records that result in a judgment for possession 3 years after the case is resolved. Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 2(c) (codified at D.C. Code § 42-3505.09). It also permitted tenants to move to seal eviction records in a number of other circumstances. *Id.*

<sup>28</sup> See D.C. B24-0096; D.C. B24-0119 (proposed legislation).

<sup>29</sup> Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 4(g).

<sup>30</sup> D.C. Code § 16-1503.

Such costs include filing fees.<sup>31</sup> Until the Council enacts further protections for the tenants, many of the serial filers that the Council hopes to deter will be able to recover much of the increased filing fees from tenants.

Future actions taken by the Court or the Council related to eviction filings should consider the effects or anticipated effects of these recent steps taken by the Council. Changes in the legal framework surrounding evictions do not operate independently. Instead, they work together to influence how, when, and why landlords file eviction actions. Additionally, each change can have distinct collateral effects on tenants. Before making additional changes, such as increasing the filing fee for evictions, it is important to weigh both the effect on the number of filings and the effect on each individual filing.

## **II. Under the Current Legal Framework, Raising Filing Fees May Reduce Filing Rates But Could Have Substantial Collateral Harms for Tenants.**

Some studies suggest that increasing filing fees may reduce the rates at which evictions are filed. However, these studies also show that the factors affecting the legal landscape are varied and complicated. Many factors influence local eviction filing rates, and there is no simple causal link between raising filing fees and reducing filing rates. Instead, filing fees are just one factor that interact with many more to shape the legal landscape around evictions.

While raising filing fees may impact the number of cases that are filed, under the current legal framework this change could harm tenants who do face eviction filings, and in particular those tenants who want to pay off their balances and stay in their homes. Because filing fees are currently passed on to many tenants who exercise the right of redemption, higher filing fees make it more expensive for tenants to remain in their units. This change is especially significant for low-income tenants for whom a high filing fee would be the greatest burden.

### **A. The connection between filing fees and filing rates is complicated and inconclusive.**

There is some evidence that higher filing fees may lead to lower eviction filing rates, including lower rates of serial eviction filings. The Georgetown Report compared filing fees and eviction rates in the 50 largest U.S. cities and noted that there was a correlation between these two factors.<sup>32</sup> The Georgetown Report did not control for other variables that influence filing rates. Instead, the study plotted these two data points from the largest U.S. cities. Other reports, citing the same data, make this same connection.<sup>33</sup>

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<sup>31</sup> This is acknowledged in the D.C. Rules of Procedure for the Landlord Tenant Branch, Rule 15 (b), which states that “the prevailing party must be awarded . . . all taxable costs in the action including the filing fee.”

<sup>32</sup> McCabe & Rosen, *supra* note 1, at 28.

<sup>33</sup> Kyle Nelson, Philip Garboden, Brian J. McCabe & Eva Rosen, *Evictions: The Comparative Analysis Problem*, Housing Policy Debate (2021), at 10, <https://www.tandfonline.com/doi/pdf/10.1080/10511482.2020.1867883?needAccess=true>.

There are limitations to these studies because they do not control for other variables. Without this more rigorous statistical analysis, it is difficult to make any clear causal link between filing fees and filing rates. Although McCabe and Rosen argue that there may be a causal relationship, they acknowledge these limitations, cautioning that “these data alone do not provide evidence of a causal relationship between filing fees and filing rates.”<sup>34</sup>

We have found one study that looked at filing fees in conjunction with other factors, in an effort to delve deeper into this correlation.<sup>35</sup> This study used statistical methods to determine which variables could be considered statistically significant. It looked at six factors that it labeled “legal barriers” to eviction: filing fees, the number of courts handling evictions, the median eviction processing time, the requirement that landlords have an attorney, automatic hearings, and notice requirements.<sup>36</sup>

The results showed “limited associations between the six legal characteristics and serial eviction filing rates.”<sup>37</sup> The *only* one of these six factors that had a statistically significant relationship with filing rates was notice requirements.<sup>38</sup> For each of the other barriers, *including filing fees*, the researchers could not find any statistically significant connection to filing rates.<sup>39</sup> The researchers found more significant results when they looked at these legal barriers together instead of independently. Jurisdictions with more legal barriers tended to have lower filing rates.<sup>40</sup>

In large part, it is difficult to show a clear connection between filing fees and filing rates because so many variables impact filing rates. Every jurisdiction is different. Local variations in housing markets, legal structures, demographics, and other variables all matter. Studies have linked higher filing rates and higher rates of serial filings to dozens of factors. A non-exhaustive list of these factors includes the nature of the housing market, the types of landlords that predominate in the market, the number of properties units owned by a particular landlord, the ease of filing, the length of time between filing and actual evictions, neighborhood characteristics, property size, the degree of computerization or automation that the property manager uses, and the availability of affordable housing.<sup>41</sup> Each of these factors varies from city to city, making it extraordinarily difficult to compare filing rates across multiple cities.<sup>42</sup>

To our knowledge, no study exists that examines the effect of *increasing* filing fees.<sup>43</sup> Existing research compares filing fees in different cities, rather than looking at shifts in filing

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<sup>34</sup> McCabe & Rosen, *supra* note 1, at 28.

<sup>35</sup> *See* Leung et al., *supra* note 16.

<sup>36</sup> *Id.* at 15.

<sup>37</sup> *Id.* at 16.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 16-17.

<sup>41</sup> Nelson et al., *supra* note 33, at 14; Immergluck et al., *supra* note 8, at 908-10; Leung et al., *supra* note 16, at 3-4.

<sup>42</sup> For an explanation of the difficulties in comparing eviction data across jurisdictions, see Nelson et al., *supra* note 33.

<sup>43</sup> In fact, our research suggests that such significant increases in filing fees are relatively rare.

fees within a single city. These studies are necessarily limited because there are so many other significant differences between jurisdictions.

The limitations of jurisdictional comparisons can be illustrated through several examples.<sup>44</sup> Texas has seven of the 50 most populous cities in the U.S. In six of these cities, the eviction filing fee is between \$121 and \$146.<sup>45</sup> Houston is an outlier. In Houston, the filing fee is just \$46, around one-third of the fee in other large cities in Texas. If lower filing fees equate to higher filing rates, then the rate of eviction filings in Houston should be higher than in these other cities. That isn't the case. Despite Houston's low filing fee, it has a below-average filing rate for this group of cities (in Dallas, Fort Worth, and Arlington, the filing rate is around twice the rate in Houston). This example does not mean that filing fees and filing rates are unrelated. Instead, it shows that the issue is more complicated than a one-to-one connection between these two variables.

Other examples prove this same point. California has eight of the 50 most populous cities. Compared with Texas, California's filing fees are much higher (\$385 in most of the largest cities), and its eviction rates are much lower (ranging 0.39 to 2.76 eviction filings per 100 renter households in the eight largest cities). For filing fees, San Jose is the outlier: at \$85, its filing fee is less than a quarter of the fee in the other seven cities.<sup>46</sup> Yet, the city's filing rate is just 0.43 per 100 renter households—lower than every large California city except for Los Angeles. Again, this example does not disprove the link between filing fees and filing rates. It just shows that there are many other factors that are also at play.

Given the complexity of this issue, it is difficult to determine the relationship between filing fees and filing rates for eviction actions. Many factors contribute to filing rates, and these factors vary significantly between jurisdictions. Cross-jurisdictional analyses do not provide clear guidance on this issue.

### **B. In the District, filings fees are particularly unlikely to deter serial eviction filings.**

Because of the complicated relationship between filing fees, filing rates, and other variables, it is important to consider the local context. This context shapes the way that a filing fee increase would play out.

In D.C., local factors make it particularly unlikely that raising filing fees will substantially decrease filing rates. This is true for two main reasons. First, most evictions in D.C. are filed by large landlords. For these landlords, \$100 may not be a particularly significant

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<sup>44</sup> These examples use the data underlying the Georgetown Report, *supra* note 1, which the authors have generously provided to us and which is on file with the authors.

<sup>45</sup> The filing fees are: \$121 (Arlington), \$121 (Forth Worth), \$126 (Austin), \$141 (Dallas), \$146 (San Antonio), and \$146 (El Paso).

<sup>46</sup> In Los Angeles, San Diego, Fresno, Sacramento, Long Beach, and Oakland, the filing fee is \$385. San Francisco uses a tiered fee structures, with filing fees ranging from \$240 to \$450.



deterrent. Second, filing fees may be an especially weak deterrent because landlords can pass filing fees on to tenants.

In D.C., most evictions are filed by large landlords. 377 landlords own more than 100 units, and the largest 100 landlords are responsible for 71% of eviction filings.<sup>47</sup> For landlords that own hundreds of units, \$100 may not be a significant deterrent to filing eviction actions. The fee is more than outweighed by the amount that tenants owe: \$1,207 on average.<sup>48</sup> For example, WC Smith “filed more evictions against tenants than any other company or individual in the District between 2014 and 2019” and was responsible for 12% of all evictions filed in the first ten months of 2020.<sup>49</sup> W.C. Smith has 10,000 units and a residential portfolio of \$1.7 billion.<sup>50</sup> For such large filers, \$100 may not be a significant deterrent to filing.

Second, higher filing fees may be unlikely to deter landlords from filing eviction actions because, in most cases, the landlords will be able to pass them on to the tenants. D.C. gives tenants the right to redeem, meaning that even after an eviction filing, they can pay the balance owed and stay in their unit. In most cases, this is what happens.<sup>51</sup> The amount required to “pay and stay” typically includes the filing fee. Under the current legal framework, when tenants exercise the right to redeem, they—not their landlords—are likely to be the ones responsible for paying the filing fee. Because landlords, in many cases, will not bear the cost of this fee, a higher filing fee is unlikely to be a significant deterrent.

### **C. Under the Current Legal Framework, Raising Filing Fees Could Reduce the Number of Tenants Who Are Able to Redeem.**

For tenants who face an eviction filing, a higher filing fee would pose a significant burden. For most tenants who face an eviction action, \$100 is a substantial amount of money. A higher filing fee would raise the cost for many tenants who hope to stay in their homes. Indeed, the Georgetown Report acknowledges that court fees are one reasons that tenants become further in debt while eviction actions works their way through the court system.<sup>52</sup>

Most tenants who face evictions are low-income. Nearly 1 in 4 evictions are filed against subsidized renters: those who live in public housing, receive a voucher, or live in housing constructed through the low-income housing tax credit program.<sup>53</sup> People who face eviction are

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<sup>47</sup> McCabe & Rosen, *supra* note 1, at 26.

<sup>48</sup> *Id.* at 6.

<sup>49</sup> Amanda Michelle Gomez, *These Landlords File the Most Evictions in D.C.*, Washington City Paper (Oct. 30, 2020), <https://washingtoncitypaper.com/article/500983/these-landlords-file-the-most-evictions-in-d-c/>.

<sup>50</sup> About Us, WC Smith, <https://wsmith.com/about-us/>.

<sup>51</sup> *See* Section I.A, *supra*.

<sup>52</sup> McCabe & Rosen, *supra* note 1, at 24.

<sup>53</sup> *Id.* at 22.

particularly likely to have suffered a recent job loss<sup>54</sup> or live in high-poverty neighborhoods.<sup>55</sup> In D.C., more than half of eviction filings come from Wards 7 and 8, which have poverty rates of 26.6% and 34.2% respectively.<sup>56</sup> In Ward 7, the median household income is \$45,318, around half of the household average for D.C.<sup>57</sup> In Ward 8, the median household income is \$35,245, just 40% of the average household income in D.C.<sup>58</sup>

For low-income tenants, \$100 is a lot of money. For a household of three living at the federal poverty line, \$100 is nearly one fourth of what a family has to live on for an entire week.<sup>59</sup> If a person receives SSI, the \$100 filing fee is more than one-eighth of their payment for the entire month.<sup>60</sup> If, like the median subsidized renter facing an eviction action, a tenant owes \$900 in unpaid rent,<sup>61</sup> a \$100 filing fee increases the cost to stay in their unit by more than 10%. For tenants who face serial filings, this problem is even worse because these tenants have would have to confront the \$100 fee every time they face a new eviction filing.

Higher filing fees substantially increase the cost to stay in a unit. For many tenants, a \$100 filing fee could be the difference between being able to redeem and being forced to leave. To exercise the right of redemption, many tenants must pay not only the back rent but also court fees in order to stay in their unit. One national study found that, in the average tract, eviction filings led to \$180 in fines and fees, which “effectively rais[ed] monthly housing costs by 20%.”<sup>62</sup> The higher filing fee may prevent some tenants from being able to redeem, thereby increasing the number of tenants who are put out of their units. Other tenants may still be able to redeem, but the cost is a significant one that low-income tenants cannot bear easily.

### III. Protective Measures Should Precede Any Increase in Filing Fees.

Until the Council enacts protective measures to prevent filing fees from being passed onto tenants, a higher filing fee may not be the best solution to D.C.’s problem of serial eviction filings. In their study of serial filings in Atlanta, researchers at Georgia State University’s Urban Studies Institute cautioned:

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<sup>54</sup> Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, Soc. Science Research (2016), at 8, [https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.ssr\\_2016.pdf](https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.ssr_2016.pdf).

<sup>55</sup> Desmond, *supra* note 14, at 97.

<sup>56</sup> McCabe & Rosen, *supra* note 1, at 14-15.

<sup>57</sup> American Community Survey 5-year estimates: Ward 7, DC, U.S. Census Bureau (2019), <https://censusreporter.org/profiles/61000US11007-ward-7-dc/>.

<sup>58</sup> American Community Survey 5-year estimates: Ward 8, DC, U.S. Census Bureau (2019), <https://censusreporter.org/profiles/61000US11008-ward-8-dc/>.

<sup>59</sup> 2021 Poverty Guidelines, U.S. Department of Health and Human Services (Jan. 26, 2021), <https://aspe.hhs.gov/2021-poverty-guidelines>.

<sup>60</sup> SSI Federal Payment Amounts for 2021, U.S. Social Security Administration, <https://www.ssa.gov/oact/cola/SSI.html>.

<sup>61</sup> McCabe & Rosen, *supra* note 1, at 23.

<sup>62</sup> Leung et al., *supra* note 16, at 2.

In states where filing is inexpensive and quick, serial filing is effectively a state-favored practice . . . . However, merely raising the cost of evictions, without somehow limiting how much can be passed on to the tenant could backfire and leave tenants with even greater financial penalties.<sup>63</sup>

Because of these potential downsides, the Court should not increase filing fees unless and until the Council takes action to say that filing fees are not recoverable from and cannot be charged to a tenant. This type of protection would operate similarly to the prohibition on shifting attorneys' fees to tenants.<sup>64</sup> This action must be taken by the Council.<sup>65</sup> If this protection were implemented, it would mean that tenants would not bear the cost of higher filing fees. This legislative action would also make filing fees a more effective deterrent to serial filings because landlords would bear the cost of mass filings.

Unless and until the Council enacts these protections, any effect on filing rates would be outweighed by the harms to the tenants who would bear the costs of such increases. This is especially true because other protective measures taken by the Council, such as record sealing, notice periods, and the \$600 filing minimum, are likely to reduce the number of eviction filings and corresponding harms without having similar adverse impacts for tenants. If the Council passes legislation to ensure that filing fees are not passed onto tenants, it might then make sense to consider the effects of a filing fee increase.

#### **IV. Conclusion**

Serial eviction filings pose a substantial problem for many low-income D.C. residents and residents of color, who are disproportionately impacted by serial filings. We appreciate the Court and the Council's efforts to consider ways to reduce serial filings and the harms that they pose for these communities.

It is possible that a higher filing fee could deter some evictions. However, the data are not conclusive, and under the District's current legal framework any deterrent effect would likely be outweighed by the harms to tenants who would have to pay this increased cost in order to stay in their units.

The recent legislative protections enacted by the Council to reduce serial filings should be studied and made permanent. Before the Court raises filing fees for eviction cases as a further deterrent to serial filings, the Council should take action to ensure that those filing fees will not be passed on to tenants. Unless and until the Council takes this action, the Court should not increase filing fees in eviction actions.

Although we think the Court should not increase filing fees without further protections passed by the Council, if the Court were to increase filing fees, it should do so first only with

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<sup>63</sup> Immergluck et al., *supra* note 8, at 921.

<sup>64</sup> 14 DCMR § 304.4.

<sup>65</sup> The current statutory scheme provides that successful landlords are entitled to recover court costs. D.C. Code § 16-1503.

respect to Form 1B complaints. Because those cases do not involve redeemable judgments, the higher filing fees would not be passed along to tenants. Acting first with respect to Form 1B complaints would also allow the Court to see if the higher filing fees have an impact on filing rates. This data could help the Court decide whether to increase the fees for the larger universe of nonpayment of rent cases, although we recognize the deterrent effects might be different in different types of cases.

We appreciate the Court's consideration of these comments and recommendations.

Sincerely,

**Bread for the City**

Rebecca Lindhurst, Managing Attorney

**Council for Court Excellence**

James Hulme, Civil Committee Co-Chair

Elizabeth Scully, Civil Committee Co-Chair

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