Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

Testimony of Julie Becker
Legal Aid Society of the District of Columbia[1]

Committee on Economic Development
Council of the District of Columbia

Bill 20-113, the "Rent Control Hardship Petition Limitation Amendment Act of 2013"

April 11, 2014

The Legal Aid Society supports the Rent Control Hardship Petition Limitation Amendment Act of 2013, which would alter the process for imposing "hardship" increases under the Rental Housing Act. The legislation would help tenants protect themselves against unlawful rent increases that, in many cases, have the effect of unnecessarily displacing families from their homes. In particular, the bill targets a matter of increasing importance to low-income tenants: The so-called "conditional increase" that a landlord may impose 90 days after filing a hardship petition.

In our experience, hardship petitions have appeared with increasing frequency in the District since the downturn in the housing market several years ago. When it is difficult to sell a building or convert it to condominiums, a hardship petition is one of the most straightforward ways to increase the income potential of a property. The law guarantees landlords a 12 percent rate of return on their investment, and if a building's current rents do not result in that return, the law permits increases up to a level that would support the 12 percent figure.[2]

The increases available under the hardship law can be drastic. We have reviewed cases in which landlords have sought increases ranging from 60 percent to well over 100 percent of the existing monthly rents. For the low-income tenants that Legal Aid represents, these increases inevitably result in displacing them from their homes.

We have also litigated cases in which the purpose of the hardship petition is clearly not to increase the landlord's rate of return, as the Rental Housing Act contemplates. It is to empty the building of some or all of its tenants.

The "conditional increase," which is one subject of this legislation, offers the most serious potential for injustice in the current statutory scheme. Under current law, a landlord who files a hardship petition with the Rent Administrator is entitled – in theory – to a decision on the petition within 90 days. Once the agency makes a decision, the tenants may challenge any

---

[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 82 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection.

[2] It should be noted that at least in the current economic climate, 12 percent is a far greater rate of return than one might reasonably expect for an investment.

approval of the increase in the Office of Administrative Hearings. But if the Rent Administrator fails to meet the 90-day deadline, then the increase sought in the hardship petition automatically goes into effect on a "conditional" basis, without any review from the agency at all. Tenants then must pay the increase pending the Rent Administrator's review, and if the agency ultimately disapproves the increase, the landlord must return the overpaid rent to the tenants.

This setup, which might function well in some properties, is wholly unworkable for tenants of low and moderate incomes. For those tenants, the requested hardship increases are typically well beyond what they can afford.[3] This means that when the conditional increase takes effect, they cannot simply pay the increase while waiting for the agency to make a decision. But if they do not pay it, they will be forced to move out.

The result of this process is that tenants may be displaced based on rent increases that the Rent Administrator has never reviewed and that ultimately may be declared unlawful. At best, this situation creates unfairness. At worst, it poses great potential for abuse: landlords who may have motives other than increased rental profit – i.e., a desire, for whatever reason, to empty the building – can submit a wholly unsupported hardship petition, secure in the knowledge that the tenants will be displaced as a result of the conditional increases before the agency ever gets around to reviewing the matter on its merits.

The Rent Control Hardship Petition Limitation Amendment Act would address this problem in two ways. First, limiting the conditional increase to five percent would ensure that no drastic rent increase will take effect until the agency has performed a full review, and has determined that the facts support the landlord's requested figures.

Second, the penalty of treble damages for petitions filed in bad faith would certainly address some of the cases in which the landlord's motive is illegitimate. But to accomplish this goal more fully, we suggest that the penalty be structured slightly differently. As written, the statute would impose a penalty only if the landlord actually collected the conditional increase. But in reality, the very threat of the hardship increase – even if the tenants never actually pay it – is often enough to scare tenants into finding other housing. For this reason, we suggest that the Rent Administrator or the Office of Administrative Hearings be empowered to impose a penalty, perhaps in the form of a civil fine, *anytime* there is a finding of bad faith or improper purpose, regardless of whether the tenants have actually paid the increase.

With that said, it should be noted that the hardship petition process, at least in its current state, is dysfunctional for all parties – landlords as well as tenants. We recognize that there may be cases in which a landlord files a fully supported petition and then suffers significant harm from having to wait, usually well more than 90 days, for the agency to approve a needed rent increase. But in many other cases, that harm is outweighed by the effect on the tenants, for whom the Rent Administrator's delay means displacement from their homes.

---

[3] Research indicates that already, more than one in four of the District's renters spend more than half of the household income on rent. Among the lowest-income tenants – those at or below 30 percent of the area median income – 63 percent spend more than half their income on rent; among those of slightly higher income – 30 to 50 percent of AMI – nearly one-third devote more than half their income to rent. See D.C. Fiscal Policy Institute, *Disappearing Act: Affordable Housing in DC is Vanishing Amid Sharply Rising Housing* Costs, at 6-7 (2012) (available at http://www.dcfpi.org/wp-content/uploads/2012/05/5-7-12-Housing-and-Income-Trends-FINAL.pdf).

There are undoubtedly a number of ways to address these issues, and to balance the rights of landlords to a reasonable return with protection for tenants against unaffordable and unlawful rent increases. We look forward to working on this legislation with you and your staff toward a workable solution for everyone involved.