



**Testimony of Beth Mellen Harrison
Senior Staff Attorney & Director, Court Based Legal Services Project
Legal Aid Society of the District of Columbia**

**Committee on Public Safety and the Judiciary
Council of the District of Columbia**

**B18-68, "Office of Administrative Hearings Amendment Act of 2009"
February 12, 2009**

The Legal Aid Society¹ supports the proposal before the Council to ensure that tenants living in rental properties assisted by the Housing Finance Agency enjoy the same rights under the Rental Housing Act as all other tenants in the District.

The Legal Aid Society represents hundreds of tenants in landlord-tenant cases every year. A primary focus of our work is eviction proceedings in the Landlord and Tenant Branch of D.C. Superior Court. My testimony today focuses on how the pending bill will affect the rights of tenants facing eviction who live in rental properties assisted by the Housing Finance Agency.

Currently, tenants in rental housing assisted by the Housing Finance Agency are denied critical rights enjoyed by all other tenants under D.C. law.

Under current law, housing projects assisted by the Housing Finance Agency (HFA) are exempt from all provisions contained in the Rental Housing Act. *D.C. Code § 42-2703.08(a)*. When this exemption was enacted, the HFA was directed to issue regulations providing "procedures for evictions and protections from retaliatory action" and "conditions and procedures for relocation assistance" for tenants in these projects. *Id. §§ 42-2703.08(b), (c)*. HFA was instructed to put in place protections in accordance with the rights provided for all other tenants under Titles V and VII of the Rental Housing Act. *Id.* Although the statutory exemption was enacted many years ago, the HFA, to date, has not enacted implementing regulations that would ensure that the rights of tenants in HFA-assisted properties are protected.

The result is that tenants living in rental properties assisted by the HFA are denied critical rights provided under the Rental Housing Act, including protections from arbitrary evictions. To cite one example, the Rental Housing Act guarantees that a tenant facing eviction for violation of an obligation of tenancy – typically a lease violation – has the right to receive a 30-day notice and the opportunity to correct the violation. *Id. § 42-3505.01(b)*. Because of the statutory exemption, this right does not apply to tenants living in HFA-assisted properties. The Legal Aid Society and other legal services providers have represented such tenants in eviction suits in which the landlord has denied the tenant the opportunity to cure an alleged lease violation, citing

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 77 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, and public benefits.

the statutory exemption. These tenants are denied the same rights guaranteed to all other tenants simply because of the landlords' choice to accept certain types of financial assistance.

The statutory exemption creates a significant gap in the protections provided to tenants living in the District. HFA administers the federal Low Income Housing Tax Credit program in the District, allocating federal tax credits to property owners that provide rental units affordable to individuals with incomes below 50 or 60 percent of the area median income. According to the latest information from the National Low Income Housing Coalition, there are approximately 100 buildings in the District of Columbia that receive assistance under this federal program, containing 16,000 total rental units.² This is a substantial number of tenants living in the District who are being denied equal rights based solely on the type of financial assistance their landlords receive.

It is also important to note that tenants living in HFA-assisted properties include individuals receiving Housing Choice Vouchers from the D.C. Housing Authority. These low-income tenants are denied equal rights and protections simply because they have chosen to place their vouchers at a property that also receives HFA assistance.

In addition to protections from arbitrary evictions, tenants in HFA-assisted properties currently are denied the following rights and protections enjoyed by other tenants:

- Protection from retaliatory action by the housing provider, *id.* § 42-3505.02;
- Statutory rights to organize and form tenant organizations without interference from the housing provider, *id.* § 42-3505.06;
- Special protections for survivors of domestic violence – enacted by the Council as part of the Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006 – allowing a tenant to break a lease early or request that locks be changed in order to protect the tenant from ongoing domestic violence, *id.* §§ 42-3505.07-.08; and
- Relocation assistance when tenants are displaced due to substantial rehabilitation, demolition, or discontinuance of use of their rental property, *id.* §§ 42-3507.01-.05.

HFA-assisted properties are the only class of rental properties that receive this type of broad exemption from the Rental Housing Act. While other rental properties receiving federal subsidies are exempt from the portions of the Act governing rent control, *id.* § 3502.05(a), they remain subject to all other portions of the Act, including the rights and protections for tenants described above. Rental properties assisted by the HFA should receive the same treatment. While it is sensible for HFA-assisted properties to be exempt from rent control - due to the competing federal statutes and regulations that already limit the rent that may be charged in these properties – there is simply no reason for tenants to be denied the many other critical rights provided under the Rental Housing Act.

² See National Low Income Housing Coalition, *Preservation Catalog for the District of Columbia* (Feb. 2009), available at <https://www2398.sslldomain.com/nlihc/doc/dcpreservationcatalog.pdf>.

Bill 18-68 would correct this inequity by providing that HFA-assisted rental properties are not exempt from Titles V and VII of the Rental Housing Act. These two titles contain all of the critical rights and protections for tenants described above. The bill would preserve the exemption from rental control, while ensuring that the rights of tenants are protected.

The proposed statutory amendment will provide better protection for tenants than enacting regulations to accomplish the same goal.

In May 2008, the HFA published proposed regulations that attempt to provide tenants living in HFA-assisted properties with the same rights and protections under Titles V and VII of the Rental Housing Act as other tenants. The Legal Aid Society, Bread for the City, and the Washington Legal Clinic for the Homeless submitted lengthy comments to these proposed regulations, and, to date, the HFA has not issued final regulations.

The statutory amendment proposed under Bill 18-68 will better ensure that tenants' rights are protected for several reasons. First, providing tenants in HFA-assisted properties with the exact same statutory protections as all other tenants ensures that these tenants will be placed on an equal footing when seeking to enforce their rights. If the same rights instead are enacted as regulations, landlords can be expected to raise questions about enforceability.

Second, the proposed regulations issued by HFA are deficient in a number of respects, and thus would not provide the same protections for tenants as the proposed statutory amendment. To cite two examples, the proposed regulations (1) do not contain many of the protections for tenants found in implementing regulations under Title V of the Rental Housing Act pertaining to evictions; and (2) do not contain the special protections for survivors of domestic violence that were enacted by the Council in 2006 under the Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006. Placing all tenants under the protections of the Rental Housing Act is the most straightforward way to ensure equal rights.

Finally, Bill 18-68 would give the Office of Administrative Hearings (OAH) jurisdiction over adjudicated cases that arise under Titles V or VII of the Rental Housing Act. The proposed regulations issued by the HFA instead would create a parallel administrative process within the HFA for adjudicating these cases. Placing jurisdiction with OAH rather than HFA ensures that tenants in HFA-assisted properties can benefit from the expertise and experience that OAH and its judges have developed in adjudicating rental housing cases. OAH has the advantages of a thorough and well-tested administrative process and a full complement of Administrative Law Judges. Finally, this would ensure that tenants in all properties receive uniform treatment when pursuing administrative claims.

For all of these reasons, the Legal Aid Society supports the proposal to end the statutory exemption from provisions of the Rental Housing Act for HFA-assisted properties. This legislation is urgently needed to ensure that the thousands of tenants living in HFA-assisted properties in the District enjoy the same rights and protections as all other tenants.