

**Testimony of Beth Mellen Harrison and Julie Becker
Legal Aid Society of the District of Columbia**

**Committee on Public Services and Consumer Affairs
Council of the District of Columbia**

**Bill 17-0729, "Abatement of Nuisance Properties
and Tenant Receivership Amendment Act of 2008"**

June 23, 2008

The Legal Aid Society¹ supports the Mayor and City Council in their efforts to address the very serious deficiencies in the District's system of housing code enforcement. The current bill before the Committee, however, is a scattershot set of proposals that will not make any meaningful difference toward improving code enforcement. We urge the Council to adopt a more comprehensive approach, one that addresses the system's real problems and seeks solutions that will give tenants, and the city, practical tools to obtain and preserve safe and decent housing conditions.

The Council should strengthen tenants' ability to hold landlords accountable for code violations.

One crucial method of improving code enforcement is to give tenants a voice in the process. Under current law, tenants have no role in the District's enforcement process for housing code violations, nor do they have any effective, affirmative way to take legal action against their landlords to obtain repairs. As a result, tenants – who have the strongest reason to press for code enforcement against delinquent owners – have very little power to actually do so.

If the District truly hopes to improve code enforcement, it must make tenants part of the process. Two legislative reforms would help accomplish this goal:

1. Require notice to tenants when the District brings an enforcement action against the landlord.

Under current law, when the District brings an enforcement case against an owner for failing to comply with housing violation notices, it is not required to notify tenants of the action. As a result, tenants have no opportunity to participate in the case or even any information as to

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 76 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.

its outcome. They also have no opportunity to ensure that the case moves forward – and, indeed, nearly half the cases the District brought since 2004 were dismissed before reaching a verdict, usually because the city failed to follow through.²

Notifying tenants of enforcement actions is an easy and eminently logical approach that would serve the interests of both tenants and the city. As the residents of the affected buildings, tenants are in the best position to provide evidence as to when repairs are and are not made, thereby helping the District to prove its case. And because they must live with the defective conditions, tenants have the strongest incentive to ensure that enforcement actions move forward and penalties are enforced.

2. Permit tenants to bring housing conditions cases in Landlord-Tenant Court.

Under current law, the only meaningful way for a tenant to take legal action against the landlord regarding repairs is to withhold rent and be sued for eviction. Tenants cannot bring affirmative claims in Landlord-Tenant Court; currently, that forum is open only to landlords seeking possession of the premises. Once sued for nonpayment, tenants can defend based on housing code violations – but because the underlying action is for eviction, withholding rent is a risky strategy that puts the tenant's home immediately and unnecessarily at risk.

Nor do tenants have any other effective forum for legal claims. The Civil Division of Superior Court, which hears all manner of civil cases, is expensive, slow, and virtually impossible to navigate without an attorney. Neither Small Claims Court nor the tenant petition process can award injunctive relief, making them inappropriate forums for tenants who seek an order for repairs.

By contrast, Landlord-Tenant Court is designed for the speedy, inexpensive resolution of housing matters. The complaint is a one-page form; the filing fees are minimal; and the case comes to court in a matter of weeks. There is no defensible basis for making this quick, cheap forum available to landlords seeking eviction, but not to tenants seeking basic repairs in their homes.

Several other jurisdictions, including New York, Massachusetts, Connecticut, and Minnesota, permit tenants to bring actions in their housing courts to enforce the housing code. These cases have neither overwhelmed the court system nor opened a floodgate of frivolous claims. Instead, they have given tenants a workable way to enforce their rights to decent, sanitary, and safe housing.

* * *

Each of these proposals involves legislative or regulatory changes that would be more meaningful to tenants, and to the city's housing stock, than the bill currently before the Committee. We have provided draft language on each of these items to your staff, and would be happy to continue working with you and the other committee members on these issues. We look

² Cenziper, Debbie, and Sarah Cohen: A Failure in Enforcement: Agency's Ineffectiveness Has Helped Landlords Profit From Neglect, *Washington Post* (March 11, 2008), at A1.

forward to collaborating on legislation that begins to repair the District's indisputably broken system of code enforcement.

Thank you.