Legal Aid Society
OF THE DISTRICT OF COLUMBIA

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Committee on Housing and Workforce Development
Council of the District of Columbia

Bill 18-104, "Tenant Access to Justice Reform Act of 2009"

November 30, 2009

The Legal Aid Society strongly supports the bill before the Committee today. At this point, there is very little disagreement on the basic notion that tenants should have a quick, inexpensive, and easy forum for resolving housing code complaints against their landlords. 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 cumbersome, slow, and virtually impossible to navigate without an attorney. It is also expensive – it costs $120 to file a case in the Civil Division, as compared to a $15 filing fee in Landlord-Tenant Court. 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.

This situation is unworkable and unacceptable. The Tenant Access to Justice Reform Act offers the most obvious and most sensible solution: authorizing tenants to bring affirmative claims in Landlord-Tenant Court. Unlike the civil complaint process, 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.

In speaking with councilmembers, staff, court personnel, and community members, the principal objections to this change in the law appear to be threefold: 1) there is concern about the Court's resources; 2) the law is said to violate the District's Home Rule Act; and 3) this change, if desirable, is one for the Court rather than the Council to make. Each of these issues is addressed below.

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[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.

1) Affirmative tenant claims are a necessary and appropriate use of resources.

We understand that the Court has expressed concern regarding the resources necessary to adjudicate affirmative claims brought by tenants. As regular practitioners in the D.C. Superior Court, we are aware of and sensitive to the pressures on the court system. But we have no reason to believe that passing this legislation would overwhelm or even significantly strain the Court's resources. First, the experience of jurisdictions that authorize affirmative tenant suits – including Baltimore City, New York City, Minnesota, and Connecticut – is that such lawsuits constitute a small percentage of the caseload as compared to suits for eviction. In each jurisdiction, tenant cases represent less than five percent of the overall housing docket. It is thus exceptionally unlikely that passage of this legislation would result in overwhelming the Court with tenant-initiated suits.

Furthermore, there is every reason to believe that many of the lawsuits filed under this new law would replace eviction cases where the tenants have withheld rent in order to trigger an eviction suit. Because withholding rent is a tenant's only realistic way to get into court on repair issues, many eviction suits are, in fact, matters in which the tenants would have sued affirmatively had there been a meaningful way of doing so. To the extent that these lawsuits are simply replacing nonpayment or rent cases, passage of this legislation would of course be resource-neutral.

Finally, while concern over judicial resources certainly is valid, that objection cannot be sufficient to defeat this legislation. Stated simply, basic justice demands that this statute be passed. As the law currently stands, tenants in the District of Columbia lack any meaningful method – outside of withholding rent and risking eviction – to adjudicate their housing disputes. Landlords, meanwhile, have access to a cheap and summary forum that uses the Court's existing judicial resources to process more than 40,000 eviction cases each year. The Court does, undoubtedly, have limited resources, but it also has a choice about how to allocate them. Right now, it devotes virtually all of its housing resources to cases brought by landlords, and none to cases brought by tenants.

To the extent that this legislation would force the Court to reexamine which resources it devotes to adjudicating housing disputes, that can only be a step forward. The current system is unfair and unacceptable, and judicial resource concerns, even to the extent they are not overstated, simply are not a basis for rejecting badly needed reform.

2) The legislation does not violate the District's Home Rule Act.

The Home Rule Act prohibits the Council from enacting "any act, resolution, or rule with respect to any provision of Title 11 [of the D.C. Code] (relating to organization and jurisdiction of the District of Columbia courts)."[2] The proposed legislation does not affect any aspect of Title 11, and it alters neither the organization nor the jurisdiction of the Superior Court.

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[2] D.C. Code 1-206.02(a)(4).

First, the Code provision regarding organization of the Superior Court, D.C. Code § 11-902, merely states that the Court's divisions "may be divided into such branches as the Superior Court by rule may prescribe." The proposed legislation does not alter this "division of branches," nor does it affect any "rule" that "prescribes" the L&T Branch. There is no Court rule that specifically creates or describes the Landlord and Tenant Branch.[3]

Nor is there anything in Title 11, or elsewhere in the D.C. Code, that addresses Landlord-Tenant Court. Title 11 creates the Superior Court generally, and provides specifically for the Tax and Family Divisions as well as the Small Claims Branch. It does not address the Landlord and Tenant Branch, much less limit the scope of claims that can be heard in that Branch. There is no reason to conclude, therefore, that permitting tenants to bring affirmative claims in Landlord-Tenant Court would affect the provisions of Title 11 or the organization of the Superior Court.

Second, there is no basis for the claim that the proposed legislation will alter the jurisdiction of the Landlord-Tenant Branch. The D.C. Court of Appeals has long recognized that because the Superior Court is a court of general jurisdiction, its separation into branches does not limit the jurisdiction of any one branch. "[O]nce a suit is filed in a court of general trial jurisdiction, like the Superior Court, the mere fact that it 'is separated into a number of divisions, do[es] not delimit their power as tribunals of the Superior Court . . . to adjudicate civil claims and disputes.'"[4] The Court of Appeals has characterized the arrangement of the Court into branches and divisions as an act of "orderly judicial procedure," rather than a jurisdictional matter; while the separation into divisions and branches aids the court in its case assignments, "each division possesses the undivided authority of the Court."[5]

The legislation under consideration does not propose to alter in any way the jurisdiction of the Superior Court. The claims covered in the bill – affirmative claims by tenants, against landlords, for failure to maintain the premises – are indisputably within the general jurisdiction of the Court's Civil Division. The bill merely would authorize such claims to be brought in one particular branch of that division, and to be brought by original complaint rather than only as a counterclaim to a landlord's complaint for possession.[6]

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[3] Rule 1 of the Landlord and Tenant Rules states only as follows: "These Rules govern the procedure in summary proceedings for possession brought in this Court pursuant to D.C. Code 45-1409 and 16-1501 et seq. (1981) [the District's notice to quit and forcible entry and detainer statutes]." The Rule does not "prescribe" the Branch itself or the scope of its claims.

[4] Millman, Broder & Curtis v. Antonelli, 489 A.2d 481, 483 (D.C. 1985) (quoting Andrade v. Jackson, 401 A.2d 990, 993 (D.C. 1979)).

[5] Andrade, 401 A.2d 993. See Farmer v. Farmer, 526 A.2d 1365, 1369 (D.C. 1987) ("Section 11-921(a) of the D.C. Code vests the Superior Court of the District of Columbia with general jurisdiction over any civil action, whether in law or in equity. Accordingly, this court has recognized that 'there is no jurisdictional limitation prohibiting one division or branch from considering matters more appropriately considered in another, and dismissal of an action is proper only where none of the divisions possess a statutory basis for the assertion of jurisdiction.'" (quoting Ali Baba Co. v. Wilco, Inc., 482 A.2d 418, 426 (D.C. 1984)).

[6] For this reason (among others), cases such as District of Columbia v. Group Insurance Administration, 633 A.2d 2 (D.C. 1993), are inapposite. In that case, the Council's legislation purported to remove a particular type of claim from the jurisdiction of the Superior Court; the Court of Appeals found such removal to be invalid because the

For these reasons, we do not believe there is a valid Home Rule objection to the bill. To the contrary, the Tenant Access to Justice Reform Act is clearly consistent with the plain language of the Home Rule Act. Nevertheless, to the extent there are lingering concerns on this subject, we would be happy to work with you and your staff to address those issues in a way that preserves the central goal of the bill: Providing a speedy, inexpensive, effective forum for tenants to resolve housing code complaints against their landlords.

3) The Court has not taken action to resolve the problem.

Although the Court is currently discussing ways of making it easier for tenants to bring housing code cases, that discussion does not alleviate the need for legislative reform. The notion that tenants should have access to the courts in a manner on par with landlords is not new:

- In 1981, the District of Columbia Court System Study Committee noted that in the District, unlike other jurisdictions, tenants' only path to Landlord-Tenant Court is to withhold rent and wait to be sued.[7]

- In 1998, the D.C. Bar's Landlord-Tenant Task Force, reporting on a comprehensive two-year study of Landlord-Tenant Court, concluded that "tenants whose premises have serious Housing Code violations should not be forced to become defendants in lawsuits for possession . . . or to become plaintiffs in the Civil Division, with the inherent difficulty and time delays involved in that option."[8] The Task Force recommended either expanding the scope of permissible claims in Landlord-Tenant Court, or creating a similar fast-track process in another branch of the court.

- In 2005, the District's Consortium of Legal Services Providers issued recommendations to both the courts and the Access to Justice Commission that explicitly urged expanding the scope of Landlord-Tenant Court to permit affirmative claims by tenants for repairs.[9]

We are very happy that the Court has now begun to engage in discussions around this issue, and we urge those conversations to continue. Should the Court adopt reforms that would

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Council "lacked authority to alter the jurisdiction of the Superior Court as Congress defined it." Id. at 15. Here, nothing in the proposed tenant access legislation purports either to expand or contract the jurisdiction of Superior Court, or to interfere with Congressionally prescribed Court authority.

[7] Statutory Courts Report of the D.C. Court System Study Committee, the District of Columbia Bar (Charles A. Horsky, Committee Chairman) (July 29, 1981), at 6, 15.

[8] Final Report of the D.C. Bar Public Service Activities Corporation, Landlord Tenant Task Force (Aug. 1998), at 22.

[9] Consortium of Legal Services Providers, Recommendations to the Fairness and Access Committee of the District of Columbia Courts and to the Access to Justice Commission Concerning Changes to the Landlord and Tenant Branch, at 4-5.

obviate the need for this legislation, that would be to everyone's benefit. But we ask this Committee not to wait for the Court to address an issue that has been on its radar screen for more than a decade. Every day that tenants are barred from Landlord-Tenant Court is another day that families combat broken toilets and falling ceilings; that elderly tenants live without heat; that children inhale mold. This is a problem crying out for a solution, and the solution is here before this Committee.

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We urge the Committee on Housing and Workforce Development to move the Tenant Access to Justice Act forward to markup, and we look forward to working with you toward the legislation's passage. Thank you.