

**Written Testimony of Adam Wilson
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**The Committee on Business, Consumer, and Regulatory Affairs
Council of the District of Columbia**

**Performance Oversight Hearing on the
Department of Consumer and Regulatory Affairs**

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The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to comment about the critical role that the Department of Consumer & Regulatory Affairs (DCRA) can play in ensuring that families in the District do not live in substandard housing conditions. Although Legal Aid’s work may intersect with the Department’s in a number of areas, we mostly interact with the Housing Code Inspection Division, and it is to this Division that our testimony is directed.

Our testimony last year commended DCRA for its work on the Property Maintenance Code rulemaking process and identified failures within DCRA’s inspection process.

In the lead-up to our testimony this year, Legal Aid conducted a survey of seventy-eight tenants in the Landlord and Tenant Branch of D.C. Superior Court in January 2016. The results of the survey highlight some of DCRA’s successes and areas where improvement is needed. Areas identified as problems in the survey closely track issues that Legal Aid attorneys are continuing to encounter, both first- and second-hand, within DCRA’s inspection and enforcement processes—issues that we believe warrant immediate consideration and reform.

DCRA should continue to hold regular meetings with tenants’ advocates, which helps to identify areas of concern.

DCRA leadership held several meetings for tenants’ advocates at its office during the past year. These meetings were an opportunity for DCRA to disseminate data about key indicators, including its enforcement and collections efforts, and information about important subjects, like building closures. The meetings also gave advocates a forum to raise discrete questions and concerns, which were often expeditiously addressed. Importantly, they allow DCRA and advocates to continue the conversation about how we can work together to achieve our common goal of ensuring that District of Columbia tenants have safe, healthy, and habitable homes. Legal Aid appreciates that DCRA leadership makes these meetings a priority and hopes to continue these meetings as we continue to make progress toward this goal.

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.” For more than 80 years, Legal Aid staff and volunteers have provided legal services to tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

One area for improvement is the scheduling of these meetings. Currently, meetings do not always happen as often as intended, partially because they are scheduled only after polling attendees' availability. With other agencies we have found that having a regular meeting on the calendar (such as every other month) is a helpful way of facilitating communication between advocates and the agency. We recommend that our meetings with DCRA begin to follow that model; this will allow everyone involved to plan ahead and will prevent any slippage in meeting frequency due to scheduling problems.

Recommendation # 1: DCRA should schedule advocate meetings bi-monthly at the beginning of every year.

The January 2016 survey of 78 tenants identified various areas in which DCRA can and should focus on improving performance.²

Many tenants do not know that the D.C. government employs housing inspectors or how to schedule inspections.

Of primary concern, our survey responses showed that many tenants simply do not know that DCRA performs residential housing inspections. To the question, "Do you know that the D.C. government has housing inspectors (part of an agency called the Department of Consumer and Regulatory Affairs) who can be called when landlords are not fixing problems?," 29 of the 78 surveyed tenants (37 percent) said "no."

Of the 49 tenants who knew that housing inspectors could be called, the overwhelming majority (more than 80 percent) reported a situation where their landlord had not made needed repairs, but 25 percent of these tenants had not in fact requested a housing inspection. For most of these individuals, the reason that they did not contact DCRA was because, at the time when the inspection was needed, they either did not know about DCRA or did not know about how to go about requesting an inspection.

These responses suggest that, although several thousand tenants request housing code inspections annually, many other tenants who would benefit from a housing inspector visiting their units fail to request one because they do not know that the D.C. government employs housing inspectors or do not know how to schedule an inspection. We recommend that DCRA expand outreach and education efforts to make more tenants aware that this important service exists.

² Over three weeks in January 2016, three volunteers surveyed seventy-eight tenants in the Landlord and Tenant Branch of D.C. Superior Court about various issues related to DCRA. Although there may be some selection bias in the results—because these were presumably all tenants whose landlords were alleging that they had failed to pay rent or otherwise violated their lease—Legal Aid's experience in representing a broad section of tenants in the Landlord and Tenant Branch is that a large percentage of tenants facing eviction live in units where housing code violations are present. Forty of the tenants live in Wards 7 and 8, where poverty is especially concentrated. Thus, we submit that the sampled tenants closely approximate the group of D.C. residents who most need DCRA's services.

Recommendation #2: DCRA should engage in outreach and marketing efforts to build the Housing Code Inspection Division’s “brand” and advertise its services.

Overall satisfaction with DCRA is mixed.

More than half of the tenants who responded had favorable responses (strongly agree or somewhat agree) to the following questions: “Do you agree with the statement that ‘DCRA does a good job at inspecting and citing violations by the landlord?’”; “Do you agree with the statement that ‘DCRA works hard to make sure that landlords fix bad conditions in tenants’ homes?’”; and “Do you agree with the statement that ‘DCRA is fair to landlords and tenants?’” We recognize that many tenants come away from experiences with the Department feeling satisfied.

Nonetheless, it is disappointing that a significant percentage of tenants who are familiar with DCRA have quite negative impressions of its performance; about 20 percent of tenants responded “strongly disagree” to each statement. The Department should take steps to focus on customer service and satisfaction, for example by identifying its highest performing inspectors and customer service representatives and seeking to transfer their skills and approaches across the division.

Recommendation #3: DCRA should identify its highest performing inspectors and customer service representatives and seek to transfer their skills and methods across the division.

The opacity of the inspection and enforcement process severely diminishes its efficacy for tenants.

Tenants and advocates alike encounter problems in learning what violations inspectors have found, both after the initial inspection and any re-inspections.

Tenants who have turned to DCRA for help in enforcing their rights await the initial inspection report, which vindicates their complaints. However, the surveyed tenants reported serious issues in the delivery of these reports: many never received a report, many had to wait more than three weeks before they received one, and others had to contact the inspector to make sure that they got their report. DCRA should ensure that its inspectors adhere to its stated policy of sending out reports in 2 business days – including to tenants.³ Delays in receiving the inspection reports mean that landlords will also delay repairs: half of the tenants who answered the question said that their landlord waited four weeks or more after the inspector first visited to begin repairs. Given that landlords already have 30 days to repair most issues (even something as serious as lack of hot water), anything that causes further delay is highly troubling.

³ DCRA, *Lifecycle of a Housing Code Inspection*, <http://dcra.dc.gov/service/lifecycle-housing-code-inspection> (last visited Feb. 25, 2016).

A larger problem occurs after any re-inspection. It appears to be a regular practice after a second inspection not to issue a second inspection report, even where the inspector finds that violations remained. Thus, the tenant often receives no official confirmation that the violations remain: nothing in writing to present to the landlord, nothing to present while trying to enforce her rights in court. Making matters worse, we have been told several times that the tenant, or someone requesting on her behalf, cannot obtain details about what violations remain without submitting a Freedom of Information Act (FOIA) request or a subpoena. Further, we have also been told that it was entirely possible that a landlord may not have been informed about a failed second inspection a month and a half later.

Our first-hand experience with this problem is corroborated by the survey: nearly half the surveyed tenants said that DCRA did not keep them informed during the inspection and enforcement process.

“I wish they let me know why nothing was fixed.”

“DCRA never followed up with me. It took one month for DCRA to come out to my apartment.”

In addition, the lack of communication means that tenants often do not know what, if any, efforts DCRA is taking to enforce notices of infraction issued to the landlord, through the collection of fines or otherwise. They only can see the lack of action by their landlords.

The survey results also indicate that follow-through on failed inspections too often is lacking. **Seventy percent** of tenants said that their landlord never finished all the repairs required by the DCRA inspector’s report, a figure that is quite troubling in and of itself. And only three tenants knew that DCRA had fined their landlord. The others were almost evenly split between “no” or “don’t know.”

No surveyed tenant had been contacted about being a witness at a hearing about the notices of infraction.

“More diligence is needed to follow up to make sure the landlord makes repairs.”

“DCRA should follow up more with the landlords to make sure that they make the repairs in a timely manner.”

“DCRA should impose larger fines on landlords to get them to fix problems.”

At the advocates meetings, we have received statistics showing that DCRA has levied and collected fines for Notices of Infraction hundreds of cases. But this enforcement is occurring

largely out of view of tenants, and of us. The hundreds of Notices of Infraction issued represent less than 25 percent of cases where Notices of Violation are issued, according to DCRA statistics shared with us. We don't know much about what happened to the other 75 percent of cases. Presumably, DCRA deems the problems in these other properties abated, or as not yet ripe for enforcement, but how long did the landlord take or has the landlord taken to abate the problem in each case? How many re-inspections have occurred in each case? These and other questions need to be answered in order to gauge the meaning of enforcement statistics.

Too often, DCRA falls out of view after the re-inspection, meaning either that DCRA is not using its power to force the landlord to fix the violations, or that the tenant has no information about these efforts. We do not doubt that DCRA's enforcement division is overburdened. But this only highlights the importance of private efforts to enforce compliance with the housing code. Judges and litigants all look to DCRA to help determine what compliance with the housing code means. This situation, where neither landlords nor tenants have readily available information about the DCRA inspector's findings, benefits neither. It severely impairs good faith efforts by landlords and tenants to settle their differences, and it adds cost and delay to private enforcement efforts.

The cost and administrative burden of issuing re-inspection reports would be outweighed by the benefits in the form of increased transparency and increased efficacy of private enforcement actions. Further, DCRA should keep tenants updated as to their enforcement efforts and strive to involve them more in the enforcement process. These efforts would help DCRA to more effectively meet its mandate, as tenants could be better advocates for themselves. It would also help to build trust with DCRA's constituent community.

Recommendation #4: DCRA should issue a re-inspection report within 48 hours after every re-inspection.

Recommendation #5: DCRA should keep tenants informed of and involve them in the enforcement process.

Too many tenants continue to have problems scheduling inspections.

Nearly seventy percent of surveyed tenants reported a good experience with the front-line DCRA employee who schedules their appointments. We hope this means that DCRA's customer service has improved, and more tenants are having their requests for inspection noted quickly and efficiently. While these numbers are encouraging, we remain concerned about the 30 percent of tenants who reported a bad experience with DCRA staff. We continue to hear from these tenants.

DCRA's call center has put the burden on tenants to provide contact information for their landlords, and at times has refused to schedule an inspection when the tenant is unable to provide it. In one such example, an attorney called DCRA with a tenant who had no heat and was challenged to provide contact information for the landlord before an inspector could come out. The attorney eventually was able to reach a supervisor, who found the landlord's contact information

in DCRA's system. No tenant should require the assistance of an attorney in order to schedule an inspection based on lack of heat.

The reality is that far too many tenants may have no good way to contact their landlord; a landlord may even intentionally withhold this information from tenants. DCRA employees have easy access to several systems (the D.C. Real Property Tax Assessment Database and Certificate of Occupancy records, just to name two) that contain the landlord's address. It is unacceptable for the agency to refuse to schedule an inspection for this reason.

Other burdens are put on tenants. A surveyed tenant reported that an inspector told her that she would be charged for the DCRA inspection for bedbugs in her unit if the inspector didn't find bedbugs in other tenants' units. As a result, she canceled the inspection and the bedbug infestation worsened. DCRA is charged with enforcing the Housing Code, which exists to protect tenants. DCRA's role should be to inspect and cite conditions, including infestations. Inspectors should not preempt this process by making tenants fearful that calling an inspector will in fact cause them harm.

Recommendation #6: DCRA should accept tenants' requests for inspections and reduce pre-inspection burdens as much as possible.

We appreciate the opportunity to raise concerns and discuss important issues with DCRA at our regular meetings. We also believe that a more sustained focus on the work of the Inspections Division continues to be needed, both on the issues specifically addressed in our testimony and others. We are open to discussing our concerns in greater detail with DCRA leadership, developing a working group focused on these issues, or other ideas that the Director may have on ways to improve the performance of the agency in this and future fiscal years.

Thank you for this opportunity to share our thoughts on the performance of DCRA.