

**Testimony of Laurie Ball Cooper
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**Before the Committee on Housing and Community Development
Council of the District of Columbia:
“Residential Lease Amendment Act of 2015”**

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The Legal Aid Society of the District of Columbia¹ supports the Residential Lease Amendment Act of 2015, which strengthens protections for tenants in the District of Columbia by clarifying existing laws and encouraging uniformity in residential lease agreements. We offer this testimony today to highlight three particularly important components of the Bill: new protections for tenants who vacate when a landlord claims he or she will reside in the rental home, clarified and strengthened prohibitions on charges for services and facilities connected to rental units, and clearly stated rules for landlords’ non-emergency access to rental units.

Important Protections in the Residential Lease Amendment Act of 2015

Legal Aid supports the Bill and applauds many of the protections it puts in place and/or clarifies for tenants in the District.

First, the Bill protects tenants who are evicted or forfeit possession of their rented home when the landlord reclaims possession based on that landlord’s stated intention to reside in the home as a dwelling.² If the landlord claims that he or she intends to reside in the home, current law only requires the landlord to give an adequate 90-day notice to the tenant of the landlord’s intention.³ By contrast, under current law, if the landlord has contracted to sell the unit, the landlord must provide the tenant with written notice of the tenant’s statutory rights to purchase

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 83 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, public benefits, consumer, and appellate law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² See D.C. Code § 42-3505.01(d).

³ See *id.* (“A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person’s immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of action to recover possession of the rental unit in instances arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit. A stockholder of a cooperative housing association with a right of possession in a rental unit may exercise the rights of a natural person with a freehold interest under this subsection.”)

the property as required under the Tenant Opportunity to Purchase Act (“TOPA”)⁴ *in addition to* the 90-day notice to vacate.⁵

Too often, landlords attempt to avoid their obligations under TOPA by proceeding to evict tenants claiming they intend to live in the property, when instead their intention is to sell the property free of tenants and without complying with TOPA. If this Bill is enacted, landlords who reclaim rental property under the personal use and occupancy provision would only be able to sell the property in the 12 months after reclaiming possession if they also provide former tenants who vacated pursuant to the landlord’s claim for personal use and occupancy with all notices and opportunities guaranteed under TOPA.⁶

A second important protection in the Bill is the clear prohibition on charging tenants fees “for any service or facility beyond a fee that is included in the maximum rent.”⁷ Under current law, landlords registering properties subject to rent control must, at the time of registration, specify all services and facilities that are included in the rent.⁸ Because of this registration requirement, as a matter of rent control, the unit’s rent *already* includes all related services and facilities.⁹ If a landlord wishes to change the related services and facilities offered after registration, the landlord must file a petition with the Rent Administrator seeking permission to change the rent for the unit.¹⁰ If a landlord decreases related services and facilities without approval from the Rent Administrator and a decrease in the rent, or if the landlord seeks to increase the rent in an amount disproportionate to the additional services, tenants may challenge the landlord’s actions by filing a tenant petition.¹¹

⁴ Under TOPA, tenants are entitled to purchase the home they rent, subject to certain conditions, before the landlord may sell the home to another buyer. TOPA rights include a right of first refusal for tenants. *See* D.C. Code § 42-3404.02 *et seq.*

⁵ *See* D.C. Code § 42-3505.01(e) (“A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person, so long as the housing provider has notified the tenant in writing of the tenant’s right and opportunity to purchase as provided in Chapter 34 of this title. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider’s action to recover possession of the rental unit. No person shall demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.”)

⁶ Residential Lease Amendment Act of 2015, 2015 DC L.B. 420, D.C. Council Period 21 (proposed Oct. 7, 2015), § 2(b) (lines 45-50). The Bill could be further clarified by revising the new subsection (d-1), Lines 47-49, to read “unless the housing provider first offers **any tenants who vacated following a personal use and occupancy notice** an opportunity to purchase the unit pursuant to the Tenant Opportunity to Purchase act of 1980.” This revision would clarify which “tenants” are entitled to TOPA’s protections after the landlord has required them to vacate under the pretext of personal use and occupancy.

⁷ *Id.*, § 2(a)(i).

⁸ D.C. Code § 42-3502.05(f)(3).

⁹ *Id.*, § 42-3503.01(27).

¹⁰ *Id.*, § 42-3502.11.

¹¹ *Id.*, § 42-3502.16.

Legal Aid’s clients are too often in situations in which the landlords have reduced the related services (such as changing the lease to impose previously included utility costs on tenants) without filing the necessary petition with the Rent Administrator. This Bill is therefore helpful in clarifying the current prohibition on landlords changing related services and facilities in rent-controlled properties without the approval of the Rent Administrator.

That said, the Bill as drafted could also cause confusion. It appears that the Bill seeks to address the problem described above, namely, of landlords attempting to change the related services and facilities without going through the Rent Administrator. However, it also appears that the Bill seeks to prohibit landlords from adding new, mandatory fees into lease agreements for new services or facilities as an end-run around the rent control law. For example, if a unit is registered as not including parking among the related services and facilities, the landlord could seek to add a “mandatory fee” for parking into a renewed lease. The landlord might argue this is not a change in “related” services and facilities necessitating Rent Administrator review, but a “mandatory fee” is an effective increase in the rent. As a result, the Bill should also prohibit landlords from imposing mandatory fees for unrelated services and facilities. To clarify the Bill’s protections, we propose the following changes to Lines 38-40 of the Bill as drafted:

“(i) A housing provider shall not (1) require a tenant to pay any fee for any related service or facility that is included in the maximum rent that the housing provider may charge under this section; or (2) require a tenant to pay a mandatory fee for any unrelated service or facility.”¹²

This clarification in the Bill’s language would make landlords’ obligations clear with respect to both related services and facilities, that are registered as part of the rent with the Rent Administrator, and other, unrelated services and facilities that a landlord may seek to add into the rent as a way to avoid the protections of the rent control laws.

Third, the Bill establishes important restrictions on landlords’ non-emergency access to tenants’ homes. Legal Aid frequently sees tenants who report that their landlords make unreasonable demands for access to the rental property – including demands that access be provided with no notice at all or very limited notice to the tenant. This Bill would improve the situation for tenants in the District by providing much-needed clarity and uniformity by unequivocally requiring that landlords must, in non-emergency situations, provide 48-hours’ written notice prior to entering the unit. In addition, the Bill would restrict landlords’ non-urgent access to the units to “reasonable times,” which may be agreed upon by the landlord and tenant specifically but otherwise are restricted to 9 a.m. to 6 p.m. Monday through Saturday.¹³

¹² See Residential Lease Amendment Act of 2015, 2015 DC L.B. 420, D.C. Council Period 21 (proposed Oct. 7, 2015), § 2(a).

¹³ *Id.*, § 2(c).

Many corporate landlords already provide 48-hours' written notice to tenants before entering the unit for non-emergency matters, which is evidence that the Bill's definition of "reasonable time" is commercially reasonable. However, many residential leases provide no clear information to tenants regarding their landlord's rights to access the unit and the tenants' rights with respect to notice of a landlord's entry, so this Bill offers valuable protections by clarifying the law and encouraging uniformity in residential leases across the District.

Concerns Regarding New Provisions in the Bill

Legal Aid is concerned by the Bill's provision that could be interpreted to allow landlords to require tenants to provide *more* than thirty-days' notice if they intend to vacate the premises upon expiration of the initial lease term, i.e., on the date that their lease expires.¹⁴ Legal Aid sees no reason that a tenant should be required to give more than thirty-days' notice of their intent to vacate the unit upon expiration of their lease. Tenants during the lease term should not have fewer rights than tenants during in a month-to-month tenancy. Thirty days is adequate notice for the landlord of a tenant's intent to vacate when the lease expires and during a month-to-month tenancy. Legal Aid suggests amending the Bill to simply prohibit and render unenforceable lease provisions requiring more than thirty-days' notice of a tenant's intent to vacate upon expiration of the lease or thereafter.

Critical Issues Facing Tenants Not Addressed by the Bill

Legal Aid also wishes to call the Committee's attention to a few critical issues not addressed by this Bill, in the hopes that the Bill or future legislation may resolve them.

First, there is insufficient law in the District on whether and how landlords may impose late fees on tenants. As a result, landlords' practices regarding late fees vary widely in the District, and some of them are unfair. Many landlords impose a late fee that is a percentage of the total rent, for example, 5% of the monthly contract rent. For low income tenants, 5% of the total rent amount can be an extraordinary burden, and it provides an unwarranted windfall to landlords. For example, if the rent is \$1000 and the tenant pays only \$990 in one month, then many landlords will attempt to charge the tenant 5% of the contract rent (\$50) – even though the landlord still received the vast majority of the rent in a timely fashion.

In addition, many landlords will also argue that they are permitted to charge that late fee not only in the month in which the payment is missed, but each month thereafter until the tenant becomes current in all rent and late fees. So, for example, the tenant described above may pay \$990 one month, and then \$1010 the next month, but not pay the entire \$50 late fee. The landlord will then argue that the tenant can be charged *another* \$50 late fee in each subsequent month, unless and until the balance due is zero. This results in an impossible situation for a tenant with

¹⁴ Residential Lease Amendment Act of 2015, 2015 DC L.B. 420, D.C. Council Period 21 (proposed Oct. 7, 2015), § 3(b) ("Any provision that requires the tenant to provide more than thirty days of notice to the housing provider of the tenant's intention to vacate the premises upon the expiration of the initial lease term shall be void and unenforceable, unless the lease explicitly states that such provision expires upon expiration of the initial lease term, and that, unless the tenant agrees to sign a renewal lease, the tenant thereafter has the right to vacate the premises upon 30 days of notice for so long as the tenant remains a tenant from month to month, provided that the tenant has initialed the relevant lease clause upon execution of the lease.").

low income, and the landlord receives much more than is genuinely owed. Legal Aid therefore recommends that the Council implement legislation limiting late fees to 5% of any unpaid amount, and only in the month in which that amount is unpaid. Legislation to this effect would protect tenants from impossible cascades of late fees and limit late fees to amounts that accurately reflect the damages landlords suffer due to late payments without unduly penalizing tenants.

Second, the law currently does not clearly permit a tenant to revoke a notice to vacate even if he or she may have circumstances that justify revocation. Many low-income tenants, and especially tenants in the Housing Choice Voucher Program, plan to move but subsequently find that they are unable to do so. If the tenants have already provided their landlords with a thirty-day notice of intent to vacate (a requirement under the voucher program for a transfer voucher to move), then under current law the tenant arguably has no right to revoke that notice and the landlord can proceed directly to eviction.

A legislative solution to this problem would be to amend the statute so that it reads “Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party **without reasonable excuse.**”¹⁵ Adding the language “without reasonable excuse” to the statute would provide landlords and tenants with critical flexibility to manage changes in circumstances and unforeseen events (including, for example, a new rental unit’s failure to pass a subsidy program’s inspection process on the first inspection). This language also incorporates the theme of “reasonableness” that repeats throughout the Rental Housing Act and the Residential Lease Amendment Act of 2015.¹⁶

Third, and finally, Legal Aid supports the Legal Counsel for the Elderly’s proposal, also offered in testimony submitted to the Committee today, that the Council enact legislation providing specific guidance and standards for what constitutes “normal wear and tear.” All too often, Legal Aid sees clients who have been sued for alleged lease violations by landlords who claim that any damage at all amounts to intentional destruction or negligence by the tenant, even with no evidence to that effect. A certain degree of wear and tear is to be expected in all properties, and clarity as to what presumptively constitutes “normal wear and tear” could avoid many unnecessary eviction suits.

¹⁵ See D.C. Code § 42-3205, which currently reads: “Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit.”

¹⁶ See, e.g., *id.*, § 42-3207 (“If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy”); see also Residential Lease Amendment Act of 2015, 2015 DC L.B. 420, D.C. Council Period 21 (proposed Oct. 7, 2015), Section 2(c).