



**Written Testimony of Evan Henley
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**The Committee of the Whole
Council of the District of Columbia**

**Public Oversight Roundtable on the
Department of Consumer and Regulatory Affairs:
Inspection and Enforcement of Tenant Housing**

July 25, 2017

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to comment on the critical role that the Department of Consumer and Regulatory Affairs (DCRA) can play in ensuring that families in the District do not live in substandard housing conditions.

Far too many District landlords neglect their basic responsibility to maintain their rental units in habitable condition, subjecting tenants to unsafe, unhealthy—and at times horrific—living conditions.² DCRA is the primary governmental organization with the power to enforce the Housing Code and Property Maintenance Code and remedy these conditions. Legal Aid appreciates the willingness of DCRA to regularly meet with stakeholders to receive feedback and share information. For the last one to two years, representatives of tenant advocacy organizations have met quarterly with DCRA management. In these meetings, we are able to raise issues we see regarding inspections and enforcement and to receive information from DCRA about its efforts.

Yet DCRA's efforts have been inadequate to keep “bad actor” landlords in check. In our practice, we see a number of problems with the way the agency currently operates, including a lack of transparency around the inspection process, failures to engage with tenants, and what appears to be a shortage of resources to deal with the full scale of the conditions problems present in the District's housing stock. This testimony will discuss these problems, as well as potential solutions, in greater detail.

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 85 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. More information about Legal Aid is available at our website, www.legalaiddc.org, or on our blog, www.makingjusticereal.org.

² See, e.g., Alexa Mills & Andrew Giambrone, *Life is Hell for Tenants of Giant DC Slumlord Sanford Capital*, available at <http://www.washingtoncitypaper.com/news/article/20850914/life-is-hell-for-tenants-of-giant-dc-slumlord-sanford-capital> (last accessed Jul. 23, 2017).

1. A lack of transparency means that tenants cannot adequately address housing code violations

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

DCRA inspectors sometimes take many days or even weeks to prepare and provide inspection reports to tenants, which leaves tenants in the dark about their findings. Late inspection reports mean that tenants are unsure of what violations inspectors have found. Further, since landlords have 30 days to repair most issues (even something as serious as a lack of hot water), late reports further delay needed repairs. This lack of communication extends throughout the inspection process, as DCRA also often falls out of view after re-inspection, leaving tenants unaware of what, if anything, DCRA is doing to enforce notices of infraction issued to landlords (through the collection of fines or otherwise). In these cases, it is not clear that DCRA is using its power to force landlords to fix violations, and tenants do not have the information they need to monitor any efforts that DCRA might be making or make an informed decision about whether to pursue legal action themselves. Tenants only see the lack of action by their landlords.

For example, a Legal Aid client has had an inspector visit her home four times over the last six months. Although the inspector has told the client several times that the landlord has been sent to enforcement, the client has seen no evidence of this. The Legal Aid attorney has tried to contact the inspector numerous times, but the inspector did not answer or return the phone calls.

While we do not doubt that DCRA's enforcement division is overburdened, this lack of transparency leaves tenants in a difficult position. Further, a lack of clear communication complicates private efforts to ensure compliance with the housing code. Judges and litigants all look to DCRA to help determine what compliance with the housing code means. When neither landlords nor tenants have readily available information about the DCRA inspector's findings, no one benefits. A lack of information impairs good faith efforts by landlords and tenants to settle their differences and adds cost and delay to private enforcement efforts.

DCRA should adhere to its stated policy of sending out reports within two business days of an inspection. Further, DCRA should keep tenants updated as to their enforcement efforts and involve them more in the enforcement process. Tenants usually have no idea what happens once the inspection reports are generated, even when repairs are not made. Involving tenants in enforcement actions 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.

One answer to the problem with transparency is to make more information readily available to tenants and the public using DCRA's Property Information Verification System (PIVS) application or another platform. Legal Aid understands that DCRA is working on

updating its systems, and these efforts should be expedited. The system should allow the public to easily track complaints for any rental unit from the time that a complaint is made to the landlord's payment of a fine or the enforcement division's placing of a lien on the property. The system should have all relevant documents in one place, including inspection reports. Although there may be some privacy concerns with such a system, complaining parties' information could easily be redacted. While many members of our client community do not have access to the internet, meaning that a web-based system should not completely replace the current approach, such a system would help many tenants obtain more timely and complete information about DCRA's enforcement efforts. Armed with better information, tenants and advocates can be better partners in the fight to ensure that landlords maintain their housing portfolios in compliance with the law.

2. Tenants continue to have difficulty scheduling inspections.

An even more basic problem is that, far too often, tenants are rebuffed at the time of their initial contact with DCRA: scheduling the inspection. Legal Aid attorneys hear stories about tenants who have difficulty either requesting an inspection through DCRA's telephone system in the first place or confirming the date and time of a scheduled inspection. In a recent case, a Legal Aid client called an inspector a number of times to try to confirm the date of an inspection, but did not receive a response. A Legal Aid attorney had to intervene and contact a supervisor in order to obtain the needed information.

When Legal Aid and other organizations bring issues in individual cases to DCRA management, we usually receive a favorable response, as the story above illustrates. However, we are only connected to a small segment of tenants in the District, and the vast majority of tenants have to navigate these processes on their own. Tenants who encounter obstacles accomplishing something as simple as scheduling an inspection are unlikely to expend much more effort trying to connect with DCRA. Nor are they likely to bring issues to DCRA's attention in the future.

3. DCRA may not have adequate resources to effectively perform rental housing code inspections.

In the end, DCRA's failure to eliminate unsafe and unsanitary conditions may be tied to a lack of resources. For example, Legal Aid attorneys heard earlier this year that DCRA was delayed in scheduling inspections for tenants because they were tied up with inspections related to the Office of Attorney General's Sanford Capital litigation. Legal Aid believes that the partnership between OAG and DCRA in ensuring housing code compliance is an important one and hopes that the agencies strengthen this relationship. But DCRA should have the capacity to inspect more than one landlord's properties at a time. Legal Aid supports increased funding for the inspection and enforcement regime.

One potential way of generating more resources to directly address housing code violations is by updating the statute governing the nuisance abatement fund. The fund is a powerful tool at DCRA's disposal. DCRA is empowered to make repairs needed to correct substantial housing code violations in certain circumstances. The repairs are paid for out of the

nuisance abatement fund, and DCRA then can either put a lien on the property, levy a tax, or obtain an administrative judgment to recoup the expenses.³ This fund ensures that at least some tenants whose landlords refuse to make repairs are still able to live in habitable conditions, but the fund is limited in size.

Currently, although the statute provides that some of the fines collected from landlords go to the fund, it explicitly excludes fines obtained through administrative proceedings.⁴ Most fines are collected by DCRA in administrative proceedings before the Office of Administrative Hearings. Amending the statute to direct these fines to the nuisance abatement fund would serve two important purposes. First, it would increase the size of the fund. Second, if DCRA were able to keep the fines collected and use them for a salutary purpose, the agency should have a greater incentive to pursue enforcement actions vigorously.

4. The D.C. government should consider transferring responsibility for rental housing inspections.

DCRA has a broad mission which ranges from building inspections and code enforcement to business licensing and registration. Although the rental housing inspections division certainly does have synergies with the rest of DCRA's work and mandate, the division was placed within DCRA before governmental reorganization led to the creation of a broader housing agency, the Department of Housing and Community Development (DHCD). The mission of DHCD is much more tenant-specific than DCRA's: for example, it is the primary regulator of the District's Rent Stabilization Program. DHCD also already has experience with rental housing inspections and code enforcement, because it performs inspections in connection with its role in regulating Low-Income Housing Tax Credit (LIHTC) program units in the District of Columbia.

For these reasons, if dedicating more resources to DCRA is not possible, or if doing so does not significantly improve the agency's performance, responsiveness, and transparency, then perhaps the Council and Mayor should consider assigning DCRA's inspections and enforcement responsibilities to DHCD. Doing so would place that division within an agency that has a more specific expertise with rental housing.

Thank you for this opportunity to share our thoughts regarding DCRA's tenant housing inspection and enforcement divisions. Legal Aid is pleased that the Council held this roundtable session and hopes that it is the first of many as the District seeks to ensure that all tenants are provided with safe and healthy homes.

³ See generally D.C. Code § 42-3131.01.

⁴ See D.C. Code § 42-3131.01(b)(2).