

**Testimony of Samantha Koshgarian  
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**Before the Committee on the Judiciary and Public Safety  
Council of the District of Columbia:  
Bill 22-0189  
"Drug-Related Nuisance Abatement Amendment Act of 2017"**

**January 25, 2018**

On behalf of the Legal Aid Society of the District of Columbia,<sup>1</sup> we submit this testimony to express our opposition to Bill 22-0189, the Drug-Related Nuisance Abatement Amendment Act of 2017, as currently drafted. It is our understanding that this legislation was introduced in response to community concerns about nuisance conditions at commercial properties, and is intended to focus exclusively on commercial tenants. However, as drafted, the bill's language does not draw a clear distinction between commercial and residential tenants, leaving open the possibility that nuisance abatement actions could be used against low-income residential tenants directly. We urge the Committee to amend the bill to clarify that it does not apply to residential tenants, a clarification that we believe is consistent with the legislation's intent. Furthermore, we believe that the Committee should take this opportunity to address and improve existing provisions in the District's nuisance law that can negatively impact residential tenants. Our testimony today includes a discussion of the many ways in which current law lacks key procedural protections and makes low-income residential tenants vulnerable to displacement even without the changes proposed by the current version of this bill. As an organization that represents and advocates for the rights of low-income tenants, we hope that we can work with the Committee to address the flaws in current law, ensuring that individuals and families are do not unjustly lose their homes.

**ALLOWING NUISANCE ABATEMENT ACTIONS AGAINST RESIDENTIAL  
TENANTS WILL NOT IMPROVE RESIDENT SAFETY**

Legal Aid meets with thousands of District residents every year, and we often hear from clients who are victimized by or witness criminal activity in their neighborhoods. Most often, those residents report to us that the criminal activity is the result of conditions far outside of their control. Exterior doors without secure locking mechanisms, lack of appropriate lighting in parking lots and courtyards, and vacant apartments and homes due to lack of basic maintenance are some of the most common complaints we hear from our clients. Landlords have the power to

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<sup>1</sup> 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 85 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, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

remedy all of these complaints and increase safety for tenants and their properties, but often either fail to do so in a timely manner or fail to do so entirely. Situations like these allow individuals to come into communities and commit crimes, many of which are then unfairly attributed to the residents, leaving them vulnerable to eviction proceedings. As drafted, this legislation makes it much easier to shift responsibility for these issues from landlords to tenants, even when they are more properly within a landlord's control than a tenant's. In these proceedings, landlords are far more likely to be represented by counsel and be able to successfully argue that the tenant is to blame, leading to the potential result of an unrepresented tenant being displaced without any change to the conditions that actually led to the nuisance.

Of particular concern is that this legislation may in fact have the counter-productive effect of discouraging tenants from calling the police to report crime in their communities. Because existing law provides that an increase in calls to police may be a partial basis for a complaint, extending the law to apply to tenants could have a chilling effect on reporting by residents, who may fear that calls to the police will later serve as the basis for their own eviction.

## **THERE IS A HIGH POTENTIAL FOR ABUSE IN THE RESIDENTIAL TENANT CONTEXT**

There is a high potential for abuse in the application of this legislation to vulnerable tenant populations by landlords, law enforcement, and neighboring citizens.

### **Potential for Abuse by Landlords**

Firstly, this legislation is concerning for its potential abuse by landlords who are eager to avoid going through the lawful eviction process. For example, if this legislation were enacted, a landlord could repeatedly call police to report tenants they want to displace, with or without an actual basis for alleging criminal activity, and pressure or coerce other tenants to act as a community-based organization for the purpose of bringing a complaint against an individual tenant. That complaint could then be the basis for displacing the tenant in short order relative to the process followed in Landlord Tenant Court.

At Legal Aid, we have seen multiple instances of unscrupulous landlords circumventing the landlord-tenant legal process. For example, Legal Aid has represented clients against landlords who attempt to evict tenants by filing for Civil Protection Orders that would require them to vacate their rental property. Landlords who claim to be eligible for protection under CPOs based on occasional shared use of common areas abuse a process that is designed primarily to address situations of domestic abuse. Because that process does not include the same procedural protections as the Landlord and Tenant Branch of D.C. Superior Court, tenants can find themselves displaced even where there is no legal basis for eviction under The Rental Housing Act.

The Rental Housing Act was intended as "a comprehensive legislative scheme to protect the rights of tenants." *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1168 (D.C. 1985). Landlords should not be permitted to use other processes as an end-run around the

protections of that law, and the Council should be cautious not to put in place legislation that would provide them the ability to do so.

### **Potential for Abuse by Law Enforcement**

This legislation also has potential for abuse by law enforcement. At Legal Aid, we have worked productively with the Office of the Attorney General in the past few years to ensure that tenants are not displaced through the existing nuisance abatement process. We appreciate that the Attorney General's office has been responsive regarding the ways that this law has negatively affected our client community. However, under this proposed legislation, there is nothing to stop a future administration from inappropriately using this law to threaten to displace families as leverage in criminal prosecutions, or by attempting to evict tenants when they lack the evidence to support a criminal prosecution.

### **Potential for Abuse Within Neighborhoods**

Finally, there is significant potential for abuse of this law within neighborhoods. Many of our most vulnerable clients live in areas that are rapidly gentrifying, a process which is often accompanied by a clash of priorities and community norms between new and long-standing residents. There are several "adverse impacts," which provide the basis for a complaint under existing nuisance abatement law, that are especially concerning in this context. In particular, the law defines "adverse impact" to include "diminished real property value," "arrests of persons on or near the property," and, most troubling, "increased fear of residents to walk through or in public areas." These provisions allow for complaints on the basis of subjective perceptions of citizens, which are too often informed by stereotypes and implicit bias against racial and ethnic minority groups. As gentrification increasingly brings white and more affluent residents into District neighborhoods with historically minority populations, loosely-based "community groups" of newer residents could use this legislation to push out longstanding residents in ways that they perceive will increase property values and diminish crime, based on conscious or unconscious biases. As a city experiencing widespread gentrification and resulting displacement, we should be particularly cautious of policies that are susceptible to this kind of implicit bias.

## **EXISTING NUISANCE LAW LACKS IMPORTANT PROCEDURAL PROTECTIONS**

As compared to the Rental Housing Act, the Drug-Related Nuisance Abatement Act lacks critical procedural protections for tenants. Amending this law to provide for actions against residential tenants would make this problem even more significant by allowing for complaints to be filed directly against tenants, who are often not in a position to successfully defend against them. For this reason, Legal Aid has concerns about existing law as well as the proposed amendment. To be clear, these provisions can already directly affect tenants, most critically the remedy of injunctive relief requiring a tenant to vacate a nuisance property.

Existing nuisance law includes a number of provisions which are concerning for any consequential legal proceeding. Most notably, current law allows for the introduction of "evidence of general reputation of the property or tenants." D.C. Code § 42-3109. This not only enables the

same subjective and problematic perceptions addressed earlier, but risks punishing tenants for residing in properties with reputations for criminal activity – something that is already far more often the case for D.C.’s most vulnerable residents, who in many cases have few housing options and little control over the property as a whole. Moreover, because current law allows plaintiffs to proceed based on affidavits, defendants are deprived of the opportunity to cross-examine witnesses to have their credibility assessed by the court, typically a key component of legal proceedings. D.C. Code 42-3105. The expansiveness of the available forms of proof, coupled with a low preponderance of the evidence legal standard, heavily favors the plaintiff in such a proceeding. Finally, current law does not provide the right to a trial by jury, which a tenant or homeowner is entitled to in any suit threatening the loss of the right to possession of real property, and which tenants are afforded when sued for eviction in Landlord Tenant Court. See *Pernell v. Southall Realty*, 416 U.S. 363, 366, 369 (1974).<sup>2</sup>

### **Current Nuisance Law Provides Expansive Remedies to Plaintiffs**

Not only does current law allow for less rigorous and thus less reliable fact-finding than most court proceedings, the possible remedies available to the plaintiffs in these cases can be significant, including a court order to pay the attorney fees and costs of the plaintiff, or as proposed in this legislation, a civil penalty of up to \$10,000. Bill 22-0189 at 2. The possible remedies in current law include ordering the property be vacated, which for a tenant means losing their home. D.C. Code § 42-3110(a)(6). Not only is this a potential outcome for a tenant who does not successfully defend against a nuisance case, but it is a possibility from the beginning of the case.

Existing nuisance law authorizes the D.C. Attorney General, the United States Attorney for the District of Columbia, or a community-based organization to file suit seeking preliminary and permanent injunctive relief to enjoin or abate a nuisance. D.C. Code § 42-3102. The court may issue a preliminary injunction, including an order for a tenant or homeowner to vacate the property. *Id.* §42-3104. The law does not require the plaintiff to show irreparable harm to obtain a preliminary injunction, another example of an unusually permissive legal standard favoring a plaintiff. *Id.* This provision is particularly problematic given the serious consequences that can follow even brief displacement – a tenant who is ordered to vacate pursuant to a preliminary injunction under this law may well experience homelessness that can disrupt employment or school attendance for minor children, as well as other traumatic effects of homelessness such as higher levels of victimization in violent crimes.<sup>3</sup> Even if they ultimately prevail and are restored to their

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<sup>2</sup> Whether or not there is a right to trial by jury depends on the relief sought by the plaintiff. An action seeking monetary damages or an order for the party in possession of the home to vacate is at law, and the defendant has the right to a jury trial. See *Pernell*, 416 U.S. at 366, 369; *National Life Insurance Co. v. Silverman*, 147 U.S. App. D.C. 56, 62, 454 F.2d 899, 905 (1971); *Martin v. Howard County*, 349 Md. 469, 489 (Md. 1998).

<sup>3</sup> Meinbresse, et al., Exploring the Experiences of Violence Among Individuals Who Are Homeless Using a Consumer-Led Approach, *Violence and Victims*, Volume 29, Number 1, 2014, available at [http://www.nhchc.org/wp-content/uploads/2014/08/vv-29-1\\_ptr\\_a8\\_122-136.pdf](http://www.nhchc.org/wp-content/uploads/2014/08/vv-29-1_ptr_a8_122-136.pdf)

tenancy following trial, the effects of brief homelessness can be significant and long-lasting for families.

Low-income tenants would be particularly vulnerable if current law were expanded to include the ability to bring complaints against tenants, as they lack resources to leverage either for legal representation or to pay the fees and penalties available as remedies under the law. In the Landlord and Tenant Branch of D.C. Superior Court, where there is a robust community of legal services attorneys with expertise and same-day legal assistance available in court, fewer than ten percent of tenants are represented by counsel.<sup>4</sup> Tenants sued under the nuisance abatement law would likely be represented at an even lower rate, and many pro se tenants would be ill-equipped to assert defenses available under the law, increasing the likelihood of displacement even in cases without a strong showing of a nuisance by the plaintiff.

### **There Exist Sufficient Remedies to Address Tenants Engaged in Criminal Activity**

There are multiple District laws already enacted that provide remedies where tenants are engaging in illegal activities in rental units. Under the Rental Housing Act of 1985, tenants can be evicted for engaging in illegal activity. Under Rental Housing Act, tenants can be evicted for engaging in or allowing criminal activity as prohibited by their lease agreement or for maintaining a drug haven. Furthermore, tenants who engage in such activities may be criminally prosecuted, at which point their conviction may serve the basis of an eviction action by their landlord. These tools are significant and varied. Importantly, each of them includes critical procedural protections missing in current law and in this legislation, which ensure that residents will not be displaced from their homes without due process of law.

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<sup>4</sup> Based on internal data sampling by Legal Aid; official court data is not available.