

Testimony of

**Eric Angel
Executive Director**

And

**Rachel Rintelmann
Supervising Attorney, Housing Unit**

Legal Aid Society of the District of Columbia

**Before the Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 22-0809
"Eviction with Dignity Act of 2018"**

September 24, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony regarding Bill 22-0809, the Eviction with Dignity Act of 2018. The bill, introduced in the wake of the U.S. Marshals Services' announcement of changes to the eviction process, is intended to address a pressing concern: the need to protect the possessions of District residents who are evicted from their homes. Legal Aid will use this testimony to express our support for improvements to this bill, as well as Bill 22-0895, the Eviction Procedure Reform Emergency Amendment Act of 2018, which the Council passed in July.

Legal Aid has one of the largest eviction defense practices in the District. Between July 1, 2017 and June 30, 2018 alone, we provided full representation in eviction cases affecting 1,233 District residents. As such, we are deeply familiar with the destabilizing effect that evictions and housing instability can have on members of our client community and their families. Further, attorneys across all of our practice areas understand how difficult it is for clients and their families to rebuild their lives following the loss of housing. As this Committee is well aware, there has been a vigorous discussion over the last several years about how the District can do more to prevent eviction and ensure that members of our community who are struggling can stay

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." Legal Aid is the District's oldest and largest general civil legal services program. For more than 85 years, Legal Aid attorneys and volunteers have served tens of thousands of the District's neediest residents. Legal Aid currently works in the areas of housing, family, public benefits, consumer, immigration, and appellate law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

in their homes and communities. We are extremely appreciative of the Council’s recent focus on eviction prevention and, in particular, the enactment of the Expanding Access to Justice Act of 2017. By providing funding to legal services providers to expand the availability of eviction defense, this legislation will help avert eviction for thousands of District residents who might otherwise have lost their homes. However, our experience working with our clients tells us that it is also important to ensure that – in those (hopefully increasingly rare) instances in which individuals and families do lose their homes to eviction – our policies help position them to be able to recover. Protecting the belongings of tenants after an eviction is an important part of aiding that recovery.

In order to ensure that the District’s eviction laws help individuals and families rebuild their lives following eviction, we recommend that the Council make key changes to both Bill 22-0809 and its July emergency law. Most importantly, the Committee should preserve Bill 22-0809’s 10-day storage requirement, while amending the bill to include adequate pre-eviction notices and an off-site storage option that would allow District residents who have been evicted to store their possessions free of charge for at least 30 days at a secure location. To mitigate costs to small and nonprofit housing providers who might find it a challenge to pay for moving and storage, the Committee should establish a public funding option for these landlords. In addition, the Council should pass new emergency legislation replacing Bill 22-0895 so that improved notice, enforceability, and in-unit storage requirements can go into effect immediately.

We thank you, Chairperson Bonds, for holding a hearing today on this pressing matter and are eager to work with the Committee as it considers changes to the legislation ahead of mark-up.

Why Post-Eviction Protections Matter

As the Council considers this bill, it is important not to lose sight of an uncontroversial fact: the consequences of eviction for low-income individuals and families are devastating. Experts have detailed the range of damaging effects that eviction can have, from splitting up families, to endangering employment, to launching those who experience it into cycles of homelessness.² Because a prior eviction in a person’s rental history can make it harder for that person to rent again,³ eviction can also contribute to a pattern of housing instability,⁴ which is itself associated with increased health risks for both low-income tenants and their children.⁵ There are numerous,

² Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 91 (2012). Available at: <https://scholar.harvard.edu/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>

³ *Id.*

⁴ *See, e.g., Id.* at 118-119.

⁵ Megan Sandel, et. al., *Unstable Housing and Caregiver and Child Health in Renter*

Families, 141 Pediatrics 1, 2, 4-6 (2018). Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2018/01/18/peds.2017-2199.full.pdf>

compounding, and potentially long-term consequences to being evicted, and these consequences can make rebuilding one's life extremely challenging.

The research is consistent with what we see in our housing and other practices every day, as clients and potential clients who come to us rarely know where they will go if they lose their homes. They worry about their physical safety, interruptions to their children's education and overall wellbeing, and how they will maintain basic routines that are fundamental to their health and stability. And here in the District, there is an added worry. With our stock of low-cost housing so severely depleted,⁶ and rents for the District's lowest-income residents continuing to rise,⁷ it takes even more time and energy for low-income residents to find new housing, with no guarantee that safe and affordable housing will actually be available. While the consequences of eviction are not unique to the District, our affordable housing crisis all but ensures that the housing instability that flows from eviction will not simply be resolved in the few days after an eviction takes place.

It is critical, then, that the District's housing policies be responsive to this reality. Part of that response should certainly be "upstream" policy measures that will help prevent evictions in the first place. As the Council is aware, Legal Aid continues to support greater funding of both affordable housing⁸ and prevention programming, such as the Emergency Rental Assistance Program ("ERAP"),⁹ that will keep people in stable housing. We believe that the Council also can and should take other steps to improve the eviction process, for example by ensuring that tenants receive more than seven days' notice – the current statutory minimum – prior to their first court date. However, as long as evictions are a reality for far too many District residents every

⁶ D.C. Fiscal Policy Institute, *Going, Going, Gone: DC's Vanishing Affordable Housing* (March 2015). Available at: <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>

⁷ *E.g.*, Jeff Stein, *In Expensive Cities, Rents Fall For the Rich – But Rise For the Poor*, The Washington Post (2018). Available at:

https://www.washingtonpost.com/business/economy/in-expensive-cities-rents-fall-for-the-rich--but-rise-for-the-poor/2018/08/05/a16e5962-96a4-11e8-80e1-00e80e1fd43_story.html

⁸ *See, e.g.*, Testimony of Beth Mellen Harrison, Supervising Attorney, Legal Aid Society of the District of Columbia, Before the DC Council Committee on Housing and Neighborhood Revitalization, April 13, 2018. Available at: <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-FY19-Budget-Testimony-re-DCHD-HPTF-FINAL.pdf>. *See, also*, Testimony of Amanda Korber, Staff Attorney, Legal Aid Society of the District of Columbia, Before the DC Council Committee on Housing and Neighborhood Revitalization, April 20, 2018. Available at: <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-FY19-Budget-Testimony-re-DCHA-FINAL.pdf>

⁹ Testimony of Amanda Korber, Staff Attorney, Legal Aid Society of the District of Columbia, Before the DC Council Committee on Human Services, April 12, 2018. Available at: <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-Budget-Testimony-re-DHS-Housing-Programs-FINAL-UPDATED-4-17-2018.pdf>. We also urge this committee to work with the Committee on Human Services to look more closely at barriers that tenants encounter when they try to access ERAP. ERAP is an invaluable resource for families at risk of falling into homelessness. The Council and the Mayor should both be doing everything in their power to make it easier for tenants to access ERAP assistance in a timely manner.

year, we also need to ensure that when individuals and families do lose their housing, they are left in a position that best allows them to recover and rebuild their lives. In an environment in which eviction is still common, prevention and post-eviction protection are both important, and one cannot take the place of the other.

Protecting tenants' possessions during and after eviction can play a modest, but important role in aiding this recovery. At the most fundamental level, ensuring that tenants do not lose beds, cribs, couches, or other basic furniture in the immediate aftermath of eviction means that they do not have to figure out how to re-acquire those items later. As Matthew Desmond notes in his groundbreaking book, *Evicted*: "Families lose not only their home, school, and neighborhood but also their possessions: furniture, clothes, books. It takes a good amount of money and time to establish a home. Eviction can erase all that."¹⁰ Personal documents, which an individual or family might lose in the absence of somewhere safe to store them, are essential for accessing social safety net programs, applying for jobs, or maintaining a child's school enrollment or health care. And, given that eviction can wreak havoc on mental health,¹¹ items of great personal value are an important part of the rebuilding process as well. A tenant's possessions are more than just "stuff" – they are the foundation on which he or she rebuilds a stable life following the catastrophic loss of his or her home.

As the Council considers permanent eviction legislation, as well as updates to what it passed in July, it should ensure that such legislation contains post-eviction protections for tenants that will both mitigate the worst harms of eviction and allow tenants to recover and rebuild. We urge the Council to make improvements, as outlined below, and are eager to work with the Committee as it works toward mark-up.

Legal Aid's Recommendations

Although the process reflected in The Eviction Procedure Reform Emergency Amendment Act represents an improvement upon the old process, given the extent of the challenges individuals and families who are evicted face, it is insufficient to ensure that tenants do not lose most or all of their possessions within days of losing their homes. To provide a stronger foundation for tenants, Legal Aid recommends that the Committee mark up the Evictions with Dignity Act to include:

1. Clear and enforceable pre-eviction notice provisions.
2. The 10-day in-unit storage period currently in the Act, as introduced.
3. An off-site storage option, for at least 30 days, that is available at no cost to the tenant, following the 10-day in-unit period. The Council should allocate public funds to cover the costs of storing the tenant's belongings for small and nonprofit landlords.
4. Language that ensures that the legislation's procedures apply to all Superior Court-ordered residential evictions.

¹⁰ Matthew Desmond, *Evicted, Poverty and Profit in the American City* 296 (2017).

¹¹ See, *supra*, note 2.

These changes will reduce the number of unnecessary evictions that will occur under the new process, ensure that tenants' items remain secure even if they have nowhere to go at the time of eviction, and ultimately, make it more likely that they will be able to keep their possessions while working toward finding new housing. Public funding would ensure that the cost of moving and storage would not be a barrier to tenants keeping their possessions, while avoiding shifting the cost burden onto small or non-profit landlords who might not be in a position to cover the expense. Finally, language regarding applicability to all Superior Court-ordered residential evictions would correct a gap that exists in the emergency law currently in effect.

Following mark-up, we urge the full Council to pass new emergency legislation to allow all provisions of the permanent legislation that do not have a fiscal impact to go into effect immediately. The additional protections that we recommend are important, and low-income District residents operating under the current system should not have to wait.

The Council Should Incorporate Notice Requirements That Correct Gaps in the Current Emergency Law

While the permanent legislation currently contains no language regarding notice to tenants about the eviction process and post-eviction storage, the emergency law requires the landlord to provide the tenant with notice of the eviction 14 days prior to the date of the eviction.¹² It also specifies elements that must be included in the notice and appropriate methods of service. In marking up permanent legislation, The Committee should not adopt the emergency law's notice requirement wholesale, and instead, make much-needed improvements.

As an initial matter, given both the typical processing times for ERAP and the practical realities of housing searches, 14 days is not enough time. Since the new eviction process began last month, evictions have been happening much more quickly following the issuance of a writ. The time provided under the old process was critical for tenants, who could use it to redeem their tenancies or move out prior to eviction. But now that the US Marshals simply observe a lock change, rather than a multi-hour eviction, the process is faster and more efficient. This means that tenants have less time than ever before to seek and obtain ERAP funds, secure other housing, or make arrangements for the temporary storage of their belongings. Although we agree that the new system, in which families are given a date certain for an eviction, is an improvement over the prior system, in which tenants got at most 24 hours' notice, the expedited process may well mean that *more* evictions take place under the new system. Increasing the pre-eviction notice time to at least 21 days would provide tenants who could access ERAP or other means to redeem their tenancies the time to actually do so, while also aiding the housing search for those who cannot redeem and must prepare to leave. Increasing the notice period would result in fewer unnecessary evictions and also ensure more orderly transitions in cases in which evictions must occur.

Beyond the length of the notice period, the required elements of the notice are incomplete and unclear. For instance, though the emergency law requires the landlord to notify the tenant that the tenant's belongings will be held in the unit for seven days and then deemed abandoned, it

¹² Bill 22-0895, Eviction Procedure Reform Emergency Amendment Act. Available at: <http://lims.dccouncil.us/Legislation/B22-0895?FromSearchResults=true>

does *not* require the landlord to inform tenants that they have the right to collect those belongings, or how to go about scheduling a time to do so. This omission leaves many tenants confused and unaware that they can, in fact, collect their belongings before they are discarded. Similarly, although the law is clear on how the seven days is calculated, we have learned that in practice, landlords and even Marshals have provided incorrect information to tenants about when the seven days expires. The law should instead require the inclusion of a date certain for the expiration of those seven days in the notice, to avoid any confusion that could lead to the catastrophic loss of a tenant's belongings. The permanent legislation's notice requirements need to be as clear as possible about what tenants' rights are in the days leading up to and following an eviction. A lack of clarity will only lead to more confusion on the ground, which will be a problem for both tenants and landlords.

Further, there are no real consequences for the landlord's failure to timely serve a complete notice to the tenant. The law should make explicit that the failure to serve a complete notice at least 14 days prior to eviction is cause for delaying the eviction until such notice is served, should provide that any eviction carried out in the absence of a legally sufficient notice is unlawful, and should set forth an enforcement mechanism and remedy for tenants whose rights have been violated. Even in the limited time the law has been in effect, we have seen insufficient notices served by landlords with impunity. This, of course, can lead to disastrous results for vulnerable families facing eviction.

Finally, we are concerned that there is no requirement that tenants be provided updated notice of eviction date in the event that the lock-out is rescheduled for any reason. The notice requirement is rendered meaningless if it is not consistently applied to all eviction dates, including those that have been rescheduled due to landlord request, inclement weather, or US Marshal unavailability. These are relatively simple fixes to the emergency law's procedures, and Legal Aid would be happy to propose language addressing the concerns we have highlighted.

A Longer Storage Period, Including Both In-Unit Storage and an Off-Site Storage Option, Would Provide Critical Protections for Families Experiencing Homelessness after Eviction

The current emergency law provides for a mere seven days of storage in the rental unit after the locks are changed. During that seven-day period, tenants are allowed to access their belongings only once, for a period of eight hours. At the end of seven days, the property may be deemed abandoned and the landlord may dispose of it or sell it. This process is problematic for several reasons.

As mentioned above, the Marshals' decision to change the eviction process means that evictions are now happening much more quickly than they did under the previous process. This leaves tenants with substantially less time to identify new housing that they can afford or a location to store their possessions – something that was already difficult due to our affordable housing crisis.

This lack of time is compounded by the access limitations. Anyone who has experienced a move, especially on short notice, knows that moving an entire household in eight hours is a huge challenge. Moreover, the law does not require landlords to provide access outside of business

hours which is when many tenants – relying on friends and family who are employed fulltime – will need to move.

And, ultimately, what happens at the conclusion of those seven days is no less damaging than under the prior process. At the end of the seven days, a landlord can still remove a tenant's belongings to the curb or dumpster for bulk trash pickup, only now he or she can do so without US Marshal protection and oversight. This is no better than the prior system; it still exposes the tenant to the indignity of their personal belongings being laid out in a cruel public display of displacement. Even worse, under the Eviction Procedure Reform Emergency Amendment Act, landlords can now sell the tenant's belongings and use the proceeds to compensate themselves for debts allegedly due, even when no court has entered an order as to the amount due, or a money judgment providing the landlord the right to collect it.¹³ This is bad public policy, and legally problematic, given how inconsistent it is with longstanding law.

What all this means is that we still have a system in which low-income tenants are at substantial risk of losing all of their belongings within days of being evicted. This means that, while searching for scarce affordable housing, they will also likely be trying to replace lost furniture, clothing, and vital documents. They will have to start from scratch.

Based on our own research, conversations with homeless services providers, and discussions with advocates from other jurisdictions, we are firmly convinced that a model including off-site storage is the best and least harmful process for carrying out evictions. While there will be many families who are able to arrange for housing and storage alternatives prior to eviction, for those families experiencing a period of homelessness or significant housing instability after eviction, lack of a post-eviction storage option almost always means the loss of most or all of that family's possessions. As a practical matter, the loss of items such as furniture, clothing, and identity documents can substantially delay a family's move out of shelter and back into stable housing. Further, it is devastating to lose family photos, heirlooms, and other items of personal importance.

Specifically, we propose a system under which the tenants' belongings are stored in the unit for a period of 10 days (as currently contemplated in Bill 22-0809) to enable the tenant to collect his or her own belongings and relocate them. For tenants who are unable to secure alternative housing in the immediate aftermath of their eviction and are therefore unable to collect their belongings during the initial in-unit storage period, we propose that those belongings be moved to an off-site storage facility for a period of at least 30 days at no cost to the tenant. We are sensitive to the concerns raised this summer by small and nonprofit housing providers regarding the potential cost of paying for private offsite storage, and believe that a publicly-funded storage option for these categories of landlords is the best and most equitable way to protect the District's most vulnerable residents.

After an initial period of pre-paid off-site storage, we recommend that an evicted tenant have the option to assume, at a reasonable monthly cost, the expense of storage for however long it takes them to secure stable housing or make alternative arrangements. While this will be a challenge

¹³ *Id.*

for many low-income tenants, it would give them a further option to keep their belongings safe while they continue to search for housing.

The Law Should Apply to All Residential Evictions by Order of the Superior Court.

The Eviction Procedure Reform Emergency Amendment Act explicitly provides that evictions not taking place under the Rental Housing Act are not subject to the protections of the law. This language may inadvertently leave broad categories of evictions uncovered, and large numbers of residential tenants and other renters at risk of the immediate loss of their belongings, without the seven-day period. Families who are sued due to allegations of squatting, terminated co-op members, tenants of certain nonprofit housing providers and others do not fall under the Rental Housing Act, and are therefore arguably provided no protection under the law. Because all evictions in the District have to go through the Landlord Tenant Court process regardless of housing or case type, the Court does not make explicit findings of whether a defendant in an action is a tenant under the meaning of the Rental Housing Act. This means that after the entry of judgment, it is the landlord, not the Court, making a determination as to whether the tenant qualifies for the protections of this law. This creates a situation that is ripe for confusion and abuse.

Legal Aid opposed this language prior to the introduction of the Eviction Procedure Reform Emergency Amendment Act, and continues to have significant concerns about it now. We understood that the original intent was simply to exclude commercial tenants (an exclusion upon which we take no position), not certain categories of residential renters, and that last-minute drafting inadvertently excluded large swaths of the very families the law was intended to protect. There is simply no good reason to distinguish between categories of defendants in eviction cases, and for consistency and clarity, the law should apply equally to all individuals and families being evicted pursuant to an order of the D.C. Superior Court.

Conclusion

The change in the eviction process caused by the US Marshal Service's decision to no longer oversee the removal of tenants' belongings to the curb is, overall, a positive one, and a change that has been a long time coming. This change in process presents the Council with an opportunity to craft a system of evictions that is more in line with similar jurisdictions, and perhaps even better. Though it should always be our goal to make evictions a rare occurrence, Council should seize this opportunity to ensure that what evictions do take place cause as little injury as possible.