

**Testimony of Beth Mellen Harrison
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**Before the Committee of the Whole
Council of the District of Columbia**

Public Oversight Hearing Regarding:

**District of Columbia Auditor's Report:
"Housing Code Enforcement: A Case Study of Dahlgreen Courts"**

October 31, 2018

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (DCRA) and the issues raised in the recent report issued by the Office of the District of Columbia Auditor, "Housing Code Enforcement: A Case Study of Dahlgreen Courts".

Dahlgreen Courts is a case study that illustrates what tenants and advocates have recognized for years: DCRA fundamentally fails to pursue its mission to enforce the housing code and protect tenants. We urge the Council to take steps to adopt the legislative changes recommended by the D.C. Auditor, as well as similar reforms long advocated by tenants and advocates. These changes are critically necessary to ensure that tenants in the District are not forced to live in unsafe, unhealthy conditions, and that affordable housing is not lost through neglect.

DCRA Fundamentally Fails to Enforce the Housing Code and Protect Tenants

In past testimony, we have highlighted problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code.

The D.C. Auditor's report on Dahlgreen Courts illustrates the problem and echoes many of the concerns raised by tenants and advocates, including Legal Aid, in past testimony.

1. DCRA does not have sufficient inspectors to carry out its mission of enforcing the housing code. Director Melinda Bolling reported to the Auditor that each inspector is

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 84 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.

responsible for conducting 1,000 inspections per year, a staggering figure. As this Committee has noted, in comparable jurisdictions such as Baltimore and Boston there are three times as many residential housing inspectors as we have in the District.²

2. DCRA chooses to use its discretion to show leniency to landlords. DCRA extends timelines for landlords to abate violations; does not pursue fines and other penalties, even when ongoing violations are documented; and, in general, does not create sufficient deterrents to bring problem landlords into compliance with the housing code.³
3. Because of lax enforcement by DCRA, landlords escape fines and other penalties, despite ongoing violations. In the case of Dahlgreen Courts, DCRA cited 105 violations and issued 24 notices of violation with potential fines totaling \$36,300. Only half of these notices of violation were resolved as abated; the rest were simply left unresolved by DCRA. The only penalty the landlord faced – over seven months later – was fines totaling \$2,500 on three notices of infraction filed.⁴
4. DCRA does not calibrate its enforcement actions to target problem landlords. DCRA has discretion to levy higher, daily fines, issue notices of infraction without issuing a notice of violation first, and take other, stricter enforcement steps. DCRA chooses not to exercise this discretion, even for problem landlords with repeat violations across multiple properties.⁵
5. DCRA’s recordkeeping practices are inadequate, leaving tenants, advocates, and the Council in the dark about the agency’s enforcement track record. DCRA’s internal recordkeeping practices are wholly inadequate, resulting in incomplete, inaccessible, and inconsistent information about enforcement – both in individual cases and globally across the agency. Individual tenants do not have access to current information on enforcement actions covering their units. The key performance indicators tracked by DCRA and reported publicly for residential housing inspections do not track how long complaints take to resolve through abatement or how many enforcement cases are brought and with what result. DCRA also lacks basic information on which landlords or properties have problematic records and should be targeted for enforcement.⁶

While the Auditor’s report focuses on the current state of enforcement at DCRA and the leadership of current Director Melinda Bolling, it is important to note that the problems identified by the Auditor have been ongoing for years. It has been over ten years since the Washington Post’s investigative series on the systemic failures in DCRA’s rental housing inspection program, including a near total failure to cite violations or assess or collect fines against landlords. The Post’s conclusions were based on a review of thousands of court records and agency documents. DCRA Director Linda Argo responded at the time by assuring the public

² Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* 5 (Sept. 24, 2018).

³ *Id.* at 12-20.

⁴ *Id.* at 9.

⁵ *Id.* at 18-21.

⁶ *Id.* at 6, 21-27.

that the agency would provide more training to employees and develop a system to better track inspections and re-inspections.⁷

In the decade that has followed, Legal Aid, other providers, and the Council itself have repeatedly sought data from DCRA to demonstrate that it has righted its enforcement approach, to no avail. Legal Aid continues to see far too many cases in which DCRA fails to cite landlords for violations, perform necessary re-inspections, assess fines, or collect fines, leaving tenants living in unsafe and unhealthy conditions. Through multiple directors, DCRA continues to come up short at every step in the enforcement process.

We believe that a comprehensive approach to reforming housing code enforcement in the District is needed to fully address these problems, including establishment of an independent rental housing inspections agency. Legal Aid supports moving rental housing inspections out of DCRA altogether, as envisioned by B22-669, the Department of Buildings Establishment Act. We have urged the Council to go even further, by either creating an independent agency focused exclusively on rental housing, or amending that bill to ensure that the Department of Buildings' rental housing unit engages in robust inspections and enforcement efforts and does not simply replicate the current problems at DCRA.

The Council Should Adopt Legislative Changes Recommended by the Auditor

The D.C. Auditor issued a set of 21 specific recommendations for Council action to improve enforcement of housing code violations.⁸ Legal Aid endorses these recommendations and believes further steps are needed to ensure that tenants in the District can live in safe, healthy housing, and that the District government is able to identify and take action against landlords who fail to maintain their housing to the standards of the housing code. Many of the elements described below already are before the Council in various pending bills.⁹ Legal Aid supports combining these and other recommendations outlined below into a comprehensive, omnibus bill.

1. The Council should mandate tighter enforcement timelines and stricter procedures for DCRA to follow. Narrowing DCRA's enforcement discretion is necessary because of the agency's systematic failure over a period of many years and under many directors to exercise its discretion appropriately. Legislation with tighter enforcement timeframes and stricter procedures for enforcement, with only narrow exceptions requiring documentation, will help address these concerns. Rather than requiring DCRA to adopt regulations – as the Auditor recommends – Legal Aid supports codifying these requirements by statute.

⁷ Debbie Cenziper & Sarah Cohen, A Failure in Enforcement, Washington Post, Mar. 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/10/AR2008031003193.html>.

⁸ *Housing Code Enforcement: A Case Study of Dahlgreen Courts*, *supra*, at 46-52.

⁹ This includes Bill 22-381, the Landlord Transparency Amendment Act, Bill 22-396, the Property Manager Licensing Amendment Act, Bill 22-573, the Slumlord Deterrence Amendment Act, Bill 22-596, Housing Rehabilitation Incentives Regulation Amendment Act, Bill 22-615, the Housing Code Enforcement Integrity Amendment Act, and Bill 22-905, the Real Estate Transparency Amendment Act.

More specifically, violation notices should be served by means other than mail to accomplish service on landlords quickly; properties with 30-day violation notices should be re-inspected 30 days later; extensions should be granted to landlords rarely and only upon documentation of specific, exceptional circumstances; criteria should be established for DCRA to bypass the notice of violation stage and proceed directly to issuing a notice of infraction with fines (e.g. for problem landlords); and properties with unabated violations at re-inspection should be referred for enforcement within a short period, such as 10 days.

2. The Council should require DCRA to publish information online on problem landlords. The Public Advocate for the City of New York publishes online a list of the 100 worst landlords based on open violation citations.¹⁰ DCRA should adopt a similar model to publicize information about the worst landlord offenders. This will help educate prospective tenants and allow DCRA, the Attorney General's office, and private advocates to target their resources on problem landlords.
3. The Council should create other reporting requirements for DCRA, including both disclosure to individual tenants about ongoing enforcement and disclosure to the Council and the public about DCRA's enforcement track record. Individual tenants who are able to obtain a DCRA inspection often do not have access to information about ongoing enforcement for violations cited. DCRA should make this information available online through the Property Information Verification System (PIVS) or some other online portal. PIVS also should be improved to allow tenants and advocates to search for information about particular properties or landlords, including ongoing and past enforcement actions. Finally, the Council should mandate new reporting requirements for DCRA to publish information about its enforcement track record.
4. The Council should increase penalties for landlords with unabated housing code violations, particularly repeat offenders. The Council should increase fines across the board, with even higher fines for repeat offenders. The Council also should mandate that problem landlords meeting certain criteria receive the full penalty of daily fines, which DCRA currently does not assess. The Council also should adopt other penalties for landlords with unabated violations, such as removing their basic business license, barring such landlords from evicting tenants until they come into compliance, and preventing such landlords from receiving new financial support from the District.
5. The Council should require corporate landlords to disclose ownership interests, so that DCRA, the Attorney General, and tenants and advocates can track problem landlords. Many landlords in the District hide behind single-purpose LLCs or other corporate structures, making it difficult for DCRA, the Attorney General, and tenants and advocates to understand how different ownership entities are related and to spot trends. New legislation should require all owners obtaining a housing business license to disclose this information, and DCRA should then make the information publicly available.

¹⁰ See <https://advocate.nyc.gov/landlord-watchlist/worst-landlords>.

The Council Should Consider Other Steps to Improve Enforcement of Housing Code Violations, Including the Creation of an Independent, Rental Housing Inspection Agency.

While the above steps will move DCRA in the right direction, more action is needed. At the end of the day, Legal Aid believes that many of DCRA's challenges with respect to rental housing inspections stem from a broken agency culture. DCRA does not have a clear sense of mission to enforce the housing code, and it brings neither a public health nor strategic perspective to its work. The focus of DCRA's overall mission is business development and regulation, and far too often it appears that landlord interests are trumping tenant interests in the realm of rental housing inspections. There are numerous steps DCRA could take to improve its inspections process and enforcement process. But without a transformation in agency mission and culture, we fear that real change never will be realized, and tenants throughout the District will continue to live in unsafe conditions.

Legal Aid has come to a similar conclusion as the many members of the Council who signed onto the Department of Buildings Establishment Act: the wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. However, Legal Aid suggests that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement. Should the Council choose to proceed with the current framework for a Department of Buildings, as envisioned in Bill 22-669, it should ensure that the Department's structure and procedures will lead to an effective inspections and enforcement regime. Legal Aid provided more detailed comments on how a new agency should be structured in our April 2018 testimony on Bill 22-669.¹¹

The Council also should consider more comprehensive legislation to improve enforcement by enacting the following recommendations, supported by Legal Aid and other advocates:

- Inspectors should be trained and licensed to cite for mold, lead, and asbestos, so that tenants do not need to contact multiple agencies to obtain redress for safety issues in their units.
- The agency should expand the use of the nuisance abatement fund to summarily correct substantial violations that landlords fail to fix and place liens on properties to recoup the cost.
- Legislation should clarify that DCRA has jurisdiction over and must inspect all residential housing in the District, including subsidized units.
- The agency should strategically target bad actor landlords in coordination with the Office of the Attorney General.

¹¹ Written Testimony before the Committee of the Whole Council of the District of Columbia, Public Hearing Regarding Bill 22-0669 "Department of Buildings Establishment Act of 2018", <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-Testimony-re-B22-0669-FINAL.pdf>.

- The agency should assign inspectors to the Landlord and Tenant Branch, similar to what currently occurs in the Housing Conditions Calendar, to make inspections readily accessible to those who need them and provide court oversight of needed repairs.
- The proactive inspections process should be formalized and strengthened:
 - Agency inspectors, not contractors, should continue to perform proactive inspections.
 - All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.
 - The agency should prioritize buildings with “risk factors,” such as a certain number of violations found during complaint inspections during a certain period, for targeted proactive inspections.
 - The agency should ensure that proactive inspectors visit a substantial percentage of units in every building, varying based on building size (i.e., at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 50 units, etc.).
 - A “pass” on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.
 - The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period.

Conclusion

Thank you for this opportunity to share our thoughts on the Auditor’s report on DCRA and the need for fundamental agency reform. We are eager to continue working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.