

**Testimony of Beth Mellen Harrison  
Supervising Attorney, Housing Law Unit  
Legal Aid Society of the District of Columbia**

**Before the Committee of the Whole  
Council of the District of Columbia**

**Public Oversight Hearing Regarding:**

**“The Department of Consumer & Regulatory Affairs:  
What Issues Should the Committee Pursue?”**

**February 6, 2019**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (“DCRA”) and the issues this Committee should pursue in its oversight of the agency, as well as in considering possible legislative reform.

Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many of these tenants are living in substandard conditions, in homes with serious housing code violations that threaten the health and safety of their families. The failure of DCRA to enforce the housing code and protect tenants is an issue of critical importance to our client community.

**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.

Many of the concerns raised by tenants and advocates in past testimony before this Committee, including by Legal Aid, were confirmed in a recent report by the D.C. Auditor:<sup>2</sup>

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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 87 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.

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

- DCRA does not have sufficient inspectors to carry out its mission of enforcing the housing code.
- DCRA chooses to use its discretion to show leniency to landlords.
- Because of lax enforcement by DCRA, landlords escape fines and other penalties, despite ongoing violations.
- DCRA does not calibrate its enforcement actions to target problem landlords.
- DCRA's recordkeeping practices are inadequate, leaving tenants, advocates, and the Council in the dark about the agency's enforcement track record.

While the Auditor's report focuses on the current state of enforcement at DCRA and the leadership of recently-departed 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's Director at the time, Linda Argo, responded by assuring the public that the agency would provide more training to employees and develop a system to better track inspections and re-inspections.<sup>3</sup>

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.

In addition to the issues identified above, we recommend that the Committee focus on the following ongoing challenges at DCRA:

- DCRA's proactive inspections program is not effective and continues to pass buildings where significant housing code violations exist.
- DCRA does not effectively prioritize its use of the Nuisance Abatement Fund to focus on particularly egregious health and safety violations and/or cases where use of the Fund can prevent imminent displacement of tenants or preserve affordable units.

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<sup>3</sup> 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>.

- DCRA’s failure to inspect or cite for mold leaves far too many tenants without options to force their landlords to make repairs.

### **Legal Aid Has Yet to See Improvements in DCRA’s Performance**

DCRA has reported to this Committee that it has made or is in the process of making various changes to its policies and procedures with respect to residential housing inspections. We appreciate the agency’s efforts to make changes. We also look forward to working with Interim Director Ernest Chrappah on the issues outlined in our testimony. Unfortunately, we have not yet seen improvements in DCRA’s performance.

Tenants still do not have access to basic information about enforcement actions being taken by DCRA regarding their own units. DCRA launched PIVS 2.0, its updated online public portal, to much fanfare last year. But in our experience, the system continues to contain inaccurate information. Moreover, even the upgraded interface does not provide access to inspection reports or enforcement documents and does not tell a tenant where a case is in the enforcement process.

During the past year, Legal Aid has represented a tenant at Oak Hill Apartments, part of the Sanford Capital portfolio. Our client works full-time in the District and lives in the unit with his partner and their children. DCRA inspected his unit in late 2016 and issued a notice citing multiple violations. His unit should have been re-inspected in 2017, as part of DCRA’s review of the entire Sanford portfolio.

In looking up his building in PIVS, however, no records appear. Our client also has not had any contact with DCRA since the inspections of his unit. He does not know if DCRA issued a notice of infraction, issued or collected fines, or otherwise took any enforcement actions. He does not know if DCRA found violations in any of his neighbors’ units. What he does know is that two years later, his unit continued to have dozens of serious housing code violations, including the same issues cited by DCRA in 2016. Among the more serious issues, his unit had an unabated roach infestation, water damage from multiple floods, insecure front and balcony doors, and insufficient heat.

Thankfully, this tenant came to Legal Aid for help. We were able to negotiate with the receiver for the property for comprehensive repairs to be performed on his unit. Without our intervention, however, this tenant and his family would still be living in unsafe, unhealthy conditions.

Legal Aid currently is working with one such multifamily rental property in Columbia Heights. This fall, a Legal Aid inspector visited over twenty units in the building (representing over two-thirds of the property) and found hundreds of potential housing code violations, including issues such as water damage to ceilings and walls, roach and mice infestation, and entry doors that are not secure. Two months later, this same property passed a proactive inspection with DCRA. We are in the process of following up with these tenants but do not believe that the owner has yet completed the level of repairs that would be needed to address the violations found by our inspector.

## **This Committee Should Move Forward with the Department of Buildings Establishment Act – and Should Strengthen the Proposal**

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 B23-0091, the Department of Buildings Establishment Act, and believes the Act should go even further.

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 23-0091, 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 the previously-introduced version of the Department of Buildings Establishment Act, Bill 22-0669.<sup>4</sup>

## **The Council Should Adopt Legislative Changes Recommended by the Auditor**

In its recent report, the D.C. Auditor issued a set of 21 specific recommendations for Council action to improve enforcement of housing code violations.<sup>5</sup> 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. Some of these recommendations were addressed in the Department of Consumer and Regulatory

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<sup>4</sup> 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>.

<sup>5</sup> *Housing Code Enforcement: A Case Study of Dahlgreen Courts*, *supra*, at 46-52.

Affairs Omnibus Amendment Act, Bill 22-0317. Legal Aid supports combining the recommendations that remain and other proposals outlined below into a comprehensive, omnibus bill to be enacted during this Council period.

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.

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; 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.<sup>6</sup> DCRA should adopt a similar model to publicize information about the worst landlord offenders. This will help educate prospective tenants and allow DCRA, the Office of the Attorney General, and private advocates to target their resources on problem landlords.
3. The Council should create other reporting requirements, including disclosure about individual cases and about the agency's enforcement track record. DCRA should improve its Property Information Verification System (PIVS) to provide more information about ongoing enforcement actions, to allow searches by owner across different properties, and to provide access to underlying documents such as notices of violation and notices of infraction. The Council also 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.

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<sup>6</sup> See <https://advocate.nyc.gov/landlord-watchlist/worst-landlords>.

## **The Council Should Consider Other Steps to Improve Enforcement of Housing Code Violations**

The Council also should consider 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. (We support the Indoor Mold Remediation Enforcement Amendment Act of 2019, introduced yesterday, which would require DCRA inspectors to be licensed in mold assessment and remediation.)
- The agency should expand and improve 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:
  - The Fund should be governed by a set of criteria prioritizing its use, for example giving weight to the tenants' circumstances, the severity of the violations in terms of tenant health and safety, and the potential loss of affordable units if violations are not corrected, including termination of any applicable housing subsidies;
  - Use of the Fund should be required in certain particularly egregious circumstances, for example where violations pose a health and safety risk, the landlord has ignored multiple notices of such violations, and the property faces a risk of condemnation or loss of federal housing subsidies; and
  - Tenants should be allowed to submit information requesting that the Fund be used to correct particular violations, and DCRA should be required to investigate these requests to determine if the Fund should be used for those purposes.
- Legislation should clarify that DCRA has jurisdiction over and must inspect all residential housing in the District, including subsidized units.
- 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 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 performance of 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.