

**Testimony of Eleni P. Christidis
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**Before the Committee of the Whole and the Committee on Health
Council of the District of Columbia**

Public Hearing Regarding:

**B23-0045
“Bedbug Control Act of 2019”**

December 19, 2019

The Legal Aid Society of the District of Columbia¹ supports the introduction of the Bedbug Control Act of 2019, to the extent that it imposes affirmative requirements on all landlords to disclose, quickly treat, and proactively inspect rental units for bedbug infestations. The bill could do more, however, to inform and empower tenants and to ensure that the Department of Consumer & Regulatory Affairs (DCRA) plays an active role in the elimination of infestations through effective monitoring and enforcement. Legal Aid also recommends that the final version of any bill broaden the availability of financial assistance for bedbug remediation to low-income tenants and low-income homeowners.

Despite the bill’s potential, Legal Aid is concerned that, as currently drafted, it imposes broad new legal obligations on private homeowners, including homeowners who are not in a landlord-tenant relationship, that will disproportionately impact low-income homeowners and homeowners of color. These new obligations and the associated risk of fines or litigation could result in foreclosure, displacement, and accelerated gentrification in the most intensely gentrifying city in the United States.² For these reasons, Legal Aid urges the Committee to convene a working group of stakeholders to develop amendments to the bill to make it more

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 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, immigration, and consumer protection. We also help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² National Community Reinvestment Coalition, *Shifting Neighborhoods; Gentrifications and cultural displacement in American cities* (March 19, 2019).

aligned to the goal of promoting healthy housing *without* the unintended consequence of displacing low-income D.C. residents.

No One Should Lose Their Home Because of Bedbugs

Legal Aid routinely represents tenants who live with the extreme discomfort and stress of a bedbug infestation that their landlord has failed or refused to remedy. Worse still, Legal Aid has represented tenants who have faced eviction or the loss of a vital housing subsidy, or who have been forced to move because of issues stemming from a bedbug infestation. A person should never be placed at risk of becoming homeless or be forced to move because of bedbugs. More than other types of infestation, landlords often view bedbugs as the fault or responsibility of tenants, a view that is misguided and harmful. When a former Legal Aid client noticed bedbugs in her unit and immediately called her landlord, her landlord immediately began speculating as to how the tenant could have brought the bedbugs home, instead of taking immediate corrective action. Only after the tenant called DCRA did the landlord finally arrange for the unit to be treated. Even so, this tenant ultimately felt she had no choice but to move because of the landlord's lack of effective treatment of a building-wide bedbug infestation.

Bill 23-0045 sends a strong message to landlords that they must do more to effectively treat and prevent the spread of bedbugs. Even so, we believe the bill should be amended to better address the most common barriers that tenants face when their homes are infested with bedbugs. In our experience, these often include the following:

- Tenants may not know it is their landlord's responsibility to remediate a bedbug infestation.
- Tenants may not know they have the right to request a DCRA inspection.
- Tenants may not immediately realize that a unit in their building is infested and that the tenant should be monitoring any potential infestation in their own home.
- Tenants may not have the ability or resources to prepare for a bedbug treatment. For example, they may not be able to purchase appropriate temporary storage, may not have easy access to laundry facilities, or may not be otherwise able to store, remove, or replace any infested personal belongings.
- Tenants may feel embarrassed or ashamed to report a bedbug infestation.
- Tenants may fear retaliation from their landlord or neighbors if they report they have bedbugs.

To overcome these barriers, this bill should do more to ensure that tenants are informed of their rights, make more resources available to tenants, and make sure DCRA takes steps to enforce the law effectively.

While we want to ensure that the bill is sufficiently protective of tenants, however, there is another concern. Legal Aid also represents low-income homeowners facing foreclosure and many of these homeowners are long-time D.C. residents, low-income, and/or people of color. The homeowners who could be potentially impacted by this bill include seniors, people with fixed incomes, persons with disabilities, retirees, veterans, immigrants, and returning residents.

As currently drafted, the bill creates an unprecedented, broad, and vaguely defined legal duty for *all* property owners— not just landlords— to keep their property “free from infestations of bedbugs or other insects” and to implement “continuous eradication measures” whenever there is an infestation. Under the proposed legislation, those who are unable to comply with these new duties could face fines by DCRA; homeowners who cannot pay the fines could lose their home in a tax foreclosure of their property.

Making funds available to income-eligible homeowners will not solve this problem. Under the current version of the bill, any aggrieved person could argue that a property owner violated the law if that person’s home became infested with bedbugs. This could result in private litigation that would disproportionately impact low-income homeowners, who may not be able to afford an attorney or any resulting damage award if they were sued.

For these reasons, Legal Aid urges the Committee to narrow the scope of any new duty to keep properties free from bedbugs to cover *only* landlord-tenant relationships.

Disclosures and Reporting Requirements Should Encourage, Not Punish, the Reporting of Infestations

Tenants, landlords, and the public at large have a shared interest in the accurate and timely reporting of bedbug infestations when they occur. However, if landlords or tenants fear they will be punished, stigmatized, or otherwise put at risk if they report a bedbug infestation, they may decide it is not worth it. To promote reporting, the bill’s enforcement mechanisms should avoid unintentionally punishing or shaming landlords and tenants who do report infestations.

As currently drafted, the bill requires landlords to inform new and current tenants of the history of bedbug infestations in a dwelling for the past year.³ Legal Aid supports this initial disclosure to prospective tenants, in addition to a requirement that landlords not offer for rent a unit that the landlord knows or reasonably should know to contain bedbugs. Both are necessary—the former to fully inform prospective tenants, and the latter to protect tenants whose landlords do not properly disclose a prior infestation.

When infestations do occur in the course of a tenancy, however, we believe prompt notification and action by the landlord is preferable to annual reporting requirements. While some tenants may want access to annual infestation information, simply knowing about an infestation months after it has occurred does little to protect tenants. This is particularly true where the past infestation was treated professionally and subsequently eliminated. If landlords must annually report all infestations, regardless of whether they were effectively treated, they may feel as if they are being punished for something that is not necessarily their fault. The desire to avoid reportable incidents may translate into stricter lease requirements on tenants or retaliation (in the

³ Under existing law, landlords must disclose to any prospective tenant all housing code violation reports issued by DCRA for the past 12 months, as well as any prior violations which have yet to be abated. *See* D.C. Code § 42-3502.22(b)(1)(F).

form of an eviction suit or other adverse actions) against tenants who report or experience an infestation.

A more effective way to promote accurate reporting is to create incentives for tenants to report infestations when they occur. To avoid the appearance or effect of shaming or punishing landlords or tenants at properties where infestations occur, the bill should remove the annual reporting requirement.⁴ Instead, the bill should place a greater emphasis on informing tenants of their rights and providing timely technical and financial assistance to tenants who experience an infestation.

The Bill Should Require Landlords to Inform All Tenants of Their Rights and of Available Resources on an Annual Basis

The bill currently requires landlords to either publicly post or provide tenants with a notice about bedbug “prevention, detection, and removal.” As drafted, the bill requires landlords who provide this notice to tenants to do so at the commencement of and “upon renewal” of the tenant’s lease.

Firstly, and most critically, to actually encourage tenants to report infestations when they occur, any notice provided by a landlord must include more than just information about bedbug “prevention, detection, and removal.” The notice should clearly inform tenants of their rights and of resources available to help them.⁵ The notice should clearly state that it is the landlord’s duty to remediate a bedbug infestation. It should inform tenants that it is illegal for a landlord to retaliate against them for reporting an infestation (or other potential housing code violations). It should explain how to contact DCRA to request an inspection and how to apply for resources and financial assistance for eligible tenants. Finally, it should include contact information for organizations who represent and advocate for tenants.

Notices with the above information that are *actually delivered* to a resident’s home are much more likely to be read than a notice posted in a common area. Posted notices are often too small to read and can be easily ignored. For this reason, the bill should require that annual informational notices be delivered to each tenant, in addition to publicly posting such notice.

Furthermore, annually notifying all tenants, regardless of the status of their lease, will be more effective at promoting awareness and will be much easier for DCRA to administer and enforce. Many leases in the District are entered into for an initial one-year term, after which the lease automatically converts to a month-to-month lease. For tenants in this type of tenancy, there is no

⁴ If the Committee keeps the reporting requirement as drafted, it should clarify what is meant by “[t]he *number* of dwelling units” in Section 5(a)(2)-(3) (emphasis added). It is not clear whether “number” refers to the quantity of affected units or to an individual unit number (e.g., Unit 202). Identifying infested units by their unit number invades tenants’ privacy and unfairly stigmatizes anyone residing in those units.

⁵ For this reason, the notice should be provided in English and in Spanish, with prominent information about how to receive translation of the notice into other languages.

clear “lease renewal” date. Requiring landlords to provide notices on an annual basis, irrespective of the status of a tenant’s lease, will be easier for landlords and for DCRA to keep track of and will routinely inform as many tenants as possible.

The Council Should Provide Assistance for Bedbug Remediation to District Residents Who Need Help Preparing for Treatment

Even for tenants whose landlords provide prompt bedbug treatment, thorough remediation of the infestation will often require tenants to temporarily store their belongings in plastic bags, to thoroughly wash or dry all their clothing, or to encase their mattress in a special cover. In addition, some pest control companies may request or recommend that tenants discard infested belongings or furniture, requiring tenants to spend money on replacement items.

Tenants with disabilities and low-income households face real barriers and risks when they must unexpectedly perform these tasks and incur these costs. If a tenant cannot do all that is required to prepare for a treatment or simply cannot afford to purchase these items, they may not report an infestation at all, or may find themselves at risk of eviction for “failing to cooperate” with a landlord’s remediation efforts. This outcome benefits no one. For this reason, the bill should include legal protections for individuals with disabilities and financial assistance for low-income renters.

The Bill Should Make Clear That Landlords are Required to Provide Reasonable Accommodations for Tenants with Disabilities.

Legal Aid has represented clients with physical and mental disabilities who were not able to fully prepare for a bedbug treatment without additional assistance. Some of these tenants have been sued for eviction or faced termination of their housing subsidy for this so-called “failure to cooperate” with bedbug remediation. To prevent displacement of tenants who need additional help preparing for treatment because of a disability, the bill should be clear that landlords are required to provide reasonable accommodations for these tenants—whether in the form of additional time or assistance with storage, cleaning, and removal, or in the provision of supplies, cleaning, or moving assistance. While both local and federal law already require landlords to provide reasonable accommodations to tenants with disabilities, restating this requirement in the context of preparation for bedbug extermination would be a helpful clarification.

The Bill Should Provide Financial Assistance to Residents Who are Low-Income.

The bill currently establishes a Remediation Assistance Fund to provide grants for District *homeowners* with incomes between 50% to 80% of the area median income. Money from this fund should be also made available to *tenants* and, to ensure funds are targeted to households that need it most, eligibility should be limited to both homeowners and tenants with household incomes up to 60% of the area median income.⁶ Furthermore, the percentage of assistance

⁶ Lowering the current upper income threshold for eligible homeowners from 80% to 60% AMI would better target assistance to those who are most likely to experience a financial hardship in

should not be capped at 60% of costs but should be available to cover all costs, depending on need.

For tenants, Remediation Assistance Funds could go toward things like the purchase of plastic bags or mattress covers; the removal, storage, or replacement of personal belongings; and laundry costs. These costs are more likely to be prohibitive for the lowest-income tenants. Removing this financial barrier will therefore greatly incentivize reporting bedbugs to DCRA or another District agency and will minimize the spread of infestations and the displacement of tenants.

The Council also should strongly consider streamlining the grant process to quickly provide low-income residents with resources to immediately prepare for or conduct a bedbug treatment. For instance, in place of a grant, residents who receive certain forms of public benefits, such as TANF, Food Stamps, or Medicaid/DC Alliance could be automatically qualified and referred to an agency for help. One or more DC agencies could receive funding to provide eligible residents with plastic bags, mattress covers, cleaning services, or replacement essentials.

DCRA's Enforcement Process Should Include Alerting Nearby Units to the Infestation and Performing Follow-Up Inspections Until Remediation is Complete

The bill should require more immediate follow-up action on the part of DCRA once an infestation is detected. While the bill is right to place the primary responsibility for inspections on landlords, more could be accomplished, and more reliably, if DCRA were required to take immediate steps once an infestation is detected.⁷

For instance, upon discovering an infestation, the DCRA inspector should be required to immediately inform any on-site property management staff. A follow-up inspection should be automatically scheduled to gauge whether treatment(s) have been performed and, if necessary, to impose fines. The inspector also should provide notices to units that share a wall, floor, or ceiling with the infested unit, informing those households that they may be affected. In addition to basic information about bedbugs, the notices should encourage tenants to report any infestation by explaining that it is the landlord's obligation to treat for bedbugs; that landlord retaliation for reporting bedbugs is illegal; that a tenant may request a DCRA inspection; and where tenants can go for help, financial assistance, or legal representation.

paying for bedbug treatment. The Council could also consider making assistance available on a sliding scale between 0% and 100%, based on need.

⁷ Legal Aid has testified before the Council about systemic problems within DCRA and our recommendation that the housing inspection and enforcement duties of DCRA be removed to a specialized division within the proposed Department of Buildings. Our recommendations with respect to the Bedbug Control Act apply equally to whichever entity is ultimately charged with performing housing inspections and enforcing housing code violations.

Because of how easily bedbugs spread, DCRA should categorize bedbug infestations as an enforcement priority. Subsequent inspections and enforcement steps should be automatically scheduled to take place within a matter of days, and DCRA should actively monitor the open case until it can confirm the infestation is actually abated.

As drafted, the bill requires quarterly inspections of properties where three infestations have occurred within two years for twelve months *after* the bedbugs have been exterminated. While Legal Aid supports proactive DCRA inspections, particularly of properties where landlords routinely or repeatedly fail housing inspections, the quarterly inspection requirement seems unduly burdensome and less calculated to achieve DCRA's enforcement goals in this particular instance. Past bedbug infestations, if effectively treated, should not be an indication of a greater likelihood of future infestations, and residents should not be subject to unnecessary and invasive inspections. With respect to bedbugs, DCRA's resources would be better spent in ensuring intense monitoring in the period immediately following detection of bedbugs (with a scheduled follow-up a month or two later) to ensure that an infestation is quickly and completely treated and contained.

In addition, Legal Aid is concerned that the bill appears to give DCRA the authority to enter privately-owned homes and tenant-occupied rental units based on an exterminator's affidavit and "documented evidence" of three infestations within a two-year period. This section of the bill is not clear as to what this authority entails. It doesn't explain what, if any, steps DCRA must take *prior* to entering a home that is allegedly infested, or whether DCRA would need a court order if a resident did not consent to an inspection. Legal Aid is concerned that this section of the bill thrusts the D.C. government into the role of enforcing private disputes between neighbors, who do not share the same duties to one another that landlords have towards their tenants. The public interest is better served if DCRA's role is focused on enforcing the housing regulations within rental units and promptly responding to infestations as soon as they occur.

Conclusion

Legal Aid appreciates the opportunity to provide these recommendations on the Bedbug Control Act. We request that, before the Committee moves forward with this legislation, it convene a working group of stakeholders to brainstorm the best way to address bedbugs as a public health issue without intentionally displacing low-income D.C. residents. We look forward to collaborating with the Committee, the Council, and other stakeholders to ensure that all D.C. residents enjoy the right to safe, stable, and healthy housing.