

**Testimony of Beth Mellen Harrison
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**Before the Committee on Housing & Neighborhood Revitalization
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0394

“Tenant and Homeowner Accountability and Protection Amendment Act of 2019”

January 28, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony in support of Bill 23-0394, the Tenant and Homeowner Accountability and Protection Amendment Act of 2019, which contains various provisions to strengthen the District’s enforcement of the housing code against landlords who force their tenants to live in unsafe and unhealthy conditions.

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. Lack of compliance by landlords and underenforcement by the District government both contribute to this public health challenge. Legal Aid recommends the Council respond on two tracks, with fundamental agency transformation at the Department of Consumer & Regulatory Affairs (DCRA) and with comprehensive reform to the compliance and enforcement structure governing landlords. Bill 23-0394 contains provisions that are necessary pieces of a new housing code compliance and enforcement strategy for the District.

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 oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and 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.

Far Too Many Tenants in the District Continue to Live in Unsafe and Unhealthy Conditions and Are Unable to Enforce Their Rights

The vast majority of tenants who come to Legal Aid seeking assistance are living with poor housing conditions. Our legal assistants conduct hundreds of home visits and inspections each year. Their reports back confirm conditions such as lack of heat, lack of utilities, defective appliances, infestation, leaks and water damage, mold, defective wiring, holes in walls and ceilings, defective door locks, and windows and doors that do not keep out the elements. Recent enforcement actions by the Office of Attorney General have confirmed numerous code violations at properties owned by slumlords. Legal Aid has represented tenants at many of these properties, including Terrace Manor (owned by Sanford Capital)², Oak Hill (Sanford Capital), Bennington Road and Astor Place (Mehrddad Valibeigi/ Bennington Corporation and Astor Limited Partnership),³ and Forest Ridge/The Vistas (Joe Kisha/Vista Ridge Limited Partnership)⁴.

Tenants living with housing code violations may choose to call on the government for help, but for reasons discussed below, public enforcement of the housing code outside of these large-scale lawsuits often fails. Private enforcement has its own challenges. Taking a landlord to court is difficult, if not impossible, without the help of an attorney, and the overwhelming majority of low-income tenants cannot get access to free legal services. Tenants in the District have the option of suing their landlord to get a court order for repairs in the Housing Conditions Calendar of D.C. Superior Court or withholding their rent and defending against an eviction case in the Landlord and Tenant Branch. The recently-released report by the D.C. Access to Justice Commission, *Delivering Justice*, finds that 75 percent of tenants in Housing Conditions cases and 88 percent of tenants in Landlord Tenant cases are unrepresented.⁵

Ensuring that tenants facing eviction can raise habitability defenses should be one area of focus. Based on Legal Aid's experience representing hundreds of tenants each year facing eviction, we believe the overwhelming majority of tenants sued for nonpayment of rent are living in unsafe and unhealthy conditions that violate the housing code.⁶ Studies from other jurisdictions support

² *District of Columbia v. Terrace Manor, LLC*, 2016 CA 7767 (23rd Street & Savannah Street, SE).

³ *District of Columbia v. Bennington Corporation*, 2018 CA 007253 B (4559 – 4569 Benning Rd SE; 4480 C Street SE); *District of Columbia v. Astor Limited Partnership*, 2019 CA 001845 B (5058 Astor Pl SE).

⁴ *District of Columbia v. Vista Ridge Limited Partnership*, 2018 CA 007285 B (Forest Ridge and the Vistas).

⁵ D.C. Access to Justice Comm'n, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* 4 (Dec. 2019) (2017 figures), available at https://www.dcaccesstojustice.org/assets/pdf/Delivering_Justice_2019.pdf. The figure for the Landlord and Tenant Branch is for designated parties.

⁶ Since 2007, Legal Aid has operated an office sited in the Landlord and Tenant Branch of D.C. Superior Court to provide same-day and extended representation to low-income tenants facing eviction. Through this office and our intakes sites in NW and SE, we meet with hundreds of tenants each year who are facing eviction, and we are able to provide advice, brief services, and/or limited and extended representation to most of them.

this, with a study of rent court in Baltimore finding that 78 percent of tenants facing eviction had at least one serious health or safety violation in their home and 72 percent already had reported the problem to their landlord.⁷ Unfortunately, the overwhelming majority of tenants in the District facing eviction remain unrepresented, and far too often these tenants fail to raise defenses or obtain needed repairs. Data analysis by Legal Aid shows that approximately 42 percent of cases end with a consent or confessed judgment, which rarely contain any repairs, and another 33 percent end with a default judgment with no repairs.⁸

The District Needs Both Fundamental Agency Transformation and Stronger Compliance and Enforcement Tools to Address Housing Code Violators

In past testimony, Legal Aid has shared problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles and delays in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, DCRA 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.

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. The wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. 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 to create a separate, independent, tenant-focused agency responsible for rental housing inspections and other functions related to housing code compliance and enforcement.⁹

Legal Aid also believes that, wherever housing code enforcement activities are housed, other changes are needed to ensure that tenant health and safety are protected and that landlords actually comply with the law. Legal Aid long has recommended five proposals now before the Committee in Bill 23-0394:

⁷ Public Justice Center, *Justice Diverted: How Renters are Processed in the Baltimore City Rent Court 14-15* (Dec. 2015), available at <https://www.abell.org/sites/default/files/files/cd-justicediverted216.pdf>.

⁸ These figures are based on Legal Aid's analysis of a random sample of eviction cases filed in 2018 and are accurate +/- 2 percent with a 95 confidence interval. These figures exclude cases dismissed by the landlord voluntarily or dismissed by the court when the landlord fails to prosecute the case.

⁹ Legal Aid presented detailed testimony on our recommendations on the Department of Buildings at a December 2019 hearing. See Written Testimony before the Committee of the Whole, Council of the District of Columbia, Bill 23-91, Department of Buildings Establishment Act of 2019 Office of Inspector General Prospective Evaluation of Bill 23-91 and Evaluation of DCRA Business Processes (Dec. 10, 2019), available at <https://www.legalaiddc.org/wp-content/uploads/2019/12/Legal-Aid-Testimony-re-B23-0091-FINAL.pdf>.

- Ensuring DCRA employs enough government inspectors to carry out its mission;
- Attaching DCRA inspectors to the Housing Conditions Calendar and Landlord and Tenant Branch of D.C. Superior Court;
- Requiring that all DCRA inspections be performed by DCRA employees;
- Requiring that all DCRA inspectors be trained, certified, and licensed to inspect and cite for lead and mold; and
- Establishing tighter, automatic timeframes for abatement and enforcement of housing code violations.

These steps alone will not be sufficient. Other important reforms include codifying and strengthening the proactive inspections program and increasing penalties for landlords who violate the housing code, particularly repeat violators.¹⁰ During this oversight and budget season, it also is worth noting that the Council must fund reforms once they are enacted, such as those in the currently-unfunded Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018 (Law 22-0287). All of these steps are needed to create a comprehensive and effective housing code compliance and enforcement structure.

Landlords Without Basic Business Licenses Should Not Be Able to Collect Rent or Sue for Eviction

Licensing requirements exist to ensure that businesses that provide goods and services to consumers are in compliance with the law. They deter businesses from offering unsafe goods and thereby putting consumers at risk. In the District, landlords are required to obtain a basic business license with a housing endorsement in order to rent out a property to tenants.¹¹ Landlords obtaining or renewing a basic business license are required to meet certain requirements, including paying a rental unit fee, providing a 24-hour accessible phone number for their tenants, employing a person responsible for maintenance and repairs, and allowing DCRA and other government agencies to inspect their property.¹² Landlords also are required to maintain their properties in compliance with the housing code and to provide access to government inspectors as conditions of holding a basic business license.¹³ Non-compliant landlords may face revocation or suspension of their license, or may be denied renewal of their license.¹⁴

¹⁰ Legal Aid supports Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which we testified in favor of at a December 2019 hearing. Written Testimony before the Committee of the Whole, Council of the District of Columbia, B23-0132 – “Indoor Mold Remediation Enforcement Amendment Act of 2019” (Dec. 10, 2019), available at <https://www.legalaiddc.org/wp-content/uploads/2019/12/Legal-Aid-Testimony-re-B23-0132-FINAL.pdf>.

¹¹ See D.C. Code § 47-2828(c). Single-unit dwellings do not have to obtain a certificate of occupancy. See 14 D.C.M.R. § 1401.1.

¹² D.C. Code §§ 42-3504.01, 47-2828; 14 D.C.M.R. §§ 200-207.

¹³ See 14 D.C.M.R. § 202.

¹⁴ See *id.* §§ 205-206. Other grounds for revocation or suspension include fraud, false statements, and certain criminal conduct. See *id.* § 206.

While the above provisions are important, they lack sufficient enforcement mechanisms. Under current law, a landlord's failure to obtain a basic business license, or even the revocation of a basic business license for housing code or other violations of the law, are treated as technical, paperwork issues. Unlicensed landlords are allowed to increase rents and file suits in D.C. Superior Court to evict tenants for nonpayment of rent or other grounds. The fact that a landlord is not licensed is not considered a defense to eviction, in part because of a 40-plus-year-old case from the D.C. Court of Appeals.¹⁵ And while the District can fine and prosecute unlicensed landlords, enforcement resources typically are focused on more egregious misconduct.

Bill 23-0394 (Section 3) would clarify current law to require that landlords filing an eviction suit for possession or seeking to increase a tenant's rent must have and show proof of a valid basic business license. Landlords also would have to notify tenants that a landlord cannot raise the tenant's rent or evict the tenant unless the landlord is properly licensed. These penalties will provide a critical deterrent to landlords who otherwise might flout the law, either by never obtaining a basic business license or by engaging in conduct that causes the landlord to lose the license.

We recommend strengthening the bill further by adding a provision that a landlord may not collect rent if the landlord does not hold a valid basic business license. The ability to collect rent while running an unlicensed rental property allows landlords providing unsafe housing that are not recognized by the District government to continue to profit from doing so, with dangerous consequences for tenants at these properties. This Committee should create strong deterrents across the board to stop this sort of behavior. Adding these penalties will create a more effective and complete enforcement structure to ensure that landlords comply with the law – not only by obtaining a license in the first place, but also by avoiding misconduct that would cause the landlord to lose the license.

DCRA Should Be Required to Employ a Sufficient Number of Trained Inspectors to Meet Its Mandate to Enforce the Housing Code and Ensure Landlord Compliance

DCRA simply does not employ enough inspectors to allow for vigorous enforcement of the housing code. In explaining their failure to respond to communications about the Kennedy Street property where a fire last August killed two tenants, DCRA employees cited a “high volume of emails” received, “overwhelming” workloads, and being “too busy with administrative duties”.¹⁶ A report by the D.C. Auditor found that other jurisdictions employ two to three times more inspectors than the District.¹⁷ The District has approximately 165,000 renter-

¹⁵ *Curry v. Dunbar House*, 362 A.2d 686, 689 (D.C. 1976).

¹⁶ Alvarez & Marsal Disputes & Investigations, LLC, *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD* 33, 46, 54, 66 (Oct. 25, 2019), available at <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/Review-Investigation-Code-Enforcement-Policies-Procedures-Inter-Agency-Communications.pdf>.

¹⁷ Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts 5* (Sept. 24, 2018), available at <http://dcauditor.org/report/housing-code-enforcement-a-case-study-of-dahlgreen-courts/>.

occupied housing units.¹⁸ Yet, DCRA's Housing Inspections and Housing Code Enforcement sections employ only 23 housing code inspectors to perform this work, or one inspector for every 7,000 units. Bill 23-0394 (Section 7) mandates that the agency employ one residential housing inspector for every 2,000 residential housing units. This ratio is more in line with other jurisdictions.¹⁹

Chronic understaffing appears to be a critical factor in the low quality of DCRA housing code inspections, as well as the lack of enforcement follow-up. Reducing the workload on overtaxed inspectors should improve the quality of the housing code inspections and enforcement process. Inspectors would have more time to prepare for and conduct each individual inspection, ensuring a comprehensive report. More inspectors would be available to conduct follow-up inspections promptly. Each inspector would have more time to work up cases and thoroughly, but promptly, prepare them for legal enforcement when landlords do not abate violations.

Legal Aid also supports provisions in Bill 23-0394 (Section 8) requiring DCRA to attach inspectors to both the Housing Conditions Calendar and the Landlord and Tenant Branch in D.C. Superior Court. When the Court created the Housing Conditions Calendar in 2010 – allowing tenants to sue their landlords to make required repairs to address housing code violations – the Court worked in cooperation with DCRA for the agency to provide a housing code inspector attached to the Court. This inspector attends all court hearings, performs inspections when directed to do so by the Court, prepares reports, and reports back to the Court on the findings. This process has worked reasonably well – the inspectors attached to the Court over the years have performed high-quality inspections, issued detailed reports, and made the inspection process more accessible to tenants.

Tenants facing eviction in the Landlord and Tenant Branch of D.C. Superior Court would benefit from a similar program. Landlords in the District file over 30,000 new eviction cases in this

See Written Testimony before the Committee of the Whole, Council of the District of Columbia, Budget Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs (March 27, 2019). The Children's Law Center has done a similar survey of additional jurisdictions and found similar ratios.

¹⁸ American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2018 1-Year Estimates, *available at* <https://www.census.gov/acs/www/data/data-tables-and-tools/>.

¹⁹ Minneapolis, MN and Buffalo, NY employ one inspector for every 2,000 renter-occupied housing units (<https://www.minneapolisfed.org/publications/community-dividend/working-with-finite-resources-twin-cities-rental-housing-inspectors-reward-good-target-bad>, updated figures provided by telephone interview with Department of Regulatory Services on March 25, 2019; <https://www.buffalony.gov/Directory.aspx?did=84>). Montgomery County, MD, employs one inspector for every 4,000 renter-occupied units (<https://www.montgomerycountymd.gov/DHCA/community/organization.html>). Boston, MA employs one inspector for every 5,000 renter-occupied units (https://www.cityofboston.gov/images_documents/housing-inspectors_tcm3-34907.pdf).

Branch every year, most alleging nonpayment of rent by tenants.²⁰ As noted above, our experience and data suggest that the overwhelming majority of tenants facing eviction for nonpayment of rent also have repair needs in their unit – and in many cases, substantial housing code violations. Data also show while housing code violations are a defense in these cases, most tenants are not represented by an attorney and enter consent judgments that typically require the tenant to pay back rent in full without requiring the landlord to make necessary repairs. Attaching DCRA inspectors to the Court would ensure that tenants have easy access to obtain an inspection, raise housing code violations defenses, and obtain needed repairs.

Legal Aid also supports provisions in Bill 23-0394 (Section 7) that would require all inspections to be performed by DCRA employees and would require all DCRA inspectors to be trained, certified, and licensed to inspect and cite for both lead and mold. Legal Aid previously has testified about our concerns that DCRA Director Ernest Chrappah’s new citizen inspection program will only weaken an already troubled enforcement environment by leading to lower-quality inspections, less consistency, and less follow through on enforcement. These are precisely the problems we have witnessed over the years with the use of private, contract inspectors in the proactive inspections program. We also support Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which addresses gaps in current law by requiring DCRA to certify its inspectors in mold assessment and to issue notices of violation and impose penalties when landlords fail to comply with the mold law. As to mold, the provisions in Bill 23-0132 are more comprehensive than the provisions in Bill 23-0394 and should be incorporated into any bill that moves forward out of Committee.

Landlords That Violate the Housing Code Should Face Tight, Automatic Enforcement Actions

Finally, Legal Aid supports provisions in Bill 23-0394 that would create tight, automatic enforcement timelines. These provisions include:

- Creating a specific timeline for DCRA to issue a notice of violation following an initial inspection, to provide a copy to the tenant, to re-inspect the unit following the allowed abatement period, and to forward cases with ongoing violations to enforcement for further action, including consideration of whether DCRA should abate the conditions and charge the landlord (Section 7);
- Creating a specific timeline for DCRA to issue notices of infraction following a re-inspection finding ongoing violations and to provide a copy to the tenant, limiting the granting of extensions to landlords (Section 9); and
- Requiring DCRA to notify the Office of the Attorney General of repeat housing code violators (Section 10) and requiring regular reviews of enforcement data by DCRA, with reporting to the Council (Section 11).

²⁰ District of Columbia Courts, Statistical Summary 2018 4 (reporting 31,206 new case filings in 2018). Legal Aid’s own data analysis of a random sample of 2018 cases shows that 98 percent allege nonpayment of rent by the tenant.

Bill 23-0394 also would create a Strategic Housing Health Official to examine public health data and use it to inform strategic compliance and enforcement. Legal Aid supports this type of agency structure within a new Department of Buildings or – our recommendation – a separate, independent, tenant-focused agency charged with housing code compliance and enforcement.

Conclusion

Thank you for this opportunity to testify about our ongoing concerns about DCRA’s lapses in enforcement. Bill 23-0394 contains provisions that are necessary pieces in creating a new housing code compliance and enforcement strategy for the District, a necessary complement to the kind of fundamental agency transformation that DCRA so desperately needs. We look forward to working with members of the Committee of the Whole, staff, and other advocates to ensure that this and other legislation addressing DCRA’s systemic failures can be considered and moved forward this Council period.