

**Testimony of Rachel Rintelmann
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**Before the Committee of the Whole
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0456

“Abatement and Condemnation of Nuisance Properties Amendment Act of 2019”

and

Bill 23-0499

“Housing Provider Repeated Violation Enhancement Amendment Act of 2019”

January 28, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony in support of Bill 23-0456, the Abatement and Condemnation of Nuisance Property Amendment Act of 2019, and Bill 23-0499 “Housing Provider Repeated Violation Enhancement Amendment Act of 2019.” We believe that these pieces of legislation strengthen one of the most powerful tools available in the District of Columbia for the enforcement of tenants’ rights to safe and habitable housing.

The Tenant Receivership Statute is a Powerful Tool in the Fight for Safe and Habitable Rental Housing in the District of Columbia

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.

The lack of safe and affordable housing in the District of Columbia has reached a crisis point. As the availability of affordable units decreases, demand for affordable housing far outstrips supply, leaving landlords with multiple applicants for every vacancy, no matter the location or condition of the property. This dynamic gives landlords unequal bargaining power and little incentive to make repairs. Much of the remaining affordable housing stock is in serious disrepair, forcing low-income DC residents into neglected and substandard housing. We regularly meet tenants living with serious housing code violations, including rodent, roach and bedbug infestations, no heat in the winter and no air conditioning in the summer, severe plumbing and roof leaks, untreated mold, broken windows and door locks, and more.

Tenants living with such conditions have historically had limited options for the enforcement of their rights: they can withhold rent and risk being sued for eviction; they can sue in Housing Conditions Court (which can be a long and frustrating ordeal);² they can file an affirmative civil action, which is difficult without legal counsel; or they can contact DCRA (but recalcitrant landlords know they can ignore threats of fines because they are rarely enforced). We have assisted tenants in pursuing their rights through each of these channels, none of which is perfect, and all of which require significant expenditure of time and resources on the part of the tenant.

Within this bleak landscape, we have been heartened in recent years to watch as the Office of the Attorney General (“OAG”) has prioritized this issue, using the Tenant Receivership Statute to enforce tenants’ rights to safe and habitable housing. Landlords that have long neglected the condition or safety of their properties have suddenly had to answer for their misconduct on a larger scale, forced to either abate housing conditions themselves, or see a receiver appointed to do so. Because OAG generally pairs these cases with claims under the Consumer Protection Procedures Act, landlords are becoming increasingly aware that maintaining properties in these conditions is not only unlawful, but expensive.

These actions have had wide-ranging effect, securing needed repairs for all tenants in properties with poor conditions, even those who have not pursued claims themselves. In so doing, OAG has eliminated barriers for tenants who are elderly or disabled and for whom frequent court appearances simply are not practicable, as well as for tenants whose work or childcare obligations prevent them from prosecuting claims on their own behalf. In a single action, OAG can vindicate the rights of hundreds of tenant households, having a massive impact on the security and habitability of those families’ homes.

In many cases, receivership actions have not replaced, but have complemented tenants’ own exercise of their rights. For example, where OAG has filed a receivership action and the

² The Court created the Housing Conditions Calendar in 2010, allowing tenants to sue their landlords to make required repairs to address housing code violations. Unfortunately, Housing Conditions Court has not proven to be an ideal or effective forum for the resolution of these claims. The Court is slow to require even emergency repairs, does not issue or enforce written orders, declines to take testimony from tenants, often dismisses cases even when repairs are not complete, and fails to hold landlords sufficiently accountable for failures to make repairs. Tenants are often frustrated by what they (reasonably) see as a huge investment of their time to obtain slow and incomplete relief.

landlord has responded by filing for bankruptcy, Legal Aid has assisted tenants in pursuing their claims in bankruptcy court so that their individual claims relating to the housing conditions were not waived. Where receivership actions have prompted landlords to file eviction cases against tenants in bulk, Legal Aid has done affirmative outreach to conduct intake with those tenants and provided them legal representation in the eviction cases, where they can assert housing conditions defenses. Where a receivership action prompts the owner to sell a property, Legal Aid can assist the tenants in exercising their rights pursuant to the Tenant Opportunity to Purchase Act, bargaining for long-term affordability and building improvements. These coordinated efforts serve to maximize the effects of our efforts, as well as the efforts of the Attorney General.

Receivership is a valuable tool, and we believe that both of the related legislative proposals before the Council today are thoughtfully designed to sharpen that tool for maximum effect.

Legal Aid Supports the Housing Provider Repeated Violation Enhancement Amendment Act of 2019

Legal Aid supports the expansion of the legal grounds for the appointment of a receiver. We believe that this bill takes a reasonable and common-sense approach to ensuring that the law targets the worst-actor landlords. It is our hope that -- coupled with much-needed improvements to housing inspection, citation, and code enforcement -- these changes will lead to greater enforcement of tenants' rights in the District.

The Abatement and Condemnation of Nuisance Properties Amendment Act of 2019 will Make the Receivership Statute Stronger

In our observation, OAG has carefully honed its use of the Receivership Statute, taking lessons learned from each such case and adjusting and improving its strategy for the next. We believe that the proposed Amendments are measured and informed by experience, and that they will enable OAG to continue to build its efforts and improve even further upon outcomes of receivership actions.

Pre-Suit Subpoena Power Will Enable the Attorney General to Fully Investigate Claims Prior to Initiating Actions

The primary concern we have heard raised by tenants about the receivership cases litigated to date is that it takes too long for the Court to appoint a receiver. This is in part because of the process of building a body of evidence for the Court which currently happens through discovery after the filing of a receivership action, and it can take many months. Granting OAG pre-suit subpoena authority would allow it to begin more fully investigating its case prior to the filing of the action, and concurrently with its other litigation preparations, thereby shortening the time it takes to get a receiver in place. We also believe that the ability to look into the financial structure of corporate entities that own or manage the property in question will enable OAG to ensure that the proper parties are named and held to account.

Landlords Should be Required to Contribute Funds in Excess of Rents Collected to Make Needed Repairs

The Act clarifies that an owner, member, or any person with charge, care, or control of the property can be required to deposit funds in excess of tenant rents to abate violations. We are fully supportive of this clarification. Moreover, we do not believe that tenant rents should be viewed as the exclusive, or even the primary, source of funds for repairs.

Tenants in the District have the right to withhold rent due to substandard housing conditions, and every building in receivership will meet that definition. Requiring the receiver to rely on tenant rents to cover the costs of repairs puts that receiver at odds with the tenants, prompting them to demand rents that tenants may be lawfully withholding. We do not believe that this should ever be the outcome of the appointment of a receiver, because in every such case both the Attorney General and the Court have determined that the property is not in compliance with housing codes, and under this Act, tenants should be entitled to at least a 50% abatement of their rent. The receiver should not be threatening tenants with eviction over the lawful exercise of their protected rights, nor should it waste funds paying the cost of counsel to pursue eviction actions. Instead, the landlord must be held liable for providing the requisite funds to make necessary repairs.

Legal Aid Supports the Refund of at Least Half of Rent Paid, and Recommends the Removal of the Cap on Recovery

We support the Act's provision that tenant rents should be refunded in an amount of no less than one half. In order to meet the statutory threshold for the appointment of a receiver, OAG must establish a "pattern of neglect" and "serious disrepair," which is an extremely high threshold. In cases where there has been a finding of such severe violations as to warrant the appointment of a receiver, we believe that a minimum 50% rent refund to tenants forced to endure such violations is wholly appropriate.

However, we recommend that the upper limit of a refund of two-thirds of the rent be eliminated. We have seen cases with conditions so deplorable that tenants can no longer reside in rental units, or continue to reside in those units at serious risk to their own health and safety. In such cases, we believe that rent refunds exceeding 66% may be appropriate and believe that discretion should be left to the Court.

Legal Aid Recommends Clarification that any Recovery by the Attorney General is without Prejudice to the Tenants' Individual Claims and Defenses

While we fully support the Attorney General's efforts to recover rent overpaid by tenants when their rental homes were out of compliance with housing regulations, we would encourage the Council to ensure that any such recovery does not prejudice individual tenants' ability to raise conditions affirmatively or defensively in future actions. This is particularly true because individual tenants are not parties to the receivership action, and have no say in the litigation or settlement of those claims. We worry that landlords after receivership may argue that tenants are precluded from asserting housing code defenses as a result of the receivership action, or that tenants should be precluded from litigating their own claims as a result of a case in which they did not participate.

While we believe that there would be a legal basis for opposing such an assertion by a landlord, many tenants do not have the benefit of legal counsel, and so clarity in the language of the law is necessary. Legal Aid would welcome the opportunity to discuss language that would address this concern.

Legal Aid Would Support the Creation of a One-Time, Self-Replenishing Fund for the Attorney General to use for Emergency Repairs

Another challenge we have observed with receivership actions is that even after a receiver is appointed, it can be a significant undertaking to get the landlord to provide the funds required for repairs. Often, landlords claim an inability to pay, forcing the Court to order an extensive review of their finances. This process can be lengthy, and every day that passes without much-needed repairs can prove hazardous for tenants at these properties.

To address this concern, we would support the creation of a fund that would allow OAG to undertake urgent repairs for emergency housing and fire code violations, with the idea that the landlord would reimburse the fund, with interest, through a court-ordered payment or via a lien placed on the property by the District. It is our hope that the availability of such funds will allow OAG to cut through procedural and administrative hurdles and secure the repairs necessary to protect the life and safety of tenants.

Conclusion

We thank the Attorney General for his commitment to securing safe and habitable housing for all DC residents and look forward to continuing to work with his office to achieve this end. We also thank the Committee for the opportunity to testify in support of the Abatement and Condemnation of Nuisance Property Amendment Act of 2019. We support the bill as written, and believe that with minor modifications, it can be made even stronger.