

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

**Public Roundtable Regarding  
“Tenant Protection and Eviction Prevention”**

**September 14, 2020**

The coronavirus pandemic has drawn public attention to long-standing, systemic inequalities in the District, in particular along lines of race and income. Put simply, people of color, individuals with disabilities, and individuals living in poverty are on the front lines, contracting COVID-19 and dying at disproportionate rates, including because of longstanding gaps in access to quality health care, safe and affordable housing, and other resources.<sup>1</sup> These systemic inequalities fall mostly heavily on black residents of the District. Mayor Muriel Bowser’s administration describes the District’s response to the pandemic as “a once-in-a-generation opportunity to thoughtfully build toward a more equitable, resilient, and vibrant city.”<sup>2</sup> If this vision for the future means anything, it must include protecting the District’s lowest-income residents from eviction and displacement.

The Legal Aid Society of the District of Columbia<sup>3</sup> recommends that the Council take the following actions to prevent the coming eviction crisis in the District and protect tenants:

1. The Council should keep in place the strong tenant protections already enacted that have put a hold on evictions and otherwise protected tenants from displacement. These protections must remain for the duration of the public health emergency to avoid a wave of new evictions that would devastate tens of thousands of families, disrupt

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<sup>1</sup> Executive Office of the Mayor, Coronavirus Data – Total Deaths by Race, available at <https://coronavirus.dc.gov/page/coronavirus-data>.

<sup>2</sup> Executive Office of the Mayor, *ReOpen DC Overview*, available at <https://coronavirus.dc.gov/reopencdc>.

<sup>3</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, 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

neighborhoods and communities, and impose high costs on the District’s social safety net system.

2. The current tenant protections also should be strengthened by:
  - a. Extending the current bar on actual evictions, currently in place for the duration of the public health emergency, to extend 60 days beyond the emergency,
  - b. Increasing the minimum repayment term for tenant payment plans from 12 to 18 months, and
  - c. Extending the bar on new rent increases, currently in place for the public health emergency plus 30 days, to last for one full year after the emergency ends.
3. The Council also should consider new tenant protections to:
  - a. Stop landlords from issuing new notices to vacate, and
  - b. Stop landlords from proceeding with currently pending eviction cases.
4. The Council should move forward with enacting B23-338, the Eviction Record Sealing Authority Amendment Act of 2019, on an emergency, temporary, and permanent basis.
5. If the Council has the opportunity to revisit the FY 2021 budget in the coming months, local funding for rental assistance should be increased significantly. While the above measures are necessary to help hold off the coming eviction crisis, only direct financial assistance to tenants provides a long-term solution to ensure that tens of thousands of District residents and their families are able to remain in their homes.

### **The District’s Severe and Deepening Affordable Housing Crisis**

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low and moderate incomes — many headed by people of color — are being left behind.<sup>4</sup> Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.<sup>5</sup> As private market affordable options continue to disappear, subsidized housing remains out of reach for most tenants. The centralized waiting list for subsidized housing maintained by the D.C. Housing Authority (DCHA) has been closed for seven years and still numbers just under 40,000 families.<sup>6</sup>

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<sup>4</sup> RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

<sup>5</sup> D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015), available at <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

<sup>6</sup> D.C. Housing Authority, *2020 Performance Oversight Hearing - Committee on Housing and Neighborhood Revitalization Responses to Pre-Hearing Questions 28* (March 2020), available at <https://dccouncil.us/wp-content/uploads/2020/03/dcha.pdf>.

The result of this deepening affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, a threshold that HUD classifies as “severely housing cost burdened”.<sup>7</sup> In fact, nearly half of these families pay 80 percent or more of their monthly income towards rent.<sup>8</sup> And this issue also is one of racial equity; of the approximately 27,000 extremely low-income, severely rent-burdened households, 88 percent are headed by a person of color.<sup>9</sup>

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly black households. A study by the National Community Reinvestment Coalition found that about 40 percent of the District’s lower-income neighborhoods experienced gentrification between 2000 and 2013, giving the city the greatest “intensity of gentrification” of any city across the country for that period.<sup>10</sup> The District also saw the most black residents — more than 20,000 — displaced from neighborhoods, mostly by white, affluent, recent transplants.<sup>11</sup> An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification” with displacement continuing.<sup>12</sup>

### **The Coronavirus Pandemic Is Exacerbating the District’s Existing Affordable Housing Crisis, Putting Tens of Thousands of Tenants at Risk of Eviction**

Against this backdrop, the national economy now is facing what is being described as the worst economic crisis since the Great Depression.<sup>13</sup> In the District, as of September 10, 2020, over 143,000 residents had filed for unemployment.<sup>14</sup> Survey data collected by the Census Bureau throughout the pandemic indicate that 40 percent of District residents have lost employment income since mid-March.<sup>15</sup>

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<sup>7</sup> D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* 3 (Dec. 8, 2016), available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1.

<sup>10</sup> National Community Reinvestment Coalition, *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>.

<sup>11</sup> *Id.*

<sup>12</sup> National Community Reinvestment Coalition, *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

<sup>13</sup> New York Times, “I.M.F. Predicts Worst Downturn Since the Great Depression” (Apr. 14, 2020), available at <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-economy-recession-depression.html>.

<sup>14</sup> Department of Employment Services, “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

<sup>15</sup> U.S. Census Bureau, Week 13 Household Pulse Survey: August 19 – August 31 – Detailed Tables, available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp13.html#tables>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the District, since the week of April 23, 2020. The latest data, released just this past week, reflects surveying between August 18 and 31, 2020.

This loss of income is putting tens of thousands of District residents at risk of eviction. The latest Census survey indicate that approximately 30,000 households in the District are not current in their rent payments, and 70,000 households had little or no confidence in their ability to pay September rent.<sup>16</sup> The current figures are just starting to account for the loss of extra federal unemployment insurance benefits, which ended on July 31, 2020, meaning we should expect the number of at-risk households to continue to grow.

The burden of this economic and housing crisis is falling disproportionately on low-income black and Latinx families. More than 80 percent of the families reporting that they are not current in their rent or have little or no confidence in their ability to pay September rent are black or Latinx.<sup>17</sup> Those most affected are families with children headed by single black women with reported 2019 annual income of \$25,000 or less, the majority of whom report loss of employment income since mid-March 2020 and no current employment.<sup>18</sup>

In a normal 2020, we would have expected to see approximately 30,000 eviction cases filed against tenants in the District.<sup>19</sup> Because of federal and local moratoria on the filing of new cases, to date for 2020 only 8,105 eviction complaints have been filed in D.C. Superior Court.<sup>20</sup> As of December 2020 — when the current local filing moratorium is scheduled to expire — the District will be at least 20,000 cases behind, even for a normal year.

A recent study published by the Aspen Institute and a coalition of national experts uses the latest Census survey data to estimate that approximately one-third of District families — between 51,000 to 57,000 households, or 118,000 to 131,000 individuals — are at risk of eviction because of the pandemic.<sup>21</sup> Even acknowledging that not every tenant who is at risk may be sued, analysis of the data suggests up to 39,000 new eviction cases could be filed after the moratorium

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> District of Columbia Courts, *Statistical Summary 5* (2019), available at <https://www.dccourts.gov/about/organizational-performance/annual-reports>. Annual filings in the Landlord and Tenant Branch of D.C. Superior Court have averaged a little over 30,000 new cases annually each year between 2015 and 2019. *Id.*

<sup>20</sup> New case filings can be monitored by looking up D.C. Superior Court dockets at <https://eaccess.dccourts.gov/eaccess/home.page.2>. Cases are numbered sequentially as filed, and filings can be searched by case number in the format YYYY LTB #####.

<sup>21</sup> The Aspen Institute, *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk* (Aug. 7, 2020), available at <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

is lifted.<sup>22</sup> The authors note that these figures likely are an undercount, because they do not capture tenants living in federally subsidized housing.<sup>23</sup>

Legal Aid’s housing attorneys and legal assistants are speaking with tenants at risk of eviction every day. Since we opened our new tenant hotline in March 2020, we have received over 1,000 calls and spoken to many hundreds of tenants at risk of eviction.<sup>24</sup> Many have lost income and are behind on their rent. Some qualify for unemployment insurance and still are struggling with higher expenses, or are having trouble paying the rent now that the extra federal benefits have ended. Still others have had trouble accessing unemployment or have been wrongly denied benefits. Others do not qualify for unemployment, because of their work history, the type of work or income they had before, or their documentation status. Many are searching for work and not finding replacement income. For all of these tenants, rental arrearages are accruing.

Tenants who contact us also are afraid. We have heard from many tenants whose landlords are threatening to lock them out illegally or otherwise are engaging in a pattern of harassment and intimidation. Many tenants are confused about their rights and are fearful of what lies ahead. While some tenants who reach us qualify for rental assistance – to the extent it is available – others do not meet the criteria for current programs. Many tenants would like to enter a tenant payment plan with their landlords, but they are unsure when they will have enough income to make payments toward the balance they owe. They are wondering whether they should stay and fight for their housing or just give up and leave. Without significant financial assistance for tenants, we fear that many of these individuals and their families will face eviction and, ultimately, displacement from their homes and the District.

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<sup>22</sup> Stout, Risius, Ross LLC, *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction* (Aug. 2020), available at <https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTIiOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>. Stout estimates 39,000 new eviction case filings within the next four months, i.e. within four months of the lifting of all moratoria. *Id.*

<sup>23</sup> Covid-19 Eviction Defense Project & the Aspen Institute Financial Security Program, *National Eviction Risk Projections 2*, 17 (Aug. 2020), available at [https://assets.aspeninstitute.org/content/uploads/2020/08/Evictions-Data-Update-August.pdf?\\_ga=2.250569729.622815838.1599941399-1898066878.1597206425](https://assets.aspeninstitute.org/content/uploads/2020/08/Evictions-Data-Update-August.pdf?_ga=2.250569729.622815838.1599941399-1898066878.1597206425).

<sup>24</sup> Legal Aid also has received requests for help through the Landlord Tenant Legal Assistance Network (LTLAN), a coalition of six legal services providers running a shared telephone intake system to provide advice, brief services, and representation to tenants facing eviction and other housing issues. LTLAN is made possible by funding appropriated by the Council and awarded by the D.C. Bar Foundation under the Civil Legal Counsel Projects Program. See D.C. Bar Foundation, *Critical Network Collaboration for Eviction Defense* (updated Aug. 18, 2020), available at <https://www.dcbfoundation.org/post/critical-network-collaboration-for-eviction-defense>. Legal Aid is grateful to members of the Housing Committee and others members of the Council who created and have continued to support this critical program.

## **Increased Evictions Will Have Devastating Consequences on Families and Neighborhoods and, Ultimately, on the District and All of Its Residents**

Responding to the coming eviction crisis is essential because of the devastating consequences that eviction too often has on individuals, families, neighborhoods, and communities. Four years ago, Harvard sociologist Matthew Desmond published his path-breaking book *Evicted: Poverty and Profit in the American City*, which charts his experience living in low-income communities in Milwaukee, Wisconsin for over a year and studying eviction up close. The central thesis of Desmond's book is that eviction is a cause, not just a condition, of poverty. He argues powerfully that eviction too often has been overlooked and misunderstood in larger conversations about housing policy, even as its consequences have ravaged low-income families of color and their communities. As Desmond succinctly states the dimensions of the crisis: "Poor black men were locked up. Poor black women were locked out."<sup>25</sup>

Relying on comprehensive data collection and social science analysis, Desmond and his team have made the following findings about eviction:

1. Evicted families are discriminated against and often forced to move into substandard housing. Families with an eviction on their record may be unable to secure decent, affordable housing because landlords will simply not consider an applicant with an eviction on their record.<sup>26</sup> "Because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market and often are forced to move into run-down properties in dangerous neighborhoods."<sup>27</sup> Desmond and his research team found that families who experience a forced move typically relocate to worse neighborhoods — those that lack access to public transportation, grocery stores, child care, and other critical resources — than those who move under less demanding circumstances.<sup>28</sup>
2. Eviction can lead to loss of a vital housing subsidy. A court-ordered eviction results in loss of a subsidy for tenants whose assistance is tied to their units and also is a basis to terminate tenant-based assistance.<sup>29</sup> For those on the waiting list for subsidized housing, eviction and unpaid debts often count as a strike against an applicant.<sup>30</sup>

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<sup>25</sup> Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

<sup>26</sup> *Id.* at 297.

<sup>27</sup> Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 118 (2012).

<sup>28</sup> *Evicted, supra*, at 297. A recent cost-benefit analysis study of eviction defense services in Baltimore collects together additional research on this and other costs of eviction. See Stout, Risus, Ross LLC, *The Economic Impact of an Eviction Right to Counsel in Baltimore City* 38-40 (May 2020), available at <https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf>.

<sup>29</sup> Matthew Desmond and Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94(3) Soc. Forces 295, 299 (2015); see also Stout, Risus, Ross, *supra*.

<sup>30</sup> *Evicted, supra*, at 297.

3. Eviction disproportionately affects families with children. Desmond notes “Children didn’t shield families from eviction; they exposed them to it.”<sup>31</sup> Even after accounting for other facts such as how much the tenant owed the landlord, household income, and race, Desmond found that the presence of children in the household almost tripled a tenant's odds of receiving an eviction judgment.<sup>32</sup>

4. Eviction results in tenants losing important possessions that are expensive to replace. Some tenants cannot afford to move larger, more expensive items such as furniture and appliances and are forced to leave behind these and other possessions when evicted. Even for tenants able to pay for storage initially, items may be lost later if payments are not made to the storage facility.<sup>33</sup>

5. Eviction has proven negative effects on children’s health and schooling. Substandard housing conditions to which evicted families too often must relocate can degrade a child’s health, ability to learn, and sense of self-worth.<sup>34</sup> Eviction also is associated with higher rates of adolescent violence and poor school performance.<sup>35</sup>

6. Eviction is linked to future employment instability. Desmond’s research has found that the likelihood of being laid off is roughly 15 percent higher for workers who have recently experienced eviction.<sup>36</sup> Eviction causes many stresses on low-wage workers that can lead to job loss: a forced move can “consume renters’ time and cause them to miss work; consume their thoughts and cause them to make mistakes on the job; overwhelm them with stress and cause them to act unprofessionally in the office; result in their relocating farther away from their worksite and increase their likelihood of tardiness and absenteeism; and lead to homelessness, relationship dissolution, and other severe consequences.”<sup>37</sup>

7. Eviction can lead to psychological instability, depression, and even suicide. Desmond reports that half of recently evicted mothers reports multiple symptoms of clinical depression, double the rate of similar mothers who were not forced from their homes.<sup>38</sup> Psychiatrists have cited eviction as “a significant precursor to suicide.”<sup>39</sup>

Eviction also is costly for landlords and for the government. The Aspen Institute estimates that each eviction may cost a landlord up to \$6,000, particularly in high-cost areas such as the

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<sup>31</sup> *Id.* at 287.

<sup>32</sup> *Id.* at 332.

<sup>33</sup> *Eviction and the Reproduction of Urban Poverty, supra*, at 119.

<sup>34</sup> *Evicted, supra*, at 299; *see also* Stout, Risus, Ross, *supra*, at 41-45.

<sup>35</sup> *Eviction and the Reproduction of Urban Poverty, supra*, at 89 (citing Sharkey and Sampson 2010; Pribesh and Downey 1999); *see also* Stout, Risus, Ross, *supra*, at 45-47.

<sup>36</sup> *Evicted, supra*, at 296.

<sup>37</sup> Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Prob. 46, 59 (2016).

<sup>38</sup> *Evicted, supra*, at 298; *see also* Stout, Risus, Ross, *supra*, at 41-45.

<sup>39</sup> *Id.* at 299.

District.<sup>40</sup> The costs for the District are high as well, with increased funding required for homeless services, medical services, and other social services. It costs \$50,000 annually to house a family in emergency or temporary shelter in D.C., or nearly \$150 per day per family. New housing subsidies save the District money compared to shelter but still amount to \$17,000 to \$27,000 annually per single adult and \$24,000 to \$35,000 per family.<sup>41</sup> Studies in other jurisdictions estimate that families experiencing homeless or housing instability also may have thousands more dollars annually in healthcare costs that require increased Medicaid funding.<sup>42</sup> Other government costs include increased costs for the child welfare system and lower utility bill and property tax collections.<sup>43</sup>

Preventing eviction and displacement and keeping a family in their home can avoid these costs to the District government, as well as the devastating short- and long-term costs for that family and their neighborhood. It is important to note that in the District — where housing costs remain stubbornly high, the wait for a homeless family to gain a housing subsidy can stretch for many years, and landlords are allowed to refuse to rent to families based on their eviction record — eviction is likely to lead to displacement from the District altogether. If the coming eviction crisis is not addressed, the city could lose tens of thousands more black and Latinx families.

### **The Council Must Extend and Strengthen Existing Emergency Protections for Tenants to Prevent an Eviction Crisis**

The Council already has enacted far-reaching emergency and temporary legislation to protect tenants from eviction. Actual evictions are barred for the duration of the public health emergency, currently through October 9, 2020.<sup>44</sup> Landlords cannot file new eviction cases during the public health emergency and for 60 days after, currently through December 8, 2020.<sup>45</sup> Late fees cannot be charged during the public health emergency, and new rent increases are barred for the public health emergency plus 30 days.<sup>46</sup> Landlords also are required to offer payment plans to tenants who have been impacted financially by the pandemic and owe rent, for the duration of the public health emergency plus one year, with payments due over a period of 12 months.<sup>47</sup>

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<sup>40</sup> *National Eviction Risk Projections*, *supra*, at 8, 18.

<sup>41</sup> District of Columbia Interagency Council on Homelessness, *Homeward DC 2015-2020 – Strategic Plan 2015-2020* 76-79, available at [https://ich.dc.gov/sites/default/files/dc/sites/ich/page\\_content/attachments/ICH-StratPlan2.9-Web.pdf](https://ich.dc.gov/sites/default/files/dc/sites/ich/page_content/attachments/ICH-StratPlan2.9-Web.pdf); District of Columbia Interagency Council on Homelessness, *Homeward DC 2015-2020 - Looking Back to Move Forward: Progress and Lessons Learned During the First Four Years of Homeward DC* 38 (Sept. 2019), available at [https://ich.dc.gov/sites/default/files/dc/sites/ich/page\\_content/attachments/Homeward%20DC%20Progress%20Report\\_Final.pdf](https://ich.dc.gov/sites/default/files/dc/sites/ich/page_content/attachments/Homeward%20DC%20Progress%20Report_Final.pdf).

<sup>42</sup> Stout, Risus, Ross, *supra*, at 41-45.

<sup>43</sup> *Id.* at 41, 47-49.

<sup>44</sup> D.C. Code § 42-3505.01(k).

<sup>45</sup> D.C. Code § 16-1501(b).

<sup>46</sup> D.C. Code §§ 42-3194.01; 42-3502.08; 42-3509.04(c),(d) 42-3505.31(c)

<sup>47</sup> D.C. Code § 42-3281.

These measures represent the most important first step in a crisis – to pause, regroup, and plan a comprehensive response. Not a single tenant in the District of Columbia has been evicted since mid-March as a result of actions taken by the Council and the leadership of the Chairwoman and members of this Committee. But pausing the crisis is not enough. As described in more detail below, solving the current eviction crisis will require additional, direct financial assistance — either to tenants themselves, or to landlords, paired with requirements to cancel rent for tenants who cannot pay as a result of the pandemic.

The recently-announced federal eviction moratorium mandated by the Centers for Disease Control and Prevention (CDC) also will not solve the crisis – and indeed, may not benefit tenants in the District at all. In general terms, the federal moratorium bars any action by a landlord to remove a tenant from their rental unit based on nonpayment of rent or other fees.<sup>48</sup> However, the order does not apply “in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection,” which would appear to exclude the District. Moreover, the order only applies to households that meet certain income and other requirements, and it does not protect families from eviction for alleged lease violations beyond nonpayment of rent.<sup>49</sup> And even if the new federal moratorium applies in the District at all, it still only pauses the crisis rather than solving the underlying problem.<sup>50</sup>

In the District, drawing a line between eviction for nonpayment of rent and eviction for other lease violations is nearly impossible, a point worth emphasizing as the Council considers not only the scope of the new federal moratorium, but also whether to heed landlords’ calls to allow evictions to move forward on grounds other than nonpayment of rent. The D.C. Court of Appeals has recognized that so-called “consistent late payment of rent” is a separate ground for eviction, distinct from nonpayment.<sup>51</sup> While Legal Aid and other tenant attorneys disagree, landlords take the position that a tenant who is behind in their rent may be sued either for nonpayment or for “consistent late payment of rent.”<sup>52</sup> In other words, allowing evictions to move forward for “other” lease violations easily could encompass all tenants who have not paid their rent.

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<sup>48</sup> Dept. of Health & Human Servs., Ctrs. for Disease Control and Prevention, *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19*, Fed. Reg. Vol. 85, No. 173, pgs. 55292-97 (Sept. 4, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf>.

<sup>49</sup> *Id.* at 55294.

<sup>50</sup> The CDC eviction moratorium also is facing legal challenges, with landlord representatives filing lawsuits and requesting immediate injunctions against enforcement of the order, which could have nationwide implications if granted. See, e.g., New Civil Liberties Alliance, *NCLA Challenges Unlawful CDC Order that Leaves Landlords Powerless to Evict Delinquent Tenants* (Sept. 8, 2020), available at <https://nclalegal.org/2020/09/ncla-challenges-unlawful-cdc-order-that-leaves-landlords-powerless-to-evict-delinquent-tenants/>.

<sup>51</sup> *Pritch v. Henry*, 543 A.2d 808 (D.C. 1988); *Kaiser v. Rapley*, 380 A.2d 995 (D.C. 1977).

<sup>52</sup> Legal Aid takes the position that a tenant who is simply behind on their rent cannot be sued for consistent late payment, but the Court of Appeals has not directly addressed the issue, and many landlords file consistent late payment eviction cases against tenants who are simply behind.

The Council can and should do more to halt the entire eviction process in the District. Eviction proceeds through five distinct stages:

1. Landlord serves tenant with a notice to vacate,
2. Landlord files a new eviction case against tenant,
3. Court holds hearing on eviction case,
4. Court enters judgment against tenant and issues eviction order,
5. Law enforcement oversees physical eviction of tenant.

The emergency and temporary legislation enacted by the Council stops stages 2 and 5 of the eviction process. However, landlords continue to issue notices to vacate (stage 1), creating fear and confusion for tenants who receive them. Since the beginning of July, D.C. Superior Court also has resumed proceedings in eviction cases filed before the pandemic, including hearings and trials that may result in the entry of judgment and the issuance of an eviction order against a tenant (stages 3 and 4). All of these Court proceedings are happening remotely, putting tenants who lack access to technology and do not have attorneys by their side to help ensure that defenses are raised and their voices are heard at a severe disadvantage. Even now, only about 10 percent of tenants have access to an attorney, while more than 90 percent of landlords are represented.<sup>53</sup>

With all of this in mind, Legal Aid makes the following recommendations for actions the Council should take in the coming months to protect tenants from eviction and displacement:

1. Keep current tenant protections in place for the duration of the public health emergency. As the public health emergency continues, the Council may be tempted to lift some of the tenant protections currently in place or decouple these protections from the public health emergency timeframe. That would be a grave mistake. For as long as the public health emergency continues, those tenants currently most at-risk of eviction – black and Latinx families and individuals with low or no current income – will likely continue to face devastating economic dislocation, placing them at high risk of displacement and homelessness if new eviction case filings resume. These same families and individuals face disproportionate risks of contracting and dying from COVID-19, creating the likelihood of dire public health consequences if mass evictions are allowed to proceed.
2. Strengthen existing tenant protections. The Council also can and should take steps to close gaps in the current tenant protections:
  - a. The ban on actual evictions currently in place for the duration of the public health emergency should be *extended to cover the public health emergency plus 60 days*,

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<sup>53</sup> D.C. Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* 4 (2019), available at [https://www.dcaccessjustice.org/assets/pdf/Delivering\\_Justice\\_2019.pdf](https://www.dcaccessjustice.org/assets/pdf/Delivering_Justice_2019.pdf). Analyses by Legal Aid of cases where tenants proceed on their own compared to those where tenants have attorneys shows that tenants with counsel are 16 times more likely to be able to raise defenses and contest the case against them, 8 times less likely to have a judgment entered against them, and 4 times less likely to have an eviction ordered entered.

matching the current ban on new eviction case filings. Tenants can remain in their homes if they become current in rent before their actual eviction and providing an additional window of time will improve their chances of doing so.

- b. The minimum repayment term of 12 months for tenant payment plans should be *extended to 18 months*. As rent arrearages grow, tenants will need more time to catch up on missed payments.
  - c. The ban on new rent increases currently in place for the duration of the public health emergency plus 30 days should be *extended to cover the public health emergency plus one year*. Many tenants will continue to face precarious income and employment circumstances for some time and may not be able to absorb any rent increase.
3. Add new protections to halt notices to vacate and current eviction court proceedings. The Council should add new provisions to prevent landlords from issuing notices to vacate or proceeding with eviction cases currently pending in court for the duration of the public health emergency plus 60 days. Halting notices to vacate will prevent confusion and fear among tenants who receive them. Halting court proceedings will prevent tenants from being evicted based on the outcome of a remote hearing, where tenants often are at an insurmountable disadvantage.
  4. Move forward to enact Bill 23-338, the Eviction Record Sealing Authority Amendment Act of 2019. This bill authorizes the Superior Court to seal eviction case records immediately for tenants whose cases do not result in the entry of any judgment against the tenant and after a waiting period, or sooner upon a motion, for tenants who do receive a judgment. With tens of thousands of District residents facing an eviction complaint and all of the harms that follow from having such a case on their record, now is the time to enact this legislation, including on an emergency and temporary basis to make sure its protections are available as soon as possible.

**To Avoid Eviction and Permanent Displacement for Thousands of Tenants, the Council Also Should Appropriate Significant New Funding for Rental Assistance**

While all of the above measures have been and will continue to be incredibly helpful in holding off a tidal wave of new evictions in the District, ultimately many tenants will need direct financial assistance in order to avoid displacement. At some point, the current, temporary measures will be lifted, and tens of thousands of tenants across the city still will have large rental arrearages that will far outpace current allocated rental assistance. And even though the requirements for tenant payment plans will extend beyond the end of the public health emergency, many of these tenants still will not be in a financial position to benefit from this protection because they will lack sufficient income to pay their current rent and make payments toward a back balance.

The national studies cited above estimate that tenants at risk of eviction in the District currently may owe as much as \$79 million in back rent.<sup>54</sup> Even if rental assistance was limited to those households most in need, the cost remains high. The Brookings Institution estimates that it would cost approximately \$5 million per month to cover the rent for tenants most at risk of eviction, those earning \$20,000 or less annually who already faced severe rent burdens before the pandemic. Expanding assistance to families earning \$40,000 or less annually increases the monthly price tag by \$3 million, for a total of \$8 million in needed rental assistance per month. And if assistance is extended to include tenants who faced only moderate rent burdens before the pandemic, the total cost per month is \$10.5 million, or \$73.5 million to cover all seven months of the pandemic to date.<sup>55</sup>

These figures dwarf all of the current rental assistance programs available in the District combined. The FY 2020 budget allocated \$7.9 million to the Emergency Rental Assistance Program (ERAP), and the FY 2021 budget allocates \$14.1 million. These ERAP funds are supplemented by \$1.5 million in federal funding for the Tenant-Based Rental Assistance Program (TBRA)<sup>56</sup> and \$6.2 million in federal funding for the COVID-19 Housing Assistance Program (CHAP),<sup>57</sup> programs that are of limited duration and already may be reaching capacity.

Depending on the results of the updated revenue estimate due from the Office of the Chief Financial Officer at the end of this month, the Council may have yet another opportunity to revise the FY 2021 budget. Any revised budget should include significantly higher levels of funding for ERAP. The Council also could consider providing additional local funding to TBRA or a similar program, requiring landlords to apply for funding instead of tenants but then pairing that funding with rent cancellation and permanent eviction protections for their tenants. During budget season, as a member of the Fair Budget Coalition, Legal Aid supported several proposals for targeted increases in local revenue, and we continue to believe that such revenue is needed in order to stave off the grave challenges that lower-income District residents are facing. We also submitted testimony in favor of reallocating FY 2021 funding from the Metropolitan Police Department budget to meet the needs of District residents who are struggling with economic instability and uncertainty.<sup>58</sup> These and other measures should be considered again.

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<sup>54</sup> Stout, *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction, supra*.

<sup>55</sup> Michael Bailey, Eric LaRose, and Jenny Schuetz, Brookings Institution, *What will it cost to save Washington, DC's renters from COVID-19 eviction?* (July 23, 2019), available at <https://www.brookings.edu/research/what-will-it-cost-to-save-washington-d-c-s-renters-from-covid-19- eviction/>. Severely rent-burdened households are those paying more than 50 percent of their income as rent.

<sup>56</sup> Dep't of Hous. & Cmty. Dev., *DHCD Tenant-Based Rental Assistance Program*, available at <https://coronavirus.dc.gov/page/dhcd-tenant-based-rental-assistance-program>.

<sup>57</sup> Dep't of Hous. & Cmty. Dev., *COVID-19 Rental Assistance*, available at <https://dhcd.dc.gov/service/covid-19-rental-assistance>.

<sup>58</sup> Written Testimony of Damon King before the Committee on the Judiciary and Public Safety, "Budget Oversight Hearing Regarding the Metropolitan Police Department" (June 16, 2020), available at <https://www.legalaiddc.org/wp-content/uploads/2020/06/Legal-Aid-FY21-Budget-Testimony-re-MPD-FINAL.pdf>.

Importantly, any revisions to the FY 2021 budget should not come at the price of cutting other forms of assistance to those District residents who would benefit the most from increased rental assistance. The District's budget should continue to remedy existing inequality and close gaps that leave members of our community especially vulnerable to the type of economic and health crisis the District currently is enduring. More specifically, the Council must maintain critical investments in cash, food, and health assistance for those who are struggling to feed, clothe, and care for themselves and their families; in permanent vouchers and housing production and preservation to respond to constantly rising housing costs and high rent burdens; and in ensuring that all housing in the District is safe and healthy.<sup>59</sup>

### **Conclusion**

Thank you for this opportunity to testify. We look forward to working with this Committee and the entire Council to ensure that tenants are protected from eviction and displacement as the coronavirus pandemic and resulting economic devastation continue.

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<sup>59</sup> Damon King, *Strengthening Our Safety Net: How the FY21 Budget Should Protect Struggling District Residents* (May 4, 2020), available at <https://www.makingjusticereal.org/strengtheningour-safety-net-how-the-fy21-budget-should-protect-struggling-district-residents>; Damon King, *Preventing Pandemic-Driven Displacement: How the FY21 Budget Should Protect District Homeowners and Tenants* (May 6, 2020), available at <https://www.makingjusticereal.org/7996-2>.