

**Testimony of Mel Zahnd
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**Before the Committee on Government Operations
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 23-0338
“Eviction Record Sealing Authority Amendment Act of 2019”**

October 30, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony to express its support for the Eviction Records Sealing Authority Amendment Act of 2019. Records of eviction cases, even cases in which the tenant is ultimately vindicated, can present an insurmountable hurdle to finding new affordable housing in the District. The bill will address some of the collateral consequences of an eviction proceeding for District tenants. While we urge the Council to pass this bill, we also urge the Committee to strengthen it by amending it prior to mark-up to require automatic sealing within 30 days for cases that resolve with a consent judgment.

An Eviction Record Can Create Roadblocks to Finding Affordable Housing in the District

The stigma of even a single eviction record—whether or not it resulted in a judgment against the tenant—can make finding affordable housing in the District nearly impossible. Unfortunately, a wide swath of District renters are impacted by eviction filings. Between 2014 and 2018,

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.

landlords filed an average of about 32,000 residential eviction cases per year in the District.² Many households were sued for eviction on multiple occasions in a single year.³ Even though only about six percent of eviction cases actually result in an eviction,⁴ the record of an eviction case can continue to haunt a tenant indefinitely.⁵ Landlords often screen for renters who have past eviction cases, regardless of the result of those cases.⁶ Particularly, in a competitive housing market like that of the District, it is easy for landlords to reject prospective tenants based purely on the fact that they were previously sued for eviction, regardless of the merit of that suit. People of color, particularly women who are low-income and Black, are most likely to encounter these screening tactics that shut them out of affordable housing.⁷

Now, in the midst of a pandemic and the related recession, even more District residents are facing the risk of becoming homeless or housing insecure. Legal Aid praises the Council's quick action to ensure that an avalanche of evictions has not swept through the District at the height of the crisis. Protections such as the current eviction moratorium have been crucial to protecting tenants' housing, and public health in general, and should be continued for as long as the current public health crisis continues. Looking forward, this bill is a proactive measure the Council can take to ensure that District residents are able to find affordable homes for themselves and their families in the future.

Eviction Filings can Prevent Qualified Tenants from Securing Housing

It is important to note that the mere existence of a previous eviction filing on a prospective tenant's record can disqualify an otherwise qualified person from securing housing, even when the allegations in the complaint were never proven. For example, one of Legal Aid's clients, whom I will call Ms. Potter, was using a voucher to rent an apartment. Her landlord refused to make any repairs and the apartment was in flagrant violation of the housing code and property maintenance code. Ultimately, the D.C. Housing Authority terminated the payments to the landlord because the conditions in the apartment placed him in violation of his contract with the D.C. Housing Authority.

² Brian J. McCabe and Eva Rosen, Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability, 5 (2020).

³ Id.

⁴ Id.

⁵ Sophie Beiers, Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

⁶ Id.

⁷ Id.

The landlord told Ms. Potter that he wanted her out so that he could fill the apartment with a tenant who did not have a voucher and so that he could charge that tenant market rent without making repairs. Many landlords who no longer wish to participate in subsidized housing programs will refuse to make repairs, wait for the subsidy provider to cut off subsidy payments, and then sue for unpaid rent. This is an end-run around the District's source of income laws, which prevent landlords from simply opting out of voucher program participation. We often see tenants sued over subsidy portions that were unpaid due entirely to landlord neglect, but the filing nonetheless prevents the tenant from renting elsewhere.

However, Ms. Potter's landlord took an even more egregious approach, falsely alleging that her apartment was a "drug haven," without any factual basis for the allegation. This approach may have been more appealing to the landlord because it would have entitled him to a non-redeemable judgment, had he prevailed. The case was quickly dismissed, but it lingered in the Court's public records. Ms. Potter wanted to use her voucher to move into a safe and healthy apartment, but struggled to find a landlord who would accept her, given the false but ominous-sounding drug haven allegation that had been lodged against her. This was the first—and only—eviction case that had ever been filed against Ms. Potter. When a District resident has even a single non-meritorious eviction case on their record, that resident faces significant challenges to finding affordable housing.

This Bill Will Reduce the Collateral Consequences of an Eviction Record

This bill will successfully address many of the collateral consequences that arise from an eviction case.⁸ It automatically seals within 30 days cases that do not end in a judgment for possession for the landlord.⁹ This will prevent many non-meritorious cases from continuing to haunt tenants. In addition, this Bill automatically seals cases that are over three years old.¹⁰ The bill importantly also gives the Court authority to seal cases for a number of other reasons. For example, the Court will be able to seal cases that were filed for nonpayment of \$500 or less.¹¹ Each of these provisions will provide meaningful protection to tenants. Legal Aid supports this bill because it will make it easier for District residents to find safe, affordable housing.

This Bill Could Be Improved By Requiring Automatic Sealing Within 30 Days for Cases That Resolve with Consent Judgment

Unfortunately, many tenants, particularly those who are unrepresented by counsel, end up signing Consent Judgment Praecipes ("CJPs") early in their eviction cases. Landlords strongly favor these agreements, which are executed on a special Court form, because they are extremely unfavorable to tenants, many of whom do not have counsel, are desperate, and/or lack the legal

⁸ B23-338, Council Period 23 (D.C. 2019).

⁹ Id.

¹⁰ Id.

¹¹ Id.

knowledge to fully understand the consequences of signing. In effect, tenants waive their defenses and trial rights, and agree that the Court will enter an immediate judgment against them, but stay the execution of that judgment provided that they make certain payments to the landlord. If a payment is missed, or even a day late, the landlord can ask the Court to lift the stay and allow them to proceed with the eviction. This is true even where the landlord has breached its obligations to the tenant by failing to provide safe and habitable housing or make agreed-upon repairs. We believe more generally these agreements are unconscionable and should be prohibited. We would have interest in working with the Council next session on legislation to that effect.

Nonetheless, even cases with these extremely unfavorable CJPs generally do not result in an actual eviction of the tenant, because the tenant usually makes all of the required payments. Indeed, the primary difference between tenants who enter CJPs and those who enter more favorable settlement agreements is whether or not they have the benefit of legal counsel. Because consent judgments function like other settlements and do not generally result in actual possession for the landlord, they should be included in 30-day automatic sealing. Excepting such agreements from the protections of the bill would have the effect of punishing unrepresented tenants twice: first, because they have entered into an agreement with far less favorable terms, and again because their case would not then be automatically sealed even if they complied with those terms. We are eager to work with the Committee to draft an amendment to this effect.

Conclusion

Thank you for the opportunity to provide this testimony about the Eviction Record Sealing Authority Amendment Act. Legal Aid supports this bill and would appreciate the opportunity to work with the Committee to ensure that it protects the largest possible number of tenants, including those who have agreed to consent judgments.