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**Before the Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0643

“Keeping Cool Elderly Tenants and Tenants with a Disability Amendment Act of 2020”

October 21, 2020

The Legal Aid Society of the District of Columbia¹ recommends that the Council pass the Keeping Cool Elderly Tenants and Tenants with a Disability Amendment Act of 2020 with two key amendments: extending the bill to all renters and clarifying that landlords may not charge air-conditioning fees.

As currently drafted, this bill requires landlords to provide air-conditioning for elderly tenants or tenants with disabilities who register with the Rent Administrator (part of the Department of Housing and Community Development) by providing documentation to establish their elderly or disability status. The bill will help some elderly tenants and tenants with disabilities who manage to fulfill the registration requirement. However, it also puts an unnecessary burden on individuals to register before they can receive its protections and leaves out many other groups who are at high health risk from extreme heat. For this reason, Legal Aid recommends that the Committee broaden the applicability of this bill to include all renters. If the bill were applied to all renters, it would mirror already-existing requirements in other jurisdictions such as Montgomery County,

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.

Maryland; Dallas, Texas; and Phoenix, Arizona.² If applied to all renters, the bill would also be much easier to enforce and would protect many more groups who are vulnerable to extreme heat, including people with temporary health conditions, people who are uninsured (and therefore cannot easily access a doctor to establish that they have a disability), and families with children.

Furthermore, as currently drafted, the bill specifies that landlords must pay for the *installation* of air-conditioning, and that the party who was previously responsible for paying electricity costs (i.e., the landlord or the tenant) will continue to pay those costs. The bill should be amended to clarify that landlords may not impose fees on tenants just for the *use* of an air-conditioning unit – a current practice of some landlords that could continue if not explicitly prohibited by amending the language of this bill.

Climate Change and COVID-19 Demand an Urgent and Broad-Based Solution

The Council must consider this bill in light of the unavoidable prospect of hotter summers. The effects of climate change have already produced eight of the ten hottest D.C. summers on record in the last two decades.³ 2020 was the fifth-hottest summer on record, with a record-breaking number of days above ninety degrees in the month of July.⁴ No other category of hazardous weather event in the United States has caused more fatalities over the last few decades than extreme heat.⁵ Extreme heat is the leading cause of summertime morbidity and has specific impacts on communities with pre-existing health conditions (such as lung disease, asthma, and heart disease), limited access to resources, and the elderly.⁶ Research also suggests that higher temperatures disproportionately impact urban communities of color in historically redlined neighborhoods.⁷

² See County Council for Montgomery Council, Bill 24-19, Landlord – Tenant Relations – Obligations of Landlord – Air Conditioning (March 2, 2020); Dallas City Code § 27-11; Phoenix City Code § 39-5.

³ Matt Rogers & Jason Samenow, “2020 was Washington’s 5th-hottest summer on record, with 8 inches more rain than normal,” Washington Post, Sept. 1, 2020, <https://www.washingtonpost.com/weather/2020/09/01/washington-dc-summer-2020-recap/>.

⁴ *Id.*

⁵ Jeremy S. Hoffman, Vivek Shandas & Nicholas Penderton, *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, Climate, Jan. 13, 2020, <https://www.mdpi.com/2225-1154/8/1/12/html#>.

⁶ *Id.*

⁷ See *id.*; Brad Plumer & Nadja Popovich, “How Decades of Racist Housing Policy Left Neighborhoods Sweltering,” New York Times, Aug. 24, 2020, <https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html>.

Due to the ongoing COVID-19 pandemic, people are having to spend more time at home than ever before, and those who do contract COVID-19 may find themselves at higher risk from extreme heat.⁸ The risk of COVID-19 transmission also means that the city cannot rely on public pools and cooling centers to protect people from extreme heat as in the past.⁹

For anyone living in 2020, air-conditioning is as essential to one's comfort, health, and safety as heat is in the winter. Many D.C. residents might be surprised to learn that our laws do not already require landlords to provide air-conditioning.¹⁰ Now is the time for D.C. to follow the lead of Montgomery County and other major U.S. cities and enact a broad requirement that landlords provide air-conditioning for all tenants.¹¹

A Broadly-Applicable Law Will Better Protect Elderly Tenants and Tenants with Disabilities Because It Will Be Easier to Implement and Enforce

The bill as currently drafted requires elderly tenants and tenants with disabilities to provide documentation and register with the Department of Housing and Community Development (DHCD) before they can receive the benefit of the law's protections. This means that many people who are otherwise eligible and vulnerable to extreme heat will not be protected, simply because they do not realize they must register or are unable to register.

Under a uniform bill that applies to all tenants, a DCRA housing inspector will not have to first verify that a tenant filed a registration of status with DHCD before imposing a citation or a fine on a landlord who has not provided air-conditioning. A uniform rule means that elderly tenants and tenants with disabilities will not need to jump through unnecessary hoops just to get air-conditioning and receive the protections of a law designed specifically for them.

⁸ See American Red Cross, "Be Prepared for Extreme Heat during COVID-19," July 20, 2020, https://www.redcross.org/content/dam/redcross/get-help/pdfs/heat/Be_Prepared_for_Extreme_Heat_during_COVID-19_07202020.pdf.

⁹ See Matthew Cappucci & Andrew Freedman, "Triple-digit heat threatens D.C. as dangerous conditions are set to envelop the Mid-Atlantic," July 17, 2020, Washington Post, <https://www.washingtonpost.com/weather/2020/07/17/triple-digit-heat-threatens-dc-dangerous-conditions-are-set-envelop-mid-atlantic/>; G.S. Martinez, et al., *Protect the vulnerable from extreme heat during the COVID-19 pandemic*, Environmental research, Aug. 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7255271/>.

¹⁰ See Eliana Block, "Verify: No, landlords in DC aren't required to provide air conditioning," WUSA9, July 20, 2019, <https://www.wusa9.com/article/news/verify/verify-no-landlords-in-dc-arent-required-to-provide-air-conditioning/65-435bc118-1cd2-41d6-8987-3a92e650e740>.

¹¹ County Council for Montgomery Council, Bill 24-19, Landlord – Tenant Relations – Obligations of Landlord – Air Conditioning (March 2, 2020). See also Y.T. Eunice Lo, et al., "Increasing mitigation ambition to meet the Paris Agreement's temperature goal avoids substantial heat-related mortality in U.S. cities," *Science Advances*, June 5, 2019, <https://advances.sciencemag.org/content/5/6/eaau4373>.

A Broadly-Applicable Law Will Protect Young Children and Many Others, Who Are Vulnerable to Extreme Heat

A bill that applies to all tenants will also better protect categories of people who are left out of the current bill, even though they are at a high medical risk from exposure to extreme heat. This includes infants, children up to four years of age, people who are overweight, or people who are ill or on certain medications.¹²

Under such a bill, children would be automatically protected. People who have a temporary health condition (which very well could be COVID-19) will not need to seek a doctor's note or register with DHCD just to ensure they have air-conditioning while recovering in their homes. People who are uninsured but who are otherwise eligible under the proposed bill (due to a disability) or who are otherwise at high-risk (due to a temporary health condition) will also be automatically protected and will not have to first find a doctor to provide documentation of their medical condition.

The Council Should Put an End to Air-Conditioning Fees

As currently drafted, the bill states that landlords may not charge for *installation* of an air-conditioning unit and that electricity costs will continue to be paid by the same party as before. In addition to this, the bill should clarify that a landlord may not charge a fee to a tenant just for the *use* of an air-conditioning unit, as some landlords currently do.

Some landlords have taken advantage of existing law to extract a seasonal premium from renters who are otherwise protected from large rent increases by the rent stabilization program. Legal Aid has worked with tenants in rent-controlled properties who were charged between \$70 and \$96 per month per air-conditioning unit in 2018. Landlords typically impose these fees during the five-month period from May to September (sometimes offering a "discount" if a family pays all five months in advance). For a hypothetical family charged \$80 per air-conditioning unit, using two units, and paying median rent of \$1,487 a month, the air-conditioning fees alone would be equivalent to a 10.8% increase in their monthly rent, five months out of the year. As a percentage of rent, this is far higher than the annual increase permitted under rent control (typically in the range of 2-4%), and more than double the legal cap for late fees on rent (5%).

Landlords do not have to justify the price they set for use of an air-conditioner and can arbitrarily increase the price year to year without oversight or legal constraint. Under the current regime, families are being forced to choose between incurring hundreds of dollars in additional fees each year or suffering through the heat.

¹² See Heat Advisory Information, DC Health, May 16, 2017, <https://dchealth.dc.gov/release/heat-advisory-information>.

Conclusion

The Council can and should amend the current bill to clarify that landlords may not charge fees for the use of air-conditioning units. Even better, by extending the requirements of this bill to all landlords, the Council can put an end to this practice, greatly simplify enforcement of the new law, and ensure that all categories of people that are at risk from extreme heat, including families with children, are protected. Legal Aid greatly appreciates the opportunity to provide these recommendations.