

**Testimony of Mel Zahnd, Staff Attorney, Housing Law Unit
and Emily Near, Case Manager, Housing Law Unit
Legal Aid Society of the District of Columbia**

**Before the Committee on Government Operations
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 23-149
“Fair Tenant Screening Act of 2019”**

October 27, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony to express its support for the Fair Tenant Screening Act of 2019, which would increase transparency in the rental housing market and better protect low-income renters, including voucher-holders, from discriminatory practices. Low-income District residents, including voucher-holders, have to overcome a number of obstacles just to find homes for themselves and their families. This legislation will make affordable housing more attainable for low-income District residents. This bill can be further improved by creating a private right of action to empower prospective renters to enforce the law.

**Low-Income Residents of the District Face Unprecedented Obstacles to Maintaining
Affordable Homes for Themselves and Their Families**

Even before the pandemic, rental housing had become increasingly unaffordable for the District’s low-income residents. In 2016, 73% of low-income households in the District spent

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.

more than half of their monthly income on rent and utilities.² Over the last twenty years, the bottom two quintiles of District renters saw their rents rise by 14% and 35% respectively, even though incomes stagnated.³ The District was struggling with an affordable housing crisis long before the pandemic hit.

Now, in the midst of the pandemic and the related recession, even more District residents are facing the risk of becoming homeless or housing insecure. Job losses during the pandemic have disproportionately burdened low-wage workers and workers of color.⁴ Between February and April of this year, employment levels dropped to their lowest point since 1975.⁵ Although the economy overall has recovered about half the employment lost between February and April, Black workers and other workers of color have not recovered their jobs at the same rate as white workers.⁶ In particular, Black women, Black men, and mothers of school-age children are facing the longest roads to reentering the workforce.⁷ For example, while Department of Labor data through August shows that white women had recovered 61% of jobs lost, only 34% of Black women had recovered the jobs they had lost.⁸ As the District's low-income residents grapple with an inequitable recovery, it is imperative that the Council act to ensure that these residents can find affordable housing for themselves and their families.

For years, prospective renters searching for new housing in the District have faced a fast-moving and competitive rental housing market,⁹ which requires that they move quickly to apply for units of interest. When calling to inquire about unit availability or a housing provider's eligibility criteria, prospective renters are often met with vague and dismissive answers. This common practice is a barrier to District residents navigating the rental housing market, as prospective renters are denied the information they need to gauge if applying for a unit is worth their time and money. If they do choose to submit an application, these individuals also have no way of

² D.C. Access to Justice Commission, Delivering Justice: Addressing Civil Legal Needs in the District of Columbia, 19 (2019), https://dcaccesstojustice.org/assets/pdf/Delivering_Justice_2019.pdf.

³ Id.

⁴ Heather Long et al., The Covid-19 Recession Is the Most Unequal in Modern U.S. History, Wash. Post (Sept. 30, 2020), <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>.

⁵ Id.

⁶ See id.

⁷ Id.

⁸ Id.

⁹ Kathy Orton, Experts Weigh in on What the 2019 Rental Market Will Bring, Wash. Post (Jan. 14, 2020), <https://www.washingtonpost.com/business/2019/01/14/experts-weigh-what-rental-market-will-bring/>.

knowing how long it will take for a potential landlord to make a decision. In our experience, prospective renters often must follow up with the housing provider multiple times in order to receive a determination, particularly if that determination is a denial. Prospective renters are therefore unable to make informed decisions on how to budget for expensive application and holding fees, how frequently their credit is pulled, and how long they should spend waiting for a decision to be made before moving on to the next unit.

If a rental application is denied, prospective renters are often not presented with a written denial letter explaining the decision and are therefore unable to effectively question or challenge the decision of the housing provider, much less determine whether or not the decision was discriminatory. If the denial was based upon a credit report or background check, applicants are rarely provided with the supporting literature upon which the provider based their decision, making it impossible to know if the information collected by the landlord was even accurate. Because of the speed with which the District's market moves, the current lack of transparency often can provide cover for discrimination on the basis of source of income, race, and/or disability among other protected classes.

Voucher-holders face particularly steep obstacles to finding housing. Over the last 15 years, vouchers have made up an increasing share of subsidized housing, while public housing has decreased.¹⁰ Just getting a voucher is a long journey. In 2013, the District closed the wait-list for a number of its subsidized housing programs.¹¹ At the time, there were 70,000 people on the wait-list.¹²

Nonetheless, actually using a voucher is challenging. Nationally, voucher take-up rates are low.¹³ This is particularly true in large cities where voucher-holders are often only able to place their vouchers at a rate of about 50 percent.¹⁴

Source of income discrimination compounds the difficulty of the housing search process for voucher-holders. Although source of income discrimination is illegal in the District, the lack of transparency in the housing application process allows landlords to engage in discriminatory practices without ever being caught. In addition to this, housing providers are currently able to automatically deny voucher holders on the basis of credit score alone, without taking into

¹⁰ Jason Richardson et al., National Community Reinvestment Coalition, Shifting Neighborhoods: Gentrification and Cultural Displacement in American Cities (2019), <http://ncrc.org/gentrification>.

¹¹ See D.C. Access to Justice Commission, *supra* fn. 2 at 19.

¹² Id.

¹³ Eric Chyn et al., Housing Take-Up and Labor Market Impacts, *Journal of Policy Analysis and Management*, Vol. 38, No. 1, 65 (2019).

¹⁴ Id.

consideration that their credit may not indicate their ability to pay their rent, which is, in part or in full, guaranteed by a public program.

As a result of the myriad barriers that voucher holders face, families that are able to use their vouchers are often concentrated in high poverty, low opportunity neighborhoods.¹⁵ In order for the District's voucher program to work, the Council must take additional steps to ensure that low-income residents are actually able to use their vouchers.

Legal Aid praises the Council's quick action to ensure that an avalanche of evictions did not sweep 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. However, now is the time to think through long term solutions to ensure that our low-income neighbors are not pushed out of the District's rental housing market as they fight to rebound in the midst of this historically inequitable recession.

The Fair Tenant Screening Act Lowers Barriers to Affordable Housing

The Fair Tenant Screening Act implements necessary safeguards to ensure that District renters, including voucher holders, can find safe and affordable housing. This legislation makes permanent a number of provisions included in the Fairness in Renting Emergency Amendment Act of 2020.¹⁶

By mandating that all landlords provide written information about their available units, number of applicants, and eligibility criteria, prospective renters will be able to better assess where to spend time and money on rental applications.¹⁷ With this increased transparency, renters with time-sensitive moves (such as voucher holders)¹⁸ or limited funds to spend on application fees will be better equipped to decide where to apply based on their individual circumstances, the housing provider's eligibility criteria, and the number of applications already taken for the unit of interest.

The Fair Tenant Screening Act also requires landlords to provide the prospective tenants with specific grounds for denials and any third-party literature used to make the determination.¹⁹ This will make it harder for landlords to engage in racial discrimination, source of income discrimination or other forms of illegal discrimination during the rental application process, and

¹⁵ Id.

¹⁶ Cf. B23-940, Council Period 23 (D.C. 2020).

¹⁷ B23-149, Council Period 23 (D.C. 2019).

¹⁸ The typical amount of time Housing Choice Voucher Program participants are given to locate a new unit and place their voucher is 180 days, or 6 months.

¹⁹ Id.

allow tenants to contest erroneous and improper denials. This protection will be particularly beneficial to District residents struggling to recover from the recent economic crisis.

The Fair Tenant Screening Act further gives applicants 48 hours to provide evidence of mitigating circumstances, which will allow applicants to refute any inaccuracies in the housing provider's collected information and to contextualize any issue that may have led to a denial, such as a loss of income or an increase in debt due to the public health emergency.

In particular, the Fair Tenant Screening Act will allow the District's voucher program to better achieve its purpose of enabling low-income residents to find safe and affordable housing in neighborhoods of their choice. A voucher-holder's credit score and rent payment history prior to obtaining a voucher is irrelevant to assessing that individual's viability as a prospective tenant because the voucher-holder will only be responsible for paying an income-based and affordable portion of the rent. Accordingly, the Fair Tenant Screening Act prohibits consideration of these factors in a voucher-holder's application, which all too often masks source of income discrimination in the current application process. This provision will help this contingent of renters to place their vouchers in communities of their choosing at a higher rate.

The Fair Tenant Screening Act removes many of the barriers low-income prospective renters face to finding affordable housing. By increasing the transparency of the rental housing application process for all housing providers, renters will be more likely to successfully navigate the time-consuming and laborious process of looking for a new home without having to leave the District.

The Office of Human Rights Should Not Be the Sole Mechanism for Enforcement

While we support the provisions of the bill discussed above, Legal Aid opposes the use of the Office of Human Rights ("OHR") as the sole mechanism for enforcement of this law for multiple reasons.

Legal Aid Continues to be Concerned About the Performance and Effectiveness of OHR in Enforcement of Anti-Discrimination Protections

First, our advocates and our clients have experienced a number of barriers in pursuing other actions before OHR, and our assessment is that it is often ineffective in protecting the rights and interests of individuals appearing before it. As this Committee is aware, we have previously testified about problems with OHR's enforcement of the District's anti-discrimination laws.²⁰ We have seen, for example, well-supported legal claims dismissed without litigation. We have also seen cases in which mediators have pressured complainants into unfavorable settlements of claims, often resulting in outcomes far worse than they would have faced had they lost at a hearing. Cases filed before OHR also often move extremely slowly, with complainants sometimes hearing nothing for many months after they file their claims.

²⁰ Testimony of Maggie Donahue, Legal Aid Society of the District of Columbia, Before the Committee on Government Operations, Council of D.C., Oversight Hearing Regarding the Office of Human Rights (Jan. 22, 2020).

Restricting Tenants' Enforcement Options De-Prioritizes Discrimination that Primarily Affects Low-Income, Black District Residents

The prospective renters who will most likely be affected by the Fair Tenant Screening Act will be overwhelmingly low-income and Black. Legal Aid supports the option of a low-barrier enforcement mechanism like OHR, but we oppose the requirement that rights be enforced solely through OHR. We worry that this approach risks sending a message that violations of law more likely to affect low-income, Black residents are somehow less important, or that the rights violated are somehow less worthy of vindication.

Aggrieved Persons Should Be Entitled to Pursue a Private Right of Action Under the Fair Tenant Screening Act

Setting aside our concerns with the OHR process, we believe a fine-based enforcement mechanism is inadequate. First, in addition to monetary relief, we believe that the Fair Tenant Screening Act should provide for injunctive relief. For example, if a housing provider is refusing to give a prospective tenant a list of eligibility criteria, they should be required to do so. In addition, prospective tenants should have the opportunity to recover the actual damages that result from an improper denial of housing. We believe that persons aggrieved under this law must be entitled to a private right of action for enforcement of the rights created in the Fair Tenant Screening Act.

Conclusion

Thank you for the opportunity to provide this testimony about the Fair Tenant Screening Act. We support the Fair Tenant Screening Act and would appreciate the opportunity to work with the Committee to ensure the legislation's success.