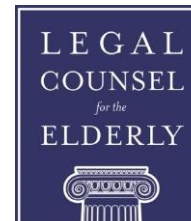


Basic Housing Law Training - Session 2

June 11, 2020



Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL



RISING
FOR JUSTICE

Public and Subsidized Housing

Lori Leibowitz, Neighborhood Legal Services Program

Overview of Programs

Eviction Cases & Subsidy Termination

Joinder of Other Parties

Main Attributes of Largest Programs

Public Housing
Site-Based Section 8
Section 8 Voucher (Housing Choice
Voucher Program - HCVP)

- Income-based rent
 - Roughly 30% of tenant's income
- Recertification is required
 - Every two years for public housing
 - Every two or three years for HCVP
 - Every year for site-based section 8
 - Tenants must report changes in income and household composition
 - Also requirement for interim recertification – for certain changes in between regular recertifications
- Occupancy restrictions
- Different transfer rights, depending on program

Public Housing

- D.C. Housing Authority (DCHA) owns and typically manages property
 - Private managers at some DCHA-owned sites
 - Also private managers at redeveloped sites (e.g. Hope VI)
- HUD provides funding to DCHA
 - Large annual payments – no concept of contract rent per se
- Governed by federal and local regulations – 24 C.F.R. parts 960, 963 to 966, 970 to 972; 14 D.C.M.R. chs. 60-65, 74
- Standard lease
- Only semi-portable – tenants have right to transfer to different public housing units
- Recertification with DCHA site manager at rental office

Site-Based (Project-Based) Sec. 8

- Subsidy tied to property and unit
- Owned and operated by private landlords, who contract with HUD
 - Each unit has a contract rent
 - Tenant pays income-based rent, HUD pays balance to landlord
- Governed by federal regulations only (no local regulations)
 - Best guidance is found in *Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (available online)
- Slightly portable – typically can only transfer within same property, with right to transfer between properties of same landlord (or sometimes other properties) in limited circumstances
- Recertification on-site with property manager at rental office

Sec. 8 Voucher (Housing Choice Voucher Program)

- Tenant contracts with private landlord, which has contract with DCHA - allows tenant to choose among private landlords
 - Lease between tenant and landlord
 - Housing Assistance Payments (HAP) contract between DCHA and landlord
- Vouchers administered as a public benefit program by DCHA
- Governed by federal and local regulations – 24 C.F.R. ch. 982; 14 D.C.M.R. chs. 49, 51-56, 58-59, 74, 76, 85, 89, 92
- Portable – can use at any property in DC (or throughout U.S. unless local dollars), as long as within maximum rent levels set by DCHA
- Recertification with DCHA (1133 N. Capitol St. NE)
- Many obstacles to voucher utilization
 - Maximum rents now reach about two-thirds of D.C. neighborhoods
 - Source of income discrimination still exists, though illegal in DC

Other Programs

- **Local Rent Supplement Program**
 - Parallel to HCVP but local dollars (usable in D.C. only)
 - Local regulations 14 D.C.M.R., ch. 95 (but essentially points to HCVP rules and regulations)
- **Department of Behavioral Health “Home First” Program**
 - May be administered through private contractors
 - Local regulations 22A D.C.M.R., ch. 2200
- **Rapid Re-Housing/ Family Re-Housing Stabilization Program**
 - Generally limited to one year of assistance with limited extensions
 - Local regulations 29 D.C.M.R., ch. 78
- **Veterans Affairs Supportive Housing (VASH)**
 - Supportive services plus housing for veterans, administered by DCHA but with link to VA
 - Federal HCVP regulations apply but federal notices have additional guidance
- **Low-Income Housing Tax Credit Program**
 - Below market rent, but not income-based, with annual recertification
 - Federal statute and regulations, 26 U.S.C. § 42, 26 C.F.R. § 1.42-10

Practice Tip: Which Program Is It?

- Who is the landlord?
 - DCHA = public housing
 - Private landlord = site-based section 8 or HCVP*
 - But note that in a few public housing properties, there are private owners/managers
- Where does your client recertify? How often does your client recertify?
 - At rental office every year = site-based section 8
 - At DCHA every two or three years = HCVP
 - DCHA is located at 1133 N. Capitol St., NE
 - At rental office every two years = public housing

Practice Tip: Which Program Is It?

- Is the subsidy portable or tied to the unit?
 - Tied to the unit = public housing or site-based section 8
 - Portable = HCVP
- Does your client have any relationship with DCHA at 1133 N. Capitol St.?*
 - Yes = HCVP or public housing
 - No = site-based section 8
 - Note: many tenants are on the waiting list at DCHA; ask some follow-up questions to determine how your client interacts with DCHA

Eviction & Subsidy Termination

- Public Housing
 - Eviction is the procedure for terminating the subsidy
 - Eviction will result in loss of the subsidy – **very important to consider this in settlement**
 - Pre-court grievance is available except for one-strike cases – but rarely used or useful (14 DCMR ch. 63)
- Site-Based Section 8
 - Eviction ordinarily is the procedure for terminating the subsidy
 - But landlord also can terminate subsidy for certain reasons and increase to market rent and then sue for nonpayment of rent
 - Eviction will result in loss of the subsidy – **very important to consider this in settlement**
 - No full administrative grievance available but landlord must offer (and convene if requested) a meeting within 10 days

Eviction & Subsidy Termination (cont.)

- Housing Choice Voucher Program
 - Eviction and subsidy termination are two different processes
 - Eviction does not automatically result in loss of the subsidy
 - But eviction for a serious lease violation is mandatory ground for terminating subsidy – **very important to consider this in settlement**
 - Termination of tenant's subsidy:
 - DCHA issues a Recommendation for Termination
 - Reasons include failure to recertify, unauthorized occupants, criminal activity, tenant violations of Housing Quality Standards (14 DCMR ch. 58)
 - Tenant has 30 days to request an informal hearing; if timely request is made, DCHA provides benefits pending (14 DCMR ch. 89)
 - Tenant can appeal adverse decision to Executive Director, and ultimately to DCCA, *Mathis v. D.C. Housing Authority*, 124 A.3d 1089 (D.C. 2015)

Eviction & Subsidy Termination (cont.)

- Housing Choice Voucher Program
 - Termination of landlord:
 - DCHA also may terminate landlord from the Voucher Program, typically for landlord violation of Housing Quality Standards
 - Eviction:
 - If tenant or landlord is terminated from HCVP and DCHA stops paying, tenant is likely to face an eviction suit for nonpayment of rent
 - Protective order/Bell Hearing concerns – will need to keep protective order at tenant portion to avoid eviction
 - If tenant is wrongly terminated, may need to involve DCHA in litigation
 - If landlord is terminated, unpaid subsidy should not be passed on to tenant (24 CFR 982.310) – case law is unsettled and will want to brief

Note: landlord **cannot evict** a tenant based on voucher status – but some landlords will fail HQS and be terminated themselves to force tenant out

Joinder of Other Parties

- If tenant is sued for rent that subsidy provider should have paid, file Motion to Join subsidy provider as necessary party (LT R. 3-II)
 - Must file Motion at the initial hearing or “within such additional time as the court may allow for good cause”
 - If LT Court grants motion, tenant must:
 - Serve the party to be joined, as detailed in LT R. 3-II(b)(3) and
 - File proof of service at least 6 days prior to further hearing (LT R. 3-II(b)(4))
 - Joined party is subject to money judgment, and tenant cannot be evicted for money owed by joined party

Rent Abatement & Intervention

- For tenant receiving a subsidy, any abatement is calculated from entire rent amount, not just tenant share
- *Basic idea*: landlord should not benefit simply because tenant does not pay full market rent
- How it works:
 - Tenant or court must notify subsidy provider, so it can intervene
 - If subsidy provider intervenes, tenant and subsidy provider are each entitled to proportional amount of abatement
 - If subsidy provider does not intervene, windfall goes to the tenant – tenant can receive subsidy provider's share of abatement
 - If tenant litigates and obtains judgment for subsidy provider, subsidy provider may be liable for tenant's costs and attorney's fees

Rent Abatement & Intervention (cont.)

- Subsidy provider typically files motion to intervene
 - Review motion to confirm that relief sought (proportional share of abatement) is correct
- Consider timing of notice/invitation to intervene
 - No clear deadline – and ultimately is court's responsibility, not yours
 - Possible impact on settlement, good and bad
 - May depend on who subsidy provider is and how they will act
- Cases:
 - *Multi-Family Management Inc. v. Hancock*, 664 A.2d 1210 (DC 1995); *Anderson v. Abidoeye*, 824 A.2d 42 (DC 2003); *Anderson v. DC Housing Authority*, 923 A.2d 853 (DC 2007); *Peart v. DC Housing Authority*, 972 A.2d 810 (DC 2009)

Break

Overview of Rent Controlled Housing

Celina Aldape, Rising for Justice

Introduction to Rent Control in D.C.

Coverage & Exemptions/Exclusions

Annual Rent Increase & Vacancy Rent Increase

Overview of Petitions & Voluntary Agreements

Other Provisions About Rent Increases

Tenant Petitions & Relief Available at OAH

Introduction to Rent Control in D.C.

- Quick history
 - Started in 1975, changes to law in 1980, 1985, 2006
 - For the most part, the Rental Housing Act of 1985 remains intact
 - Major amendment to the statute in 2006 (but regulations still not updated, draft currently out for notice and comment)
- Rent stabilization vs. rent control
 - True “rent control” would be much more regulated, with government approving individual rent increases (e.g., New York City)
 - D.C. has “rent stabilization”
 - Rules limit timing and amount of increases in certain respects; some rent increases are automatic while others are subject to prior government approval

Introduction to Rent Control in D.C. (cont.)

- Rent Administrator/Rental Accommodations Division (RAD)
 - Receives and maintains all rent control filings – exemption and exclusion forms, rent increase forms, housing provider and tenant petitions
- Office of Administrative Hearings
 - Adjudicates all tenant petition cases, housing provider petition cases, and voluntary agreements cases
- Rental Housing Commission
 - Publishes annual increase of general applicability, issues regulations on the Rental Housing Act, hears appeals from housing provider & tenant petition cases (which then go to the D.C. Court of Appeals)

Overall Structure of Law

- Structure of rent increases generally
 - Most common rent increase is the annual increase of general applicability
 - Housing providers also can increase the rent upon a tenant vacancy
 - Housing providers can request larger increases by filing petitions on several specific bases
 - Housing provider and 70% of tenants also can agree to increase rents on specific terms
- Coverage
 - All units are covered unless exempt or excluded

Coverage & Exemptions

- D.C. Code § 42-3502.05
- Exempt = covered by the Rental Housing Act generally but not the rent control sections
- All rental units are covered but the following are exempt:
 - District- or federally-owned units or mortgage or rent is District- or federally-subsidized
 - Units built after 1975
 - Units in housing accommodation with 4 or fewer units owned by 4 or fewer natural persons
 - Units continuously vacant since Jan. 1, 1985 and previously exempt under 1980 law
 - Rental unit covered by building improvement plan or housing accommodation has received rehabilitation assistance from DHCD

Coverage & Exclusions

- Excluded = not covered by the Rental Housing Act at all
- The following are excluded:
 - Foreign government residence for diplomats
 - Hospital, nursing home, or similar care facility
 - Dormitory
 - **Long-term transitional housing operated for low-income (50% AMI or below) tenants by charitable non-profit with comprehensive social services plan**
 - Rental unit covered by building improvement plan or has received rehabilitation assistance from DHCD
 - All units in HFA-assisted projects (D.C. Code 42-2703.08)

Annual Rent Increase

- 42 D.C. Code § 3502.08(h)(2); 14 DCMR § 4206
- Concept: annual increase pegged to increase in wages
- Consumer Price Index (CPI-W) + 2%, not to exceed 10%
 - But for elderly tenants and tenants with disabilities, no more than lesser of CPI or Social Security COLA, not to exceed 5%
 - Elderly tenant = 62 years of age or older
 - Disability = definition under Americans with Disabilities Act, 42 U.S.C. § 12102(1)(A)
 - For 2018, CPI is 1.4% and COLA is 2%
- Filed with RAD with 30 days' notice to tenant, must be filed within 30 days of landlord being eligible, implemented without government pre-approval but subject to challenge by tenant

Vacancy Rent Increase

- 42 D.C. Code § 3502.13; 14 § DCMR 4210
- Concept: increase taken upon vacancy in unit, to cover turnover costs and to equalize rents over time
- New law (effective Oct. 1, 2019)
 - 10% if prior tenancy was 10 years or less; 20% if prior tenancy was longer
- Filed with RAD with 30 days' notice to tenant, must be filed within 30 days of vacancy, implemented without government pre-approval but subject to challenge by tenant

Overview of Hardship Petitions

- D.C. Code §§ 42-3502.06(c), 42-3502.12, 14 D.C.M.R. § 4209
- Concept:
 - Substitute for annual CPI increase, taken if landlord is not making a minimum of a 12% annual return on investment (equity) in the property
 - Answer to a constitutional challenge of rent control as a takings
- Filed with RAD, government audit performed and increase adjusted, tenants then have 30 days to file objections and case is transferred to OAH for adjudication
- Special notes:
 - Conditional rent increase – if landlord has negative net income and RAD takes more than 90 days to rule, landlord can take 5% increase
 - Elderly and tenants with disabilities are exempt if income below 60% AMI, landlords gets \$1 for \$1 tax credit instead

Overview of Capital Improvement Petitions

- 42 DC Code § 3502.10; 14 DCMR § 4210
- Concept
 - Covers cost of capital improvements to specific units or entire building
 - Must protect/enhance health or safety of tenants or habitability of building, or be for energy efficiency or environmental protection
 - Must be considered depreciable, i.e. “capital”, under IRS rules
- Rent increase calculation
 - Total cost of project divided by 96-month period and number of units
 - Cap of 20% increase if building-wide improvement, 15% if limited
 - Note: rent increase is “surcharge,” rolled back after 96-month period
- Filed with RAD, automatically transferred to OAH for adjudication
- Special note: elderly and tenants with disabilities are exempt if income below 60% AMI, landlords gets \$1 for \$1 tax credit instead

Overview of Substantial Rehabilitation Petitions

- 42 DC Code § 3502.14; 14 DCMR § 4212
- Concept
 - Covers cost of “substantial” rehabilitation of property, meaning cost of proposed rehabilitation exceeds 50% of assessed value of property
 - Must be in interest of the tenants – considering impact on tenants, existing condition of property and health/safety violations, whether maintenance, repairs, or capital improvements could fix issues instead
- Rent increase calculation
 - Total cost of project divided by 240-month period and number of units, with cap of 125%; this rent increase is not a surcharge
- Filed with RAD, automatically transferred to OAH for adjudication
- Special notes:
 - Elderly and tenants with disabilities are exempt if income below 60% AMI, landlords gets \$1 for \$1 tax credit instead
 - Housing provider can ask for tenants to be relocated, with prior 120-day notice to vacate and right to return at new rent

Overview of Services & Facilities Petitions

- 42 DC Code § 3502.11; 14 DCMR § 4211
- Concept
 - Increases or decreases rent due to an increase or decrease of services
 - Common Examples: change in whether landlord or tenant pays for specific utilities, amenities such as parking or laundry machines
- Rent increase/decrease calculation considers:
 - Cost to tenant of obtaining comparable service/facility
 - Cost to landlord of providing service/facility
 - Market value of service/facility
- Filed with RAD, automatically transferred to OAH for adjudication
- Special note: elderly and tenants with disabilities are exempt if income below 60% AMI, landlords gets \$1 for \$1 tax credit instead

Overview of Voluntary Agreements

- 42 DC Code § 3502.15; 14 DCMR § 4213
- Concept
 - Landlord and 70 percent of tenants can agree to change rent levels and services/facilities provided and/or provide for repairs or rehabilitation
- Submission process
 - Landlord or tenant submits proposed agreement to RAD
 - Tenants must have at least 14 days to review and then vote yes/no
- Review process
 - Rent Administrator must approve unless 1) duress, harassment, intimidation, coercion, 2) fraud, deceit, misrepresentation, 3) contradicts broad purposes of Act, 4) inequitable treatment of tenants
 - If Rent Administrator disapproves or tenant objects, goes to OAH
- Special note: elderly and tenants with disabilities are exempt if income below 60% AMI, landlord does not receive tax credit

Other Provisions About Rent Increases

- 42 D.C. Code § 3502.08(a)(1) - Rent in rent control unit can be increased only if:
 - Unit and common areas are in substantial compliance with housing regulations;
 - Housing accommodation is properly registered and licensed;
 - Manager is properly registered; and
 - Landlord gives 30-day written notice of increase
- 42 D.C. Code § 3502.22 - Required disclosures to tenants:
 - Current tenants can request list of rent adjustments in past three years
 - Prospective tenants must receive notice of current rent charged, whether unit is exempt, any pending rent control petitions, and any current rent surcharges, plus additional information about housing code violations, mold, ownership of the property

Overview of Tenant Petitions

- 42 DC Code § § 3502.08, 3502.16; 14 DCMR § 4214
- Tenants in rent control units may file a tenant petition raising:
 - Rent increase is invalid under rent control (landlord not registered, challenge to exemption/exclusion, improper amount, notice issues, housing code violations at the time of the increase, etc.)
 - Services and facilities have been reduced or eliminated, i.e. housing code violations - seeking rent abatement and/or rent rollback until services and facilities are restored
- All tenants may file a tenant petition raising:
 - Insufficiency of a notice to quit (though generally the timing on this will not work)
 - Retaliation (though only a fine is available)
 - Security deposit violations
 - Unlawful interference with a tenant organization

Overview of Relief Available at OAH

- Tenants defending against landlord petitions may receive:
 - An order invalidating proposed rent increase (or decrease)
 - Fines paid to the District of up to \$5000 each for willful illegal acts
 - Attorney's fees to prevailing tenant upon motion
- Tenants bringing their own petitions may receive all of the above, plus:
 - Refund of illegal rent charges, whether paid or not (so long as demanded)
 - If bad faith by landlord established, treble damages
- Enforcement of OAH monetary awards: enroll as judgment with Judge-In-Chambers through D.C. Superior Court and pursue collections, use as rent credit, or address in co-existing Landlord and Tenant Branch action as setoff

Break

Client Counseling

Melanie Acuña, Legal Counsel for the Elderly

Client Population

Consider your client's background and daily challenges

- Very little or no income
- Little or no experience with lawyers
- Any health conditions or past trauma
- Competing demands

Poverty in D.C.

1 in 6 residents lives in poverty. 1 in 4 children lives in poverty.

East of the Anacostia River, 1 in 3 residents lives in poverty
(half of whom live in deep poverty)

Racial Justice Lens

81x

Average wealth of white households vs. black households in D.C.

- National and local legacy of racial inequality
 - History of institutional racism in housing policies, contributing to racial segregation and wealth gap
 - Some facially neutral laws and policies may still contribute to racial inequality
- Vast majority of our clients are people of color
- Advancing racial equity is a part of our anti-poverty advocacy

Client Counseling

- **Take a client-centered approach**
 - Empower your client in the legal process
 - Show empathy and respect
 - **Your representation might require difficult conversations with your client**
 - Intimate personal details
 - Unreported income
-  *Wait to build trust before having sensitive conversations, and keep value judgments in check.*

Client Counseling (cont.)

- **Be aware of any implicit bias you may have**
 - Studies show that unconscious biases are pervasive
- **A few strategies to reduce/interrupt implicit bias:**
 - Avoid being swayed by non-relevant demographic information
 - Practice perspective-taking of people whom you perceive to be different from you
 - Slow down decision-making and increase deliberation
- **Special issues involving clients with mental illness**
 - How will this affect meetings and other interactions?
 - Does your client have a case worker? Could be a key resource
- **Create a plan for staying in contact with your client**
 - Might be difficult for client to keep up phone service
 - Client might miss appointments because he/she forgot about them, lacks money to use public transportation, or was dealing with child health emergency

Special Client Populations

Melanie Acuña, Legal Counsel for the Elderly

Individuals with Disabilities
Elderly Tenants
Survivors of Domestic Violence
Limited English Proficiency

Definition of “Disability”

- A person with a disability is an individual who:
 - Has a physical or mental disability that substantially limits one or more major life activities;
 - Has a record of such disability; or
 - Is regarded as having such a disability, *even if the person does not*
- No specific diagnosis required
- Receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) is typically a sufficient showing

Anti-Discrimination Laws for Individuals with Disabilities

- DC Human Rights Act
 - Prohibits discrimination against and requires landlord to provide reasonable accommodation for individual with disability
- Federal Fair Housing Act
 - Same as Human Rights Act (but coverage may vary)
- Section 504 of the Rehabilitation Act of 1973
 - Applies to public housing owned by DCHA
 - Applies to HUD site-based subsidized housing
 - Does not apply to voucher landlords
- Americans with Disabilities Act (ADA) Title II
 - Applies to public housing owned by DCHA
 - Applies to how DCHA administers all of its programs

Types of Discrimination

- All protected classes: Overt discrimination, unequal treatment
- Individuals with disabilities (added protections):
 - Landlord's denial of:
 - Reasonable accommodations in rules, policies, practices, or services, if necessary to use housing
 - Reasonable modifications to rental unit or common areas, at tenant's expense, if necessary to use housing
 - Note: in public housing and site-based section 8, landlord must pay for reasonable modifications (because of Rehab Act)
 - Failure to have accessible housing
- Does a landlord's intent matter? Typically not for disability-based claims

Reasonable Accommodations for Individuals with Disabilities

- Asking for changes in rules or policies
- Examples of reasonable accommodations:
 - Time to engage services for a tenant who hoards
 - Waiver of no-pet rule to allow for therapy/support animal
 - Transfer to other apartment, away from precipitating activities or events
 - Additional time to cure any lease violation, *even after the tenant has been brought to court*

Common Threats to Housing for Elderly Tenants

- Limited income due to lack of employment
- Cognitive impairments and/or mobility limitations inhibiting payment of rent and income recertification
- Breach of lease (housekeeping or hoarding issues, support animals, guest issues)
- Lack of supportive services to remain housed independently and safely

Protections for Survivors of Domestic Violence

- DC law
 - Protects tenants from eviction if intrafamily offense or action relating to intrafamily offense is basis for alleged lease violation or unlawful activity
- Violence Against Women Act (VAWA) (federal)
 - Protects tenants with federal subsidies from eviction or termination of assistance based on actual or threatened domestic violence, dating violence, sexual assault, or stalking
- Other protections in subsidized housing: right to remove perpetrator, right to transfer
- See handout in materials for more details – and reach out to your mentor if these issues arise

Protections for Limited- or No-English Proficient Tenants

- DC law
 - Notice to Correct or Vacate must be in Spanish and English
 - DC Language Access Act of 2004 requires DCHA, DCRA, and other government agencies to provide interpretation/translation services
 - DC Human Rights Act prohibits national origin discrimination in housing
- Federal protections
 - Title VIII of Fair Housing Act prohibits national origin discrimination in rental of dwellings
 - Title VI of 1964 Civil Rights Act prohibits national origin discrimination in federally-assisted programs
 - Because Superior Court is funded by the federal government, Title VI applies and requires interpretation/translation