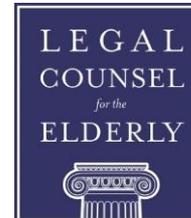


# Basic Housing Law Training - Session 4

June 25, 2020



**Legal Aid Society**  
OF THE DISTRICT OF COLUMBIA  
MAKING JUSTICE REAL



**RISING**  
FOR JUSTICE

# Practical Issues for Tenants

Sam Beckett, Bread for the City

Landlord Access, Repairs, Inspections, & Remedies  
Recertification in Subsidized Housing  
Termination in Subsidized Housing

# Landlord Access & Repairs

- DC law provides that landlords may only access a tenant's unit for a reasonable purpose, at a reasonable time, and following reasonable notice, with an exception for emergencies
  - The law does not specifically address a public health emergency
  - But tenants can assert that access during the public health emergency for non-emergency purposes is not reasonable, particularly for tenants at-risk for COVID
- Landlords still have an obligation to make repairs, with caveats
  - Nothing changes the landlord's regular obligation to make repairs within a reasonable time of actual/constructive notice
  - But landlords may try to argue that they have to be given more time to make repairs because of COVID, particularly for minor or non-emergency repairs

# Inspections by DCRA

- Department of Consumer & Regulatory Affairs (DCRA) still is conducting inspections, primarily virtually
  - Tenants can request inspection by calling (202) 442-9557, emailing [dcra.housingcomplaints@dc.gov](mailto:dcra.housingcomplaints@dc.gov), or visiting [dcra.dc.gov](http://dcra.dc.gov)
  - Tenant must have access to Google Duo or Facetime and 4G connectivity
  - DCRA may perform an inspection in-person for emergency conditions, with inspector using personal protective equipment
  - DCRA generally is following normal enforcement procedures but will delay an inspection or enforcement if a landlord requests it or if tenant does not want to provide access during the public health emergency

# Inspections by DCHA

- DC Housing Authority (DCHA) still is conducting at least some inspections
  - Inspections of new units are going forward in-person if the unit is vacant
    - DCHA is offering an option for virtual inspections; about 30% have been virtual and 70% in-person
  - DHCA does not appear to be conducting complaint-based inspections or regular inspections related to rectification at this time
  - DCHA is continuing to make emergency repairs in public housing units

# Remedies for Tenants

- Tenants with repair needs still can file a complaint with the Housing Conditions Calendar
  - DC Superior Court is scheduling and conducting remote hearings on emergency temporary restraining orders (TROs) and preliminary injunctions seeking repairs
  - The Court does not appear to be accepting or processing new complaints without TROs
  - The Housing Conditions Calendar restarted regular hearings virtually on July 7th and will hold hearings every Tuesday
    - Number of hearings will be limited (at most 25-30 per day)
    - Older cases will be dealt with first, so newer cases will face a delay

# Recertification with DCHA (Public Housing & Voucher Program)

- DCHA is continuing to accept and process requests for interim recertifications and regular recertifications
  - This includes reporting decreases in income, so that the tenant's rent can be decreased
  - Public housing tenants should contact their property manager or can email [phcovid19interim@dchousing.org](mailto:phcovid19interim@dchousing.org)
  - Housing Choice Voucher Program tenants can email [hcvpcovid19interim@dchousing.org](mailto:hcvpcovid19interim@dchousing.org) or can call DCHA's main number, 202-535-1000
  - For regular recertifications, Voucher Program tenants also can mail documents to DCHA or drop them off in the dropbox at 1133 N. Capitol St. NE
  - Stimulus payments and Pandemic Unemployment Assistance (PUA) (extra benefits up to \$600 per week) do not count as income

# Recertification for Site-Based Section 8

- HUD guidance instructs landlords of site-based section 8 properties to continue to conduct recertifications
  - Landlords can extend deadlines for up to 90 days based on extenuating circumstances, including COVID
    - But for annual recertifications, changes to rent will be retroactive to the tenant's recertification anniversary date
  - Tenants can use self-certification for loss of income due to COVID circumstances
  - Landlords can allow tenants to provide electronic signatures and documentation by email or other electronic means
  - Stimulus payments and Pandemic Unemployment Assistance (PUA) (extra benefits up to \$600 per week) do not count as income

# Termination for Voucher Program Participants

- DCHA is offering remote hearings for Voucher Program participants, but participation in a remote hearing is voluntary
  - If DHCA contacts a Voucher Program participant about a remote hearing and the participant wants to wait for an in-person hearing, they should let DCHA know this
- DCHA may still issue some recommendations for termination during the public health emergency
  - DCHA initially had indicated Voucher Program participants would not be terminated for failing to recertify, but their current guidance is less clear
  - If a Voucher Program participant receives a Recommendation for Termination, they should request a hearing by the 35-day deadline, even if they do not want to proceed with a remote hearing

# Court Operations Updates

Lori Leibowitz, Neighborhood Legal Services Program

# Tolling of Deadlines

- All of the Court's orders related to the pandemic and emergency operations can be found at [dccourts.gov/coronavirus](http://dccourts.gov/coronavirus)
  - The Court issued an order on March 18, 2020 tolling “all deadlines and time limits in statutes, court rules, and standing orders that would otherwise expire before May 15, 2020”
  - The Court issued new orders on May 14 and June 18, 2020 that continued tolling through June 19, 2020 and then through August 14, 2020 respectively, except in Landlord & Tenant Branch cases that are certified for a jury trial and where the deadline is to reply or respond to a motion

# Hearings

- The Court did not hold any hearings in Landlord & Tenant Branch cases from March 16 through July 3, 2020, except for some cases certified for jury trials
- The Court began remote hearings for other Landlord & Tenant Branch cases on July 6, 2020
  - The Court is starting with cases involving allegations other than non-payment of rent
  - Only one courtroom currently is available for eviction cases, with a maximum capacity of 25-30 hearings per day
  - Hearings are conducted using WebEx with video, but parties without access to technology for video can call in by telephone
  - Parties and counsel are provided detailed instructions about how to join the hearing and a Court employee is available during the hearing to trouble-shoot problems

# Hearings

- At first, hearings will only be held where the Court has first contacted both parties/counsel and confirmed their availability
  - The Court has asked landlords to provide contact information for tenants in all pending eviction cases
  - The Court will call unrepresented tenants and ask about scheduling and phone access; tenants are not asked to consent
  - Counsel also will be contacted about availability
  - No written notice of the hearing date will be mailed, but notice and instructions will be emailed wherever possible
- The next stage will involve cases where the Court has no contact information or has not been able to reach a party
  - This will include cases where a tenant has defaulted
  - Written notices will be sent to parties in these cases

# Hearings

- Tenants may not be defaulted at first – but likely will be eventually
  - In the first set of hearings, the Court has not entered defaults against tenants who did not appear
  - However the Court will be issuing orders for those tenants to appear at a subsequent remote hearing, and failure to appear may result in a default – and eventually in judgment
- Tenants will have the opportunity to speak to attorneys
  - Legal services providers are monitoring remote hearings and offering our services
  - The Court has granted short continuances so that tenants may consult with attorneys

# Mediations

- Upcoming mediations also will be conducted remotely
  - The Court will use WebEx for mediations
  - Mediators will reach out a week in advance to prepare parties/counsel for the remote mediation
  - In-person mediations are not expected to restart during 2020
  - The Court is exploring options for conducting mediations with a platform that allows for breakout sessions

# Evidentiary Hearings & Trials

- The Court also will move forward at some point to conduct evidentiary hearings and bench trials remotely
  - Parties will be required to exchange exhibits ahead of time and provide them to the Court – including unrepresented parties
  - Parties will be required to individually number each page of their exhibits and separately mark each exhibit
  - The Court will provide written instructions for this process, including suggestions for apps that can be used to scan documents using a cell phone
- While no official announcement has been made, civil jury trials are not expected until January 2021 at the earliest
  - The Court is still conducting some pretrial conferences
  - In many cases, however, judges are converting upcoming pretrial conferences to status hearings

# Protective Orders

- The Court's emergency orders have suspended any obligation for a tenant to pay rent directly to the Court
  - The Clerk's office has not been open to accept these payments
  - The Court's March 18 and May 14 orders say tenants "should" pay their rent directly to their landlords
  - The Court's June 19 order says tenants "shall" pay their rent directly to their landlord
  - The Court's orders all include the following language on sanctions for tenants who do not pay:
    - *If a landlord seeks sanctions for violation of a protective order after the judicial emergency ends, the court will consider, in addition to other relevant circumstances, exigent circumstances relating to the public health emergency.*
  - Note: the Court has not sent any notice or order to tenants about these changes; the Court is relying on its website notices

# Protective Orders

- As of June 8, the Court now offers an electronic payment option to pay rent directly to the Court
  - Tenants have to contact the Clerk's office and will be given brief instructions on how to access a third-party vendor, PayPort
  - Tenants can set up an electronic bank draft, i.e. an ACH electronic check, and pay a \$1 fee per transaction
  - Alternatively, tenants can use a debit or credit card, but this incurs an additional 2.5% fee, e.g. \$25 for a \$1000 payment
  - Electronic payments are limited to \$1000 each
    - The Court's June 18 order states the electronic payment option is not available for tenants with protective orders above \$1000
    - As a practical matter, we have seen that tenants can make multiple payments in one month, but each payment is capped at \$1000
  - Tenants are not required to use the electronic payment option

**BREAK**

# Tips on Conducting Remote Hearings

Faiza Majeed, Legal Aid

# Best Practices for Conducting Remote/Virtual Hearings

- Talk to your client about whether they have the technology to call-into the hearing
- Develop a plan with your client about how they will call-into the hearing
- Develop a plan about how you will communicate with your client during the hearing
- Ask your client about childcare and caregiver responsibilities and whether they have a private space to call-into the hearing

# Best Practices for Conducting Remote/Virtual Hearings

- Review what will happen at the hearing with your client. Discuss topics that will be covered, who will speak, and any questions the judge may ask them
- Consider how you will send any evidence that you plan to use at the hearing to your client
- Schedule a test WebEx meeting with your client

# Review Best Practices During the Hearing with Your Client

- Review the call-in process for the hearing
- Ask that your client join a few minutes early
- Ask that your client mute themselves when they are not speaking and mute all other sounds
- Ask that your client fully charge their phone prior to the hearing
- Ask that your client set up in the most private and quiet space possible so they can hear and be heard during the hearing

# Review Best Practices During the Hearing with Your Client

- Ask that your client say their name each time they speak so the record is clear
- Tell your client that only one person can talk at a time otherwise the judge may not understand what was said
- If your client has a headset or headphones, ask that they use that for the hearing for better sound quality
- For video hearings, discuss with your client any prejudicial images that may be captured during the video call and the best location for your client to be in their home to avoid that

# Specific Tips for Landlord & Tenant Branch Hearings

- To confer privately, you can exit the hearing and come back or mute yourselves and talk by phone
- The Court may use the WebEx waiting room to conduct bench conferences
- The Court can give you the option to share documents, but the preference is for exhibits to be shared by the Court
- Attorneys and other members of the public can observe remote hearings
  - The Clerk of the Court can provide information about logging in
  - You will be asked to identify yourself as an observer

# New Federal Protections for Tenants

Lori Leibowitz, Neighborhood Legal Services Program

# Federal Eviction Moratorium

- Between March 27 and July 24, 2020, owners of covered dwellings may not:
  - Make any filing to initiate a legal action to recover possession of a rental unit because of nonpayment of rent or fees
  - Charge fees or penalties related to nonpayment of rent
- Notice
  - Before initiating legal action, landlord must provide a 30-day notice to vacate
  - May not issue a notice to vacate until July 25, 2020

# Covered Dwellings

- The eviction moratorium in Sec. 4024 applies to residential tenant in a building
  - With a federally backed mortgage loan
  - With a federally backed multifamily mortgage loan
  - Participates in a housing program covered by the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)) - LIHTC, Sec. 8, Housing Choice Voucher Program, public housing, etc.
  - Participates in the rural housing voucher program
- Tools for finding covered multi-family properties:
  - Pro Publica database - <https://projects.propublica.org/covid-evictions>
  - DC Preservation Catalog - <http://dcpres.urban.org/dcp/>

# Additional CARES Act Protections

- The CARES Act gives owners with federally-backed mortgages the right to a mortgage forbearance
- Tenants in multi-family dwellings (5 or more units) receiving a mortgage forbearance have additional rights
  - No evictions or eviction filings during a forbearance period for nonpayment
    - This language is broad and may cover any action in an eviction case
  - No late fees or penalties during forbearance period
  - After forbearance, must give 30-day notice to vacate
- Owners may request a forbearance through the end of the national emergency or December 31, 2020, whichever is sooner

CARES Act Sec. 4023

# Local Protections for Tenants

Beth Mellen Harrison, Legal Aid

Background

Eviction

Rents & Late Fees

Tolling of Deadlines

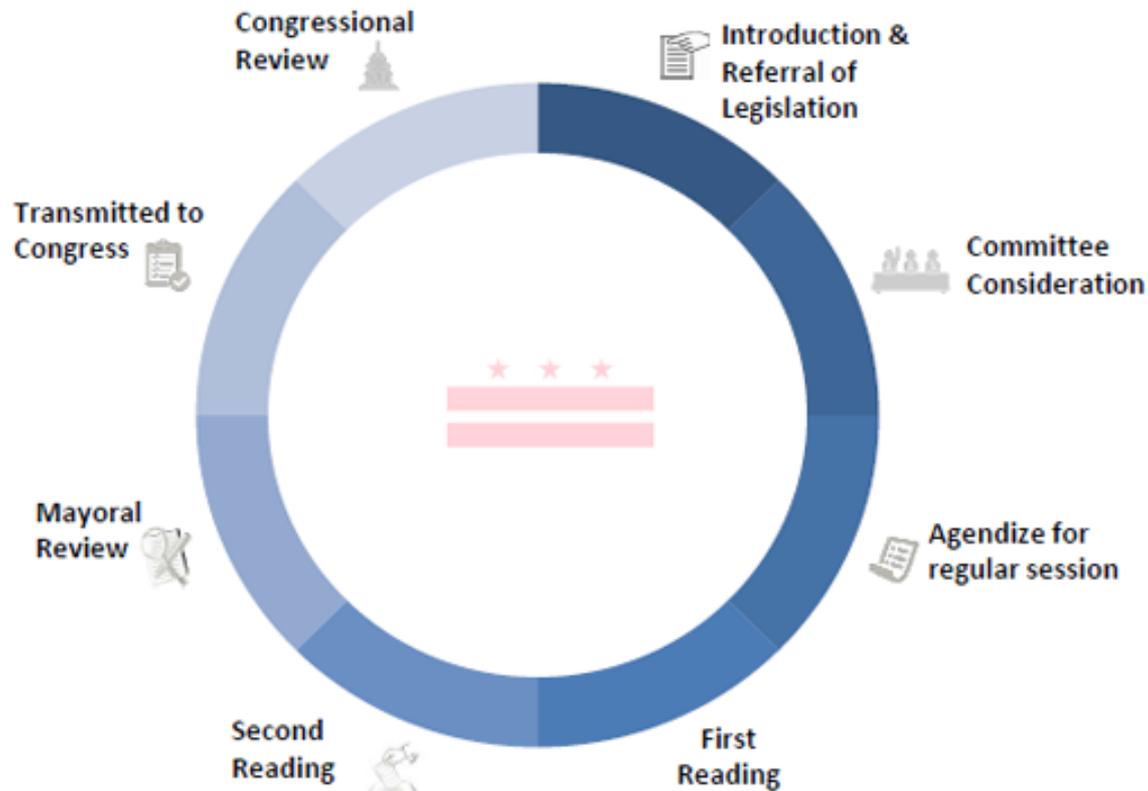
Tenant Payment Plans

# Quick Primer on D.C. Legislation

- Emergency
  - Effective for no more than 90 days (can be extended while temporary legislation remains pending before Congress)
  - No hearing, one Council vote, + Mayoral review
- Temporary
  - Effective for no more than 225 days
  - No hearing, two Council votes, + Mayoral and Congressional review
- Permanent
  - Effective with no end date (unless repealed)
  - Hearing, Committee vote, two Council votes, + Mayoral and Congressional review

# How a Bill Becomes a Law in D.C.

## District of Columbia Legislative Process



# Public Health Emergency Period

- Many of the protections for tenants under DC law are tied to the period for which the Mayor has declared a public health emergency
  - Mayor Bowser first declared a public health emergency on March 11, 2020, Mayor's Order 2020-46
  - Mayor Bowser currently has extended the public health emergency through July 24, 2020, Mayor's Order 2020-67

# Retroactivity

- The local tenant protections are retroactive to March 11, 2020
  - The one exception is tenant payment plan requirements, which are effective May 19, 2020
- Retroactivity is an exception
  - The default assumption is that new statutes are prospective only
  - That presumption is overcome with a clear statement of retroactive application
  - Here the emergency acts contain applicability clauses stating, “This act shall apply as of March 11, 2020.”
- Retroactivity is likely to be challenged on constitutional grounds
  - Landlords may raise arguments under the takings or contract clauses or make a due process argument

# Cases on Retroactivity

*Landgraf v. USI Film Products*, 511 U.S. 244 (1994)

*Scholtz P'ship v. D.C. Rental Accommodations Comm'n*, 427 A.2d 905 (D.C. 1981)

*Strand v. Frenkel*, 500 A.2d 1368 (D.C. 1985)

*Apartment & Office Bldg. Ass'n of Metro. Wash. v. Pub. Serv. Comm'n of the District of Columbia*, 129 A.3d 925 (D.C. 2016)

*Holzager v. D.C. Alcoholic Beverage Control Bd.*, 979 A.2d 52 (D.C. 2009)

**BREAK**

# Actual Evictions

- A tenant may not be evicted during the public health emergency
  - *Notwithstanding any other provision of this section, no housing provider shall evict a tenant...During a period of time for which the Mayor has declared a public health emergency...*

## D.C. Code § 42-3505.01(k)

- The statute has an exception for eviction cases under 501(c) for illegal activity or where the Court determines that the tenant's actions or presence causes undue hardship on the health, welfare, and safety of other tenants or immediate neighbors or the tenant has abandoned the unit
- In practice, the U.S. Marshal Service has stopped all evictions
- The Court will require landlords to issue a new 21-day eviction notice under D.C. Code § 42-3505.01a

# Filing of New Eviction Cases

- A landlord may not file a new complaint for possession during the public health emergency
  - *During a period of time for which the Mayor has declared a public health emergency..., and for 60 days thereafter, the person aggrieved shall not file a complaint...*

## D.C. Code § 16-1501(b)

- This applies to all eviction cases - for nonpayment of rent or any other ground
- This applies to summary suits for possession heard in the Landlord & Tenant Branch; it does not apply to a civil action for ejectment or any other lawsuit against a tenant
- The Court has announced that it will be issuing orders to show cause in each case

# Eviction Service of Process

- A tenant may not be served with a summons and complaint during the public health emergency
  - *The summons...shall be served seven days, exclusive of Sundays, legal holidays, and a period of time for which the Mayor has declared a public health emergency..., before the day fixed for the trial of the action.*

## D.C. Code § 16-1502

- There is no case law specifically interpreting this section, e.g. whether service on a Sunday or legal holiday is permissible
- Landlords are expected to argue that the new language means days during the public health emergency do not count towards the minimum service period but service can occur on those days
- Many landlords have stopped serving complaints but others have not

# Rent Increases

- A landlord may not increase a tenant's rent during the public health emergency and for 30 days after

D.C. Code §§ 42-3509.04, -3502.08, -3191.04

- The landlord may not issue a notice to increase the rent during the public health emergency
- Any rent increase is “null and void and shall be issued anew” if 1) effective date of rent increase is during public health emergency, or 2) notice of rent increase is served during public health emergency, or 3) notice of increase was served prior to but rent increase takes effect during public health emergency
- For rent control units:
  - The Rent Administrator must review all rent increases notices filed, notify the landlord of the rent increase prohibition and that the landlord must withdraw the rent increase, and notify the landlord that they are required to inform all tenants of the rent increase prohibition and file a certification that they have done so
  - A landlord that knowingly demands or receives rent in violation of these requirements may be liable for treble damages

# Late Fees

- A landlord may not charge late fees for any month during the public health emergency
  - *A housing provider shall not...Impose a late fee on a tenant during any month for which a public health emergency has been declared...*

## D.C. Code § 42-3505.31(c)

- Late fees cannot be the basis for eviction but can be included in any money judgment and also may cause accounting problems
- Check the ledger to ensure that late fees have not been charged

# Tolling of Deadlines

- Any deadline for a tenant or tenant association to exercise a right under the Rental Housing Act is tolled during the public health emergency and for 30 days after
  - *The running of all time periods for tenants and tenant organizations to exercise rights under this chapter or under chapters 38 through 43 of Title 14 of the District of Columbia Municipal Regulations (14 DCMR §§ 3800 through 4399) shall be tolled during a period for which a public health emergency has been declared...and for 30 days thereafter.*

## D.C. Code § 42-3509.11

- This applies to rent control petitions for deadlines where a tenant/tenant organization must act
- This also should apply to all landlord notices to quit/correct/vacate

# Tolling of Deadlines

- Any deadline for a tenant or tenant association to exercise a right under the Rental Housing Conversion and Sale Act is tolled during the public health emergency and for 30 days after
  - *The running of all time periods for tenants and tenant organizations to exercise rights under this chapter shall be tolled from the beginning of the period of a public health emergency declared..., until the end of the public health emergency, and for 30 days thereafter.*

## D.C. Code § 42-3405.10b

- This applies to all deadlines under the Tenant Opportunity to Purchase Act where a tenant/tenant organization must act
- This also applies to all deadlines related to condo/cooperative conversion where a tenant/tenant organization must act

# Tenant Payment Plans

- Landlords are required to establish tenant payment plans for rent due during the public health emergency and one year after for tenants with financial hardship related to pandemic  
D.C. Code § 42-3281
  - Landlords must:
    - Create a tenant payment plan program for the public health emergency period and one year after
    - Allow a tenant to enter a payment plan for gross rent and other amounts that come due during that same period
    - Notify tenants of the terms and application process of the program
    - Make applications available online and by telephone
    - Waive any fee, interest, or penalty to the tenant
    - Not report rent subject to a payment plan to a credit bureau or the payment plan as derogatory information

# Tenant Payment Plans

- Any tenant payment plan must:
  - Provide for equal monthly installment payments
  - Not provide for any lump-sum payment
  - Extend for a minimum term of one-year
  - Provide a tenant does not lose any rights under the lease by entering a payment plan
- An eligible tenant must:
  - Notify their landlord of an inability to pay rent as a result of the public health emergency
  - Provide evidence of a financial hardship resulting directly or indirectly from the public health emergency

# Tenant Payment Plans

- A landlord may not sue a tenant for eviction or to collect rent unless the landlord has
  - offered a tenant payment plan,
  - approved a payment plan for an eligible tenant, and
  - where a payment plan was entered, the tenant has defaulted under the tenant payment plan
- Tenants may challenge any denial of an application for a tenant payment plan by filing a complaint with the Rent Administrator
  - The complaint will be forwarded to the Office of Administrative Hearings for adjudication

# Tenant Payment Plans

- How will tenant payment plans play out?
  - Tenants theoretically can apply for a payment plan at any point between now and one year after the end of the public health emergency, currently July 24, 2021
    - But as a practical matter, once new eviction case filings are allowed, tenants will be forced to apply or give up their opportunity to take advantage of the law
  - Payment plans can provide for a tenant to pay reduced rent for a period of time and then catch up
    - But for most tenants, this will not work for practical reasons – tenants who need reduced rent likely do not know when they can start paying the arrearage
  - In pending eviction cases, the payment plan requirement not only impacts settlement but also potentially the protective order and any default under the protective order

# Other Protections for Tenants

- Rent deferment - D.C. Code § 42-825.01
  - Requires owners receiving a mortgage deferment to defer an equivalent amount of rent for the same period of time, to be repaid over a period of up to 18 months
    - Note this section has been repealed and was only in effect April 10 through May 27, 2020
- Tenant notices to vacate to landlord - D.C. Code §§ 42-3505.53, -3505.54
  - Allows tenants, at their option, to toll a previously-served notice to vacate during the public health emergency
- Residential cleaning – D.C. Code § 42-3193.01
  - Requires regular cleaning of commons areas during a public health emergency

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