

**Testimony of Beth Mellen Harrison
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**Before the Committee on Housing & Executive Administration
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Rental Housing Commission

March 9, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the Rental Housing Commission (RHC) and its impact on low-income tenants in the District of Columbia.

Legal Aid represents hundreds of low-income tenants in housing cases each year. Many of these cases involve eviction protections and rent control requirements found in regulations promulgated by the RHC. Through these regulations, among other functions, the RHC has a profound impact on tens of thousands of tenants in the District, including low-income tenants served by Legal Aid. It is vital that the RHC timely issue updated regulations when District law changes, to ensure that new tenant protections are fully implemented.

For several years now, the RHC has been engaged in a lengthy rulemaking process to revise all rent control and eviction regulations in the District. Proposed regulations were published on August 2, 2019. Legal Aid and other legal services providers and community-based organizations submitted detailed comments to the RHC on the draft regulations.² The RHC subsequently published revised regulations on November 20, 2020. Last month, Legal Aid

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 89 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.

² The comments were submitted on behalf of Bread for the City, the Coalition for Non-Profit Housing & Economic Development, the D.C. Tenants’ Rights Center, Housing Counseling Services, the Latino Economic Development Center, the Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly, the Neighborhood Legal Services Program, and Rising for Justice.

testified at a public meeting on the regulations and then submitted additional comments on the revised draft.

We appreciate all of the time and effort the RHC has invested to prepare a comprehensive rulemaking, seek public comments, and make changes in response to those comments. We now urge the RHC to move forward with issuing final regulations. This Committee then should consider several technical amendments to the Rental Housing Act to resolve remaining issues and ensure tenants' rights are protected.

The Rental Housing Commission Should Complete Rulemaking to Ensure That Tenants Receive the Full Protections of New Laws

The RHC last issued comprehensive regulations in 1986, despite numerous changes in the Rental Housing Act itself, decisional case law, and the rental housing market in the District in the intervening years. Housing providers, tenants, and judges are left to make their best judgments as to how to implement these and other legislative changes. The RHC now has invested significant time and resources to draft and publish amended regulations; the revised rulemaking published in November 2020 is over 200 pages long. These proposed regulations are vital to achieving the goals of the Rental Housing Act, and specifically the rent stabilization program – to preserve affordable housing and protect tenants' rights, while also ensuring that landlords are able to maintain and rehabilitate the District's existing housing stock.

The draft regulations incorporate a number of statutory changes enacted by the Council in the past few decades, which contain critical protections for tenants:

- Rent Control Reform Amendment Act of 2006 — eliminating rent ceilings, limiting vacancy rent increases, and limiting rent increases to once every 12 months
- Rent Control Hardship Petition Limitation Amendment Act of 2016 — limiting conditional rent increases in the context of hardship petitions
- Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016 — further limiting annual rent increases for protected elderly tenants and tenants with disabilities, exempting protected tenants from housing provider petition and voluntary agreement rent increases, simplifying the application process, and ensuring that petition rent increases are treated as surcharges
- Rental Housing Late Fee Fairness Amendment Act of 2016 — limiting late fees to 5 percent and ensuring late fees are not stacked or form the basis for eviction
- Rent Charged Definition Clarification Amendment Act of 2018 — ensuring housing providers do not book large rent increases beyond market rent
- Rental Housing Affordability Re-establishment Amendment Act of 2018 — ensuring formerly exempt units with subsidies remain affordable under the rent stabilization program

- Vacancy Increase Reform Amendment Act of 2018 — limiting vacancy increases to 10 or 20 percent, depending on the length of the prior tenancy

Full implementation of these statutory provisions will help to ensure that low-income tenants who are at risk of displacement from rent-stabilized and other affordable housing are protected. We look forward to seeing final publication and implementation of the proposed regulations by the end of Fiscal Year 2021.

This Committee Should Consider Legislation to Fix Remaining Gaps in the Rental Housing Act and Ensure Tenants' Rights Are Protected

The RHC's rulemaking process has revealed a number of technical problems with the Rental Housing Act that require action by the Council to resolve. While Legal Aid and other stakeholders have asked the Commission to address these issues through the current rulemaking process, we recognize that some changes may require statutory amendments. If necessary, this Committee should consider the following amendments to ensure that tenants' rights are protected.

Amend Section 42-3502.09(a) to Ensure Affordable Rents

Section 209(a) of the Rental Housing Act, D.C. Code § 42-3502.09(a), establishes the new rent to be charged when a previously-exempt unit comes under the rent stabilization program. This section was amended under the Rental Housing Affordability Re-establishment Amendment Act of 2018 to close a potential loophole when subsidized units are rented at a much-higher market rate and then later return to rent stabilization. The statutory language includes a provision for a vacancy increase, but unfortunately that language still contains the old formula (which was still in effect in 2018) — allowing up to a 30 percent rent increase to match a comparable unit. Section 209(a) needs to be amended to reflect the current vacancy increase formula, which only allows a 10 or 20 percent increase, depending on the length of tenure of the prior tenant.

Amend Section 42-3502.16(h) to Allow More Time for Parties to File Appeals

Section 216(h) of the Rental Housing Act, D.C. Code § 42-3502.16(h), gives parties only 10 days to file an appeal with the Rental Housing Commission from a final decision from the Office of Administrative Hearings or Rent Administrator in a tenant or landlord petition case. This appeal deadline can be particularly hard for tenants to meet because tenants often defend against landlord petition cases by appearing through tenant associations. For a tenant association to respond to a final decision, they must meet as an association or through their board, seek advice and possible representation from an attorney, and file the required paperwork with the Commission, including a short summary of the issues and arguments on appeal — all within only 10 days. The Council should amend the statute to allow up to 30 days to file an appeal, the same timeframe already allowed for appeals from D.C. Superior Court to the D.C. Court of Appeals and the default rule for administrative appeals to the Court of Appeals as well.

Clarify Requirements for Stays Pending Appeal to Ensure Equitable Treatment of Tenants and Landlords

The Commission's second proposed rulemaking has provisions that would automatically stay any monetary award to either party, pending any appeal filed. For practical purposes, this rule largely impacts awards to tenants of rent refunds, treble damages, and attorney's fees, i.e., areas where an automatic stay benefits landlords. Other decisions such as approval of rent increases would not be stayed automatically, though a party could move for a discretionary stay, i.e., an area where an automatic stay would benefit tenants. We are concerned this rule unnecessarily disadvantages tenants and potentially puts them at risk of eviction when they seek to challenge rent increases. If the Commission does not change this rule for final publication, then the Council should consider legislation to ensure equitable policies for stays pending appeal. The Commission appears to feel its hands are tied on this matter because of prevailing case law from the D.C. Court of Appeals. In *Strand v. Frenkel*, 500 A.2d 1368 (D.C. 1985) and *Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592 (D.C. 1991), the Court held that tenants who win monetary relief from landlords in tenant petitions cannot seek enforcement in D.C. Superior Court until any appeals are resolved. But a few years later, in *Cafritz v. D.C. Rental Housing Commission*, 615 A.2d 222, 228-29 (D.C. 1992), the Court of Appeals held that *Strand* and *Hanson* do not require an automatic stay of an approved landlord petition rent increase pending an appeal by a tenant. On the other hand, in *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 306-07 (D.C. 2006), the Court of Appeals held that an eviction action based a tenant's failure to pay a rent increase that was currently being challenged by the tenant through the administrative process must be stayed.

Legal Aid believes this case law is sufficiently flexible to allow the Commission to restore balance in the rulemaking by applying an automatic stay to approved rent increases pending appeal. Just as *Strand* and *Hanson* require an automatic stay to prevent any Superior Court action to collect a monetary award pending appeal, *Akassy* clarifies the earlier ruling in *Cafritz* and provides the Commission with ample room to require an automatic stay of a rent increase, at least to the extent the landlord seeks to bring a Superior Court action to enforce the order by evicting the tenant. If the Commission ultimately takes a different approach, we urge this Committee to consider a statutory change to impose an automatic stay on rent increases.

Ensure Public Housing Residents Enjoy the Same Protections As All Other Tenants

The Commission's rulemaking adds important tenant protections to the rules governing notices to cure or quit. For example, the proposed regulations clarify that in order to be the basis for eviction, a violation of the housing code regulations must be substantial, and that a landlord has to include enough detail in a notice to cure or quit to put the tenant on notice of what they allegedly did wrong and how it can be fixed. After adding in these important clarifications, the second proposed rulemaking goes on to exempt public housing residents from these protections. While the Commission refers to existing public housing regulations at 14 D.C.M.R. section 6404, those regulations are much less detailed and protective than the broader regulations adopted by the Commission under the Rental Housing Act (both as the regulations exist now and how they will read once the proposed changes are adopted).

There is nothing in section 6404 or any other provision in the local public housing regulations that suggest any attempt to supplant (as opposed to supplement) the more general regulations under the RHA.¹ Nor is there any reason under federal law that public housing residents must be exempt from these local regulations. The D.C. Court of Appeals has explicitly held that, except for in one very limited circumstance (federal criminal one-strike cases), local DC law surrounding the issuance of notices to cure or quit applies to all public housing residents.³ Federal law also contemplates that public housing authorities must issue notices in accordance with local law.⁴

Finally, it is important to note that exempting public housing tenants from the protections of these regulations is a racial and economic justice issue. Overall, the District of Columbia is 46 percent white and 46 percent Black, with a median household income of \$86,420.⁵ By contrast, 98 percent of the District’s public housing residents are Black, and 86 percent make below 30 percent of the area median income.⁶ By excluding public housing residents from the protections of these regulations, the Commission would be excluding over 8,000 District families that are disproportionately poor and Black compared to the District’s population as a whole.

This result is not compelled by either federal or local law, and we are hopeful the Commission will modify the final rulemaking to remove the exclusion of public housing residents from these important protections. If the Commission does not make this change, then this Committee should quickly take up and enact legislation to make clear that public housing residents are equally protected by the Rental Housing Act and its implementing regulations.

Conclusion

We appreciate this opportunity to submit testimony about the work of the Rental Housing Commission. We urge the Committee to monitor the Commission’s efforts to issue, review, and ultimately finalize the currently-pending regulations. This Committee then should consider legislation to fix any remaining issues and ensure tenants’ rights are protected.

³ See *D.C. Hous. Auth. v. Pratt*, 942 A.2d 656 (D.C. 2008) (“Should DCHA still wish to evict appellant for the same April 2002 activity, it must first provide her with a notice in accordance with § 42-3505.01 (b)”).

⁴ See 24 CFR § 966.4(l)(3)(iii) (“A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.”).

⁵ See U.S. Census Bureau, *Quick Facts: District of Columbia*, available at <https://www.census.gov/quickfacts/DC>.

⁶ See Elsa Falkenburger & Eona Harrison, Greater DC Urban Institute, *Centering DC Public Housing Residents in COVID-19 Response Can Help Address Racial Inequities* (June 15, 2020), available at <https://greaterdc.urban.org/blog/centering-dc-public-housing-residents-covid-19-response-can-help-address-racial-inequities>; Propublica, *HUD’s House of Cards*, DC Housing Authority, available at <https://projects.propublica.org/hud/owners/DC001>.