

**Testimony of Beth Mellen  
Supervising Attorney, Housing Law Unit  
Legal Aid Society of the District of Columbia**

**Before the Committee of the Whole  
Council of the District of Columbia**

**Performance Oversight Hearing Regarding  
the Department of Consumer & Regulatory Affairs**

**March 18, 2021**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (“DCRA”). Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many are living in substandard conditions, with serious housing code violations that threaten the health and safety of their families. Under-enforcement of the housing code by the District government contributes to this public health challenge.

The COVID-19 global health pandemic has exacerbated the District’s longstanding affordable housing crisis, putting thousands of Black and Latinx tenants at risk of displacement. These same tenants who are suffering disproportionate economic impacts also are most at-risk for poor housing conditions. Legal Aid increasingly is hearing from tenants whose landlords are engaging in abusive and illegal practices to push them out of their homes, including harassment and even constructive eviction through substandard housing conditions. Timely inspections and strong enforcement by DCRA remain critical for these families.

The creation of the Department of Buildings is an important first step to fixing the District’s broken enforcement system and it remains a necessary step. In addition to funding the Department of Buildings Establishment Act and other recent legislative reforms, this Committee should consider further changes to ensure the Department of Buildings gets off the ground with a strong compliance and enforcement structure in place.

---

<sup>1</sup> 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

## **Thousands of District Tenants Are at Risk of Displacement and Facing Pressure From Their Landlords, Including Through Substandard Housing Conditions**

Many tenants in the District currently are facing a variety of challenges resulting from the coronavirus pandemic. Approximately 35 percent of District residents have lost employment income since mid-March 2020, including 42 percent of Black and 57 percent of Latinx adults.<sup>2</sup> As a result, 15 percent of tenants are not current in their rent payments, and 17 percent have little or no confidence in their ability to pay March 2021 rent, translating to 25,000-30,000 households facing possible displacement.<sup>3</sup> Many of these same families are having trouble paying other household expenses and are experiencing food insecurity.<sup>4</sup> The burden of this economic and housing crisis is falling disproportionately on low-income Black and Latinx families. More than ninety-five percent of the families that are not current in rent or have little or no confidence in their ability to pay March 2021 rent are Black or Latinx.<sup>5</sup>

While DCRA does not play a direct role in many of these issues, for tenants in the District, housing affordability, displacement and eviction, and substandard housing conditions all are inter-related. For years now, District households with low and moderate incomes — many headed by people of color — have been increasingly left behind in a skyrocketing housing market. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, and 88 percent of these households are headed by a person of color.<sup>6</sup> As a result of this deepening affordability crisis, these same families are much more likely to face eviction. Tenants in Wards 7 and 8 make up 26 percent of all renter households but represent nearly 60 percent of all eviction cases filed.<sup>7</sup> In these two wards, the population is more than 90-percent Black and poverty rates hover around 25 percent, twice District averages.<sup>8</sup>

---

<sup>2</sup> U.S. Census Bureau, *Week 25 Household Pulse Survey: Feb. 17-March 1 – Detailed Tables, Employment Table 1*, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp25.html>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the District, since the week of April 23, 2020. The latest data reflects surveying between February 17 and March 1, 2021.

<sup>3</sup> *Id.*, Housing Table 1b., 2b.

<sup>4</sup> *Id.*, Spending Table 1., Food Sufficiency & Food Security, Table 2.

<sup>5</sup> *Id.*

<sup>6</sup> D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens DC's Lowest Income Residents* (Dec. 8, 2016), pp. 1,3, available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

<sup>7</sup> Brian J. McCabe & Eva Rosen, Georgetown Univ., *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* (Fall 2020), pp. 18-20, available at <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>

<sup>8</sup> DC Health Matters, Demographic Data - Households/Income, available at <https://www.dchealthmatters.org/demographicdata>. My comparison, only 26 percent of renter households in the District live in Wards 7 and 8.

Tenants who are behind in their rent right now are facing increasing pressure from their landlords, including deliberate efforts to use poor housing conditions as a tool for harassment. Since Legal Aid opened our new tenant hotline in March 2020, we have received approximately 2,000 calls.<sup>9</sup> Compared to our intakes before the pandemic, we have seen an uptick in tenants contacting us because their landlords are failing to repair housing code violations in their homes. Some of these tenants already have had one or more DCRA inspections but still have not seen enforcement or repairs. Legal Aid also has seen a substantial increase in tenants facing illegal lockouts and other forms of harassment and threats from their landlords during the pandemic. For many tenants, their landlord's refusal to repair housing code violations becomes part of an overall pattern of harassment.

One example of this trend is a tenant with whom Legal Aid spoke, M.D., who contacted us for advice. Mr. D began renting an apartment a few months before the beginning of the public health emergency. He then lost his job because of the pandemic and fell behind on his rent. Mr. D's landlord responded by turning off the heat to his apartment during the winter, making the unit unlivable and causing Mr. D to stay with friends temporarily. When he returned to his apartment, Mr. D found that his landlord had changed the locks, with all of his personal belongings still inside the unit, despite an eviction moratorium in effect at the time.

Mr. D's story is one of many, many similar stories that tenants have shared with our staff during the pandemic. Legal Aid referred this case to the Office of the Attorney General so they could contact the landlord about this illegal behavior. We also have filed cases on behalf of other tenants on the D.C. Superior Court's Housing Conditions Calendar, seeking emergency orders for repairs. But we remain concerned that far too many tenants are facing substandard housing conditions as part of a pattern of landlord harassment, at a time when many tenants are at-risk for eviction and displacement already and are bearing a disproportionate share of the economic and health burdens resulting from the pandemic. Against this backdrop, timely inspections by DCRA and robust enforcement to ensure violations are abated remain more important than ever.

### **DCRA's Inspections and Enforcement Data Continue to Trend in the Wrong Direction**

In past testimony, Legal Aid has shared problems that we continue to observe in DCRA's rental housing inspections program.<sup>10</sup> Too often, tenants encounter obstacles and delays in scheduling

---

<sup>9</sup> Legal Aid also has received dozens of requests for help through the Landlord Tenant Legal Assistance Network (LTLAN), a coalition of six legal services providers running a shared telephone intake system to provide advice, brief services, and representation to tenants facing eviction and other housing issues. LTLAN is made possible by funding appropriated by the Council and awarded by the D.C. Bar Foundation under the Civil Legal Counsel Projects Program. See D.C. Bar Foundation, *Critical Network Collaboration for Eviction Defense* (updated Aug. 18, 2020), available at <https://www.dcbfoundation.org/post/critical-network-collaboration-for-eviction-defense>.

<sup>10</sup> See, e.g., D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, "Performance Oversight Hearing Regarding the Department of Consumer & Regulatory

inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, DCRA fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code.

Legal Aid has had less direct contact with DCRA during the pandemic. Nonetheless, we remain concerned that the fundamentals have not moved in the right direction. DCRA's own data on inspections and enforcement continue to show several troubling trends. First, the number of housing inspections conducted continues to trend down, from 11,510 in FY17 and 12,226 in FY18, to only 7,586 in FY19 and 5,737 in FY 2020.<sup>11</sup> While the number of notices of infraction issued each year has been increasingly steadily — a welcome change — we continue to see an enforcement gap. For example, DCRA reports that it found violations in 4,205 housing inspections in FY19 and 5,439 housing inspections in FY20.<sup>12</sup> The agency's stated policy is to issue a notice of infraction whenever a violation is found. But DCRA issued only 1,683 notices of infraction for housing code violations in FY19 and only 2,510 such notices of infraction in FY20.<sup>13</sup> We do not understand why this gap continues to exist.

DCRA implemented the new policy on notices of infraction (eliminating a prior step of issuing a notice of violation first) to strengthen enforcement and encourage a higher level of voluntary compliance by landlords. But DCRA's data seems to show a trend in the opposite direction. The percentage of cited violations that are confirmed as abated remains at or below 50 percent and is trending down, from 50 percent in FY18, to 49 percent in FY19 and only 43 percent in FY20. Similarly, the number of days from a notice of violation or infraction being issued to confirmed abatement of violations also has gone up, from 151 days in FY19 to 173 in FY20. We understand the FY20 numbers likely were impacted by the pandemic, but, nonetheless, these downward trends are troubling to see at a time when we find more and more tenants contacting us about unabated housing code violations.

---

Affairs.” (Mar. 3, 2020); D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, Public Hearing on “Bill 23-91, Department of Buildings Establishment Act of 2019 Office of Inspector General Prospective Evaluation of Bill 23-91 and Evaluation of DCRA Business Processes” (Dec. 10, 2019); D.C. Council, Committee on the Whole and the Committee on the Judiciary & Public Safety, Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on “Agency Responses to Code Violations and the Subsequent Fire at 708 Kennedy Street N.W.” (Nov. 18, 2019); D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on “District of Columbia Auditor’s Report: Housing Code Enforcement: A Case Study of Dahlgreen Courts,” (Oct. 31, 2018).

<sup>11</sup> Dept. of Consumer & Regul. Affairs, “Responses to FY 2020 and FY 2021 to date Performance Oversight Hearing Questions” (Mar. 12, 2021), p. 105.

<sup>12</sup> Dept. of Consumer & Regul. Affairs, *Dashboard – Inspections & Compliance*, available at <https://eservices.dcr.dc.gov/DCRAAgencyDashboard/index> (last visited Mar. 17, 2021).

<sup>13</sup> *Id.*, *Dashboard – Enforcement*.

## **DCRA's Systemic Failures Require Systemic Change, With a New Department of Buildings and Other Changes in District Law to Ensure Landlord Compliance**

Ultimately, Legal Aid continues to believe that a comprehensive approach to reforming housing code enforcement in the District is needed to fully address the problems identified at this and past hearings. Legal Aid supports moving rental housing inspections out of DCRA altogether, as envisioned by the Department of Buildings Establishment Act, Act 23-0616, which the Council enacted earlier this year with an override of the Mayor's veto. We will be supporting full funding of the new agency in our budget asks to this Committee. We also support funding for implementation of the Residential Housing Environmental Safety Amendment Act of 2020, Act 23-0607, which will require DCRA inspectors to be certified in indoor mold assessment and to issue notices of infraction for violations of the District's mold law.

Wherever housing code enforcement activities are housed, other changes are needed to ensure that tenant health and safety are protected and that landlords actually comply with the law. Legal Aid has testified about these proposals in greater detail at prior hearings, and many of our recommendations can be found in other bills introduced last Council period.<sup>14</sup> We hope some of these same ideas can be carried over into legislative proposals for this Council period.

### The Committee Should Require DCRA to Employ Sufficient Inspectors and to Deploy Them in Court

We continue to fear that DCRA simply does not employ enough inspectors to allow for vigorous enforcement of the housing code. The Tenant and Homeowner Accountability and Protection Amendment Act of 2019, Bill 23-0394, would have mandated that the agency employ one residential housing inspector for every 2,000 residential housing units, and Legal Aid supports this ratio. DCRA currently employs only 25 inspectors for 161,965 rental housing units, or an approximate ratio of one inspector for every 6,500 units.<sup>15</sup>

Increasing the number of inspectors also is in line with provisions in Bill 23-0394 that would require all inspections to be performed by DCRA employees, which Legal Aid also supports. We previously have testified about our concerns that DCRA Director Ernest Chrappah's citizen inspection program will only weaken an already troubled enforcement environment by leading to lower quality inspections, less consistency, and less follow through on enforcement. These are precisely the problems we have witnessed over the years with the use of private, contract inspectors in the proactive inspections program.

---

<sup>14</sup> D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, Public Hearing on "Bill 23-0394 - "Tenant and Homeowner Accountability and Protection Amendment Act of 2019"" (Jan. 28, 2020);

<sup>15</sup> DCRA FY20 and FY21 to Date Oversight Responses, *supra*, at 78. U.S. Census Bureau, *American Community Survey Data Profiles* – District of Columbia, Housing Characteristics, available at <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/> (last visited Mar. 17, 2021).

Legal Aid also supports provisions in Bill 23-0394 requiring DCRA to attach inspectors to both the Housing Conditions Calendar (where tenants sue landlords for repairs) and the Landlord and Tenant Branch (where landlords sue tenants for eviction and tenants defend based on conditions) in D.C. Superior Court. These inspectors would be tasked with attending court sessions, performing inspections when directed to do so by the Court, preparing reports, and reporting back to the Court on the findings. Our longstanding experience representing tenants facing eviction suggests that the overwhelming majority of these tenants also have repair needs in their unit – and in many cases, substantial housing code violations – but typically do not raise these issues or get relief. Attaching DCRA inspectors to the Court would ensure that tenants have easy access to obtain an inspection, raise housing code violations defenses, and obtain needed repairs.

#### The Committee Should Enact Legislation to Codify and Strengthen the Proactive Inspections Program

Legal Aid has testified before about the many problems we have seen over the years with the implementation of DCRA’s proactive inspections program. This past year, Legal Aid and other organizations (including representatives from the D.C. Office of the Attorney General and Chairman Mendelson’s office) participated in a 12-week program organized by What Works Cities City Solutions on lessons learned from proactive rental inspections programs across the country.<sup>16</sup> That program reinforced our belief that to ensure the District’s proactive inspections program is as effective as possible, its requirements should be codified and strengthened:

- Agency inspectors, not contractors, should perform all proactive inspections.
- All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.
- The agency should prioritize properties with known, individual risk factors, such as a certain number of violations found during complaint or proactive inspections during a certain period, for more frequent proactive inspections every 2 years.
- The agency also should use publicly-available data about neighborhood characteristics – for example, the prevalence of asthma and other health outcomes – to target properties in certain areas of the District for more frequent inspections.
- The agency should ensure that proactive inspectors visit a substantial percentage of units in every building. Specifically, we recommend inspecting at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 49 units, and at least 30 percent for buildings with 50 or more units.

---

<sup>16</sup> DCRA was invited to join the team of legal services providers and government officials from the District but declined to do so.

- A “pass” on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.
- The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period. Similarly, all proactive inspection data should be available publicly through PIVS.

The Committee Should Enact Legislation to Strengthen the Basic Business License Process as a Tool to Ensure Code Compliance

Licensing requirements exist to ensure that businesses that provide goods and services to consumers are in compliance with the law. In the District, landlords are required to obtain a basic business license with a rental housing endorsement in order to rent out a property to tenants. Licensed landlords are required to allow DCRA and other government agencies to inspect their properties and must maintain their properties in compliance with the housing code as conditions of holding a basic business license.

Unfortunately, these legal requirements long have lacked sufficient enforcement mechanisms. For years, a landlord’s failure to obtain a basic business license, or even the revocation of a basic business license for housing code or other violations of the law, has been treated as a technical, paperwork issue. Unlicensed landlords have been allowed to increase rents and file suits in D.C. Superior Court to evict tenants for nonpayment of rent or other grounds.

Emergency and temporary legislation enacted by the Council last year, the Fairness in Renting Emergency Amendment Act of 2020 (Bill 23-0940) and Temporary Amendment Act of 2020 (Bill 23-941), now require landlords to show proof of a current basic business license before evicting a tenant. A similar provision now has been introduced as permanent legislation in the Eviction Protections and Tenant Screening Amendment Act of 2021, Bill 24-0119. Legal Aid supports this change and believes it should be strengthened further, to require that landlords without a current basic business license can neither increase a tenant’s rent nor collect current rent. Adding these penalties will create a more effective and complete enforcement structure to ensure that landlords comply with the law — not only by obtaining a license in the first place, but also by avoiding misconduct that would cause the landlord to lose the license. This change in the law must be coupled with efforts by DCRA to ensure that landlords that are repeatedly cited for code violations, do not abate code violations, and otherwise fail to comply with licensing requirements face a real threat of revocation or non-renewal of their license.

The Committee Should Engage in a Comprehensive Review to Remove Discretion, Shorten Timelines, and Increase Penalties

Finally, the Committee should review current law, enacted but unfunded legislation, and prior bills to create a comprehensive set of reforms to tighten timelines, increase penalties, and ultimately to remove discretion in the enforcement process. To incentivize voluntary compliance with the housing code, the District’s enforcement system must ensure that violators face timely

and strong penalties. Against the backdrop of government reports showing that DCRA uses its current discretion to show leniency to landlords and fails to collect fines even when levied, the Committee should be removing discretion from the enforcement process whenever possible.<sup>17</sup> Ideally, this work would be done before the Department of Buildings launches, so that the new agency begins its work with a strong enforcement and compliance structure and culture in place.

The Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0317) contained many such provisions. Among other changes, the Act would have created a mandatory 30-day abatement period and limit extensions granted to landlords, require DCRA to issue a notice of violation or infraction for certain types of serious, unabated housing code violations, and earmark fines levied on repeat housing code violators to go to the Nuisance Abatement Fund. Given the coming transition to a new Department of Buildings, the Act was not funded by the Council in the Fiscal Year 2020 or 2021 budgets, but the ideas nonetheless remain relevant.<sup>18</sup> These provisions also should be compared to similar provisions in Bill 23-0394 that would create tight, automatic enforcement timelines and would increase penalties for landlords that violate the housing code, particularly repeat violators. These provisions include creating a specific timeline for all of the steps in the inspection and enforcement process when housing code violations are found, requiring DCRA to notify the Office of the Attorney General of repeat housing code violators and requiring regular reviews of enforcement data by DCRA, with reporting to the Council.

### **Conclusion**

Thank you for this opportunity to testify about our ongoing concerns about DCRA's lapses in enforcement. We look forward to working with members of the Committee of the Whole, staff, and other advocates to ensure that the Department of Buildings Establishment Act will be fully funded and implemented and that other legislation addressing DCRA's systemic failures can be considered and move forward this Council period.

---

<sup>17</sup> District of Columbia Office of the Inspector General, *Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a Strong Internal Control Environment* (May 2019), p. 17.

<sup>18</sup> The Fiscal Year 2020 Budget Support Clarification Amendment Act of 2019, Bill 23-0504, amended and enacted the provisions of the Act related to disclosure of ownership interests in corporate entities — Section 3 of the original Act — and clarified that these provisions have no fiscal impact, so those provisions of the Act have been able to go into effect and will provide helpful oversight over landlords in the District.