

**Testimony of Samantha Koshgarian
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Legal Aid Society of the District of Columbia**

**Before the Committee on Housing and Executive Administration
Council of the District of Columbia**

**Public Hearing Regarding B24-0119, the Eviction Protections and Tenant Screening
Amendment Act of 2021**

May 25, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony to express its support for B24-119, the Eviction Protections and Tenant Screening Amendment Act of 2021. This legislation would help ensure that tenants do not face unfounded or unnecessary suits for eviction and would protect tenants looking for new housing from discrimination and unreasonable screening requirements. As the District begins to recover from the public health and economic crises caused by COVID-19, it is more important than ever that strong tenant protections be established to ensure that no DC resident is displaced from their neighborhood.

**The Council Should Prevent Unnecessary Eviction Filings by Prohibiting Landlords
From Suing For Less Than \$600**

Legal Aid supports provisions in Section 2 of this legislation, which would make permanent the current emergency prohibition on filing an eviction case for nonpayment of rent for an amount less than \$600.²

High Rates of Eviction Case Filings in the District Harm Washingtonians –
Especially Washingtonians Struggling Economically and Washingtonians of
Color

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 D.C. Code § 16-1501(b).

The eviction filing rate in the District is high – under normal circumstances, approximately 30,000 eviction cases are filed each year.³ This adds up to more than 15 eviction filings for every hundred households each year. In a report released last year analyzing eviction in D.C., Georgetown professors Brian J. McCabe and Eva Rosen found that ninety-three percent of eviction filings in D.C. were for nonpayment of rent.⁴ Despite the high filing rates, most eviction cases do not result in a judgment for possession. In 2018, 69% of cases filed for nonpayment of rent were dismissed, 18% resulted in a settlement agreement or a consent judgment, and only 12% resulted in a judgment for the plaintiff.⁵

In their report, Professors McCabe and Rosen specifically focused on racial and geographic disparities. While the report found that eviction filings overall are common, impacting about 11 percent of renter households each year, experiences of eviction were not shared equally across the city. In Ward 7, one in five renter households had at least one filing in 2018, and in Ward 8, that number was nearly one in four.⁶ Evictions fall most heavily on D.C. residents of color: both eviction filings and executed evictions were most heavily concentrated in majority Black neighborhoods.⁷ Most households face not one eviction, but “serial evictions,” meaning that the same landlord files more than one eviction filing against them, often filed close in time to one another.⁸ The overwhelming majority (93%) of eviction filings are for nonpayment of rent, but the amount of unpaid rent is relatively modest—just \$1,207 on average.⁹

Prohibiting Eviction Filings for Less than \$600 will Encourage Out of Court Resolutions in Appropriate Cases

Most relevant to the legislation before us, the McCabe-Rosen report found that 12% of eviction filings in D.C. are for less than \$600.¹⁰ These are cases that, given the opportunity, parties could likely resolve informally.¹¹ By preventing landlords from filing at a point where tenant debt remains comparatively low, this legislation encourages out-of-court resolution, which is likely to benefit all parties involved. It reduces the financial losses to landlords who would otherwise be paying legal fees to resolve a small debt, and it reduces the burden of case filings on an overwhelmed high-volume court. Most importantly, it prevents tenants from having to attend court, with the attendant costs and risks of navigating an unfamiliar process. For a tenant in Landlord-Tenant Court, even a small debt that they are able to resolve can lead to a public eviction record that can begin to create barriers as soon as a case is filed. Historically, these records have followed tenants even in cases where they paid everything they owed before the

³ District of Columbia Courts, Statistical Summary (2019), at 5, <https://www.dccourts.gov/about/organizational-performance/annual-reports>.

⁴ See Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability*, Georgetown University (Fall 2020), at 11, <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>

⁵ *Id.* at 9.

⁶ *Id.* at 15.

⁷ *Id.* at 18, 20-21.

⁸ *Id.* at 12-13.

⁹ *Id.* at 11, 23.

¹⁰ *Id.* at 23.

¹¹ *Id.* at 30, 34.

first court date and the case was dismissed. Under current emergency legislation, many of these cases are automatically sealed, allowing tenants to move forward without old case records holding them back.¹² We urge the Council to make this legislation permanent as a complement to the protection afforded by prohibiting filing for less than \$600.

The Council Should Legislate Other Critical Protections to Reduce Eviction Filings for Nonpayment of Rent and to Ensure the Accuracy and Legal Sufficiency of Eviction Filings

We would also like to take this opportunity to discuss several additional requirements that we believe would address significant issues with the current practices around the initiation of landlord-tenant cases for nonpayment of rent. Specifically, we advocate for: 1) requiring complaints to be signed by a person with personal knowledge of the facts alleged; 2) requiring documentation of unpaid rent to be filed with complaints; and 3) making permanent and strengthening the requirement that landlords serve 30-day notices prior to filing nonpayment of rent complaints.

The Bill Should Require Every Complainant in Eviction Cases for Nonpayment of Rent to Verify *Firsthand* Knowledge of the Facts Alleged

In current practice, almost every complaint filed in landlord tenant court is sworn by the landlord's attorney, which the law currently allows.¹³ And while it requires the person verifying the complaint to have knowledge of the facts alleged and the complaint form also requires the person to affirm their knowledge of the facts alleged, the high frequency of errors and misrepresentations, inadvertent or otherwise, in these complaints frankly belies that assurance. Attorneys for landlords are not involved with the collection of rent or the management of tenant records. They do not have firsthand knowledge of whether a tenant with whom they have never even interacted has paid their rent, and they cannot reasonably be expected to have enough information to swear to the accuracy of the facts underlying a complaint for eviction. So, the law should not permit them to do so.

For example, it is very common that a complaint claims an amount of outstanding rent that simply represents the balance on a ledger at the time of filing, even when that balance, on review of the ledger, clearly includes fees that cannot be sought in a nonpayment of rent case. Complaints regularly assert that housing is unsubsidized even as they allege monthly rental obligations of \$100 or less – a clear indication of the likely presence of a subsidy. And we often see cases in which a new owner or new property manager who has taken over a building and files complaints based on inaccurate balances accrued under prior ownership or management.

The harm of allowing attorneys to verify complaints is compounded by the fact that the landlord is not required to appear in court until the date of trial, which means that someone with actual knowledge of the facts is never required to confirm the accuracy of the complaint unless the tenant is savvy enough to demand a trial. Tenants who default or appear in court without the benefit of counsel often find themselves facing judgments for arrears they do not owe, and that the landlord has never even had to verify, let alone prove. Even settlement negotiations are

¹² D.C. Code § 42-3505.09.

¹³ D.C. Code § 16-1501(a).

mostly handled by counsel, so it is not uncommon for entire cases to resolve without the landlord ever having reviewed the complaint or appeared in court.

A tenant who attends court based on one of these misleading or erroneous complaints will often appear for their initial hearing only to find that their landlord is not present, and that their landlord's attorney does not have a current ledger for their case – despite court rules requiring them to have an up-to-date ledger at every court date. The attorney is often not familiar with the facts of their case beyond what is represented in the complaint. This means that tenants, even with assistance of counsel, are often unable to address discrepancies at the initial court date, leaving them to either request a continuance and have to miss work to attend court on another date, or to simply agree to pay whatever balance the landlord claimed on the complaint, without the opportunity to review it and ensure that it is accurate.

Given that these complaints are so often being sworn without firsthand knowledge and without sufficient care, we urge the Council to amend the law to require that the person signing the complaint have firsthand knowledge of the facts within. This would help to ensure that complaints are reviewed by someone with firsthand knowledge not only of the individual tenants' rental balance, but of the landlords' accounting practices, who will be able to accurately allege what is owed. This will also create a more level playing field between landlords and their tenants, who are required to personally verify under penalty of perjury the defenses alleged in any verified answer filed with the Court, and accept the liability associated with that.

The Bill Should Require an Up-to-Date Ledger to be Filed with Each Complaint for Non-Payment of Rent

Additionally, we encourage the Council to require that an up-to-date ledger be filed with any complaint for nonpayment of rent, so that tenants have the opportunity to review the ledger and address any inaccuracies before or at their initial hearing. It is frankly our hope that such a requirement will also encourage a more thorough review by landlords and their counsel prior to filing.

A tenant who attends court based on a misleading or erroneous complaint will often appear for their initial hearing only to find that their landlord is not present, and that their landlord's attorney does not have a current ledger for their case – despite court rules requiring them to have an up-to-date ledger at every court date. As noted above, the attorney is often not familiar with the facts of their case beyond what is represented in the complaint. This means that tenants, even with assistance of counsel, are often unable to address discrepancies at the initial court date, leaving them to either request a continuance and have to miss work to attend court on another date, or to simply agree to pay whatever balance the landlord claimed on the complaint, without the opportunity to review it and ensure that it is accurate.

This requirement, particularly if coupled with permanent legislation to require 30-day notices prior to filing suit for nonpayment of rent, will also help prevent the practice some landlords have had in the past of filing suits as a matter of course if there is any balance on an account past the fifth of a month, with the intent to dismiss the case if the tenant pays before the month is over. This repeated filing is often also a tactic used by landlords to harass tenants they are trying to remove without a legal basis for doing so. Not only does this lead to undue stress on

households that are rent-burdened and already generally subject to significant financial stressors, landlords routinely either do not dismiss cases prior to the initial court date or do not communicate to the tenant that a case had been dismissed, leading tenants to have to miss work or spend money on childcare or transportation to attend court only to have their case dismissed. In the worst scenarios, landlords fail to communicate to their attorneys to dismiss cases, with attorneys then seeking default judgments against the tenants. These default judgments remain matters of public record even where the tenant is current on rent and the landlord never proceeds with the eviction.

The Council Should Enact Measures to Protect Tenants Before Supporting Increased Filing Fees

Because we believe that both the \$600 requirement and changes to improve the accuracy of complaints would act as protections against the filing of erroneous or frivolous complaints, it is important that we also briefly highlight our current opposition to another such proposal – increasing eviction filing fees to \$100, as the Council recommended to D.C. Superior Court earlier this year. While discussed in much more depth in a letter legal services organizations and other partners submitted to the Court in April 2021, there is not sufficient conclusive evidence to suggest that increasing filing fees will reduce eviction filing rates in the District.¹⁴ What we do know is that under the current legal framework, any increased fees can and will be passed on to tenants facing eviction, creating a higher barrier to those tenants' ability to redeem their tenancies after a judgment is entered against them. For this reason, absent additional legal protections to ensure that higher fees are not passed on to tenants, we would not support any increase in filing fees.

Legislation to Require 30-Day Notices for Nonpayment of Rent Cases is a Critical Complement to the Protections in this Bill

While not directly addressed by this legislation, we also want to highlight another critical proposal to prevent tenants from being sued repeatedly without merit or over small, resolvable balances. The Council should make permanent the current emergency requirement that tenants be served 30-day notices prior to the filing of any eviction suit, including suits for nonpayment of rent, and prevent landlords from including a waiver of this requirement in tenants' leases.¹⁵

We support provisions in Bill 24-0096, the Eviction Record Sealing Authority Amendment Act, which would make permanent the requirement that tenants be served 30-day notices prior to the filing of any eviction suit, including suits for nonpayment of rent. Without this requirement, landlords often include a waiver of any prior notice in tenants' leases. This leaves tenants with very little notice before they are brought to court for an eviction case that may have devastating consequences for their family. Requiring service of a prior 30-day notice allows tenants to identify and address errors on the landlord's part and other issues that may prevent a case from being filed in the first place. It also gives tenants additional time to apply for assistance, catch up on their rent, or seek legal or other services in cases where they have fallen behind.

¹⁴ Attached is the April 12, 2021 letter sent to the Court by Legal Aid and other partner organizations with full comments regarding the proposed raising of filing fees.

¹⁵ D.C. Code § 42-3505.01(a)

Currently, the filing of an eviction court case is often the first notice a tenant receives from a landlord that their ledger shows a rental balance. This means that even where there has been a mistake or it is an amount the tenant can pay, they may be forced to take time off work or find child care to attend court and navigate a complicated process to resolve the issue – and often with very little notice.¹⁶ Unrepresented tenants often end up waiving rights unnecessarily through this process by signing consent judgments or having a default entered where no rent was in fact owed or where they quickly catch up once they receive notice.

The provisions in Bill 24-0096 could be strengthened by providing more detailed requirements for valid 30-day notices related to nonpayment of rent. While regulations and case law establish specific standards for notices for other types of lease violations, notices for nonpayment of rent have not been held to the same standard. We support requiring that notices for nonpayment of rent specifically state the amount rent owed at the time of service of the notice (excluding of late fees or other non-rent fees, which generally cannot be collected) and identify the specific months during which any rental balance accrued. Landlords also should be required to attach a ledger showing charges and payments. This requirement would allow tenants to identify discrepancies with their own records. The notice also should specifically state that tenants must pay only the rent owed and any further rent that comes due, and not any other fees, to avoid eviction.

We also support requiring all notices, including those for nonpayment of rent, to be served on the Rent Administrator. This requirement currently is found in regulations and only applies to notices for other types of lease violations.¹⁷ The Rent Administrator has authority to review and reject invalid eviction notices, and this authority should be extended to notices for nonpayment of rent.¹⁸ Finally, the Council should require that all notices served for nonpayment of rent include the website and phone number for the Emergency Rental Assistance Program and any other current District government rental assistance programs. These changes will ultimately benefit both tenants and landlords by encouraging pre-court resolution of these claims.

The Council should also take this opportunity to strengthen requirements for all notices to vacate, for both nonpayment of rent and other lease violations, by requiring them to state clearly that tenants do not have to vacate the rental unit until and unless a court orders the tenant to do so, that tenants have the right to correct or cease the alleged violation of tenancy and remain in the rental unit, that tenants have the right to dispute the landlord's allegations through the court process and remain in the rental unit until the court reaches a decision on the matter; and to include the phone numbers of the Office of the Tenant Advocate and the Landlord Tenant Legal Assistance Network and state that both resources provide free legal services to a tenant facing eviction. These requirements were included in the Eviction Moratorium Public Safety Exception

¹⁶ District law currently only requires that landlords service tenants with court papers seven days before their initial hearing. *See* D.C. Code § 16-1502. Legal Aid supports extending this minimum service period to at least 30 days.

¹⁷ 14 D.C.M.R. § 4300.3.

¹⁸ *Id.* § 4300.4-.5.

Emergency Amendment Act of 2021 (Act 24-0067) and should become the standard for future eviction notices.¹⁹

Landlords Without Basic Business Licenses Should Not Be Able to Collect Rent or Sue for Eviction

Legal Aid also supports provisions in Section 2 of Bill 24-0119 to require landlords to show proof of a current basic business license before suing a tenant for eviction, but we believe those requirements can be strengthened.

Licensing requirements exist to ensure that businesses that provide goods and services to consumers are in compliance with the law. They deter businesses from offering unsafe goods and thereby putting consumers at risk. In the District, landlords are required to obtain a basic business license with a housing endorsement in order to rent out a property to tenants.²⁰ Landlords obtaining or renewing a basic business license are required to meet certain requirements, including paying a rental unit fee, providing a 24-hour accessible phone number for their tenants, employing a person responsible for maintenance and repairs, and allowing DCRA and other government agencies to inspect their property.²¹ Landlords also are required to maintain their properties in compliance with the housing code and to provide access to government inspectors as conditions of holding a basic business license.²² Non-compliant landlords may face revocation or suspension of their license, or may be denied renewal of their license.²³

While the above provisions are important, they lack sufficient enforcement mechanisms. Under current law, 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, are treated as technical, paperwork issues. Unlicensed landlords are allowed to collect and increase rents and file suits in D.C. Superior Court to evict tenants for nonpayment of rent or other grounds. The fact that a landlord is not licensed is not considered a defense to eviction, in part because of a 40-plus-year-old case from the D.C. Court of Appeals.²⁴ And while the District can fine and prosecute unlicensed landlords, enforcement resources typically are focused on more egregious misconduct.

¹⁹ Legal Aid ultimately would support the Rent Administrator being charged with creating and publishing a required form notice, but we do not want this suggestion to delay our recommendations. Landlords should be required to conform to these requirements immediately, but the Council could specify that landlords ultimately can meet these requirements by including a form published by the Rent Administrator with any eviction notice.

²⁰ See D.C. Code § 47-2828(c). Single-unit dwellings do not have to obtain a certificate of occupancy. See 14 D.C.M.R. § 1401.1.

²¹ D.C. Code §§ 42-3504.01, 47-2828; 14 D.C.M.R. §§ 200-207.

²² See 14 D.C.M.R. § 202.

²³ See *id.* §§ 205-206. Other grounds for revocation or suspension include fraud, false statements, and certain criminal conduct. See *id.* § 206.

²⁴ *Curry v. Dunbar House*, 362 A.2d 686, 689 (D.C. 1976).

Section 2 of the bill would clarify current law to require that landlords filing an eviction suit for possession must show proof that they have a current basic business license at the time of filing. We support strengthening this requirement in three ways. First, the Committee should clarify that landlords also should have to show proof that their license remains current at the time of actual eviction. Second, the bill should add provisions to bar landlords from increasing a tenant's rent unless they have a current, valid basic business license. Landlords also should be required to notify a tenant at the time of a rent increase that a landlord cannot raise the tenant's rent or evict the tenant unless the landlord is properly licensed. The latter requirements were included in a prior Bill 23-394, the Tenant and Homeowner Accountability and Protection Amendment Act of 2019, and should be added back in here. Adding these penalties back in will provide a critical deterrent to landlords who otherwise might flout the law, either by never obtaining a basic business license or by engaging in conduct that causes the landlord to lose the license.

We recommend strengthening the bill further by adding a provision that a landlord may not collect rent if the landlord does not hold a valid basic business license. The ability to collect rent while running an unlicensed rental property allows landlords providing unsafe housing that are not recognized by the District government to continue to profit from doing so, with dangerous consequences for tenants at these properties. This Committee should create strong deterrents across the board to stop this sort of behavior. 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.

We Support Comprehensive Protections for Prospective Tenants in Tenant Screening Processes

We support the Tenant Screening provisions in Section 3 of this legislation, and also support the passage of the more comprehensive Fair Tenant Screening Act of 2021. While the provisions included in this legislation would meaningfully empower tenants looking for housing, we urge the Council to pass the Fair Tenant Screening Act of 2021.

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

For years, rental housing has become increasingly unaffordable for the District's low-income residents. In 2016, 73% of low-income households in the District spent more than half of their monthly income on rent and utilities.²⁵ Over the last twenty years, the bottom two quintiles of District renters saw their rents rise by 14% and 35% respectively, even though incomes stagnated.²⁶ The District was struggling with an affordable housing crisis long before the pandemic hit.

²⁵ D.C. Access to Justice Commission, Delivering Justice: Addressing Civil Legal Needs in the District of Columbia, 19 (2019), https://dcaccesstojustice.org/assets/pdf/Delivering_Justice_2019.pdf.

²⁶ *Id.*

Now, amid the pandemic and the related economic crisis, even more District residents are facing the risk of experiencing homelessness or housing insecurity. Job losses during the pandemic have disproportionately burdened low-wage workers and workers of color.²⁷ Between February and April of this last year, employment levels dropped to their lowest point since 1975.²⁸ Although the job market has begun its slow recovery, Black and Latinx workers, particularly women, have not experienced this upturn at the same rate as white workers.²⁹ In particular, Black men, Black women, Latinx women, and single mothers of school-age children are facing the longest roads to reentering the workforce.³⁰ According to data collected by the Current Population Survey from the U.S. Census Bureau and Bureau of Labor Statistics, between February 2020 and February 2021 Black and Latinx women saw a decrease in labor participation at rates of 3.4 percent and 3.6 percent respectively. For white women, this rate was 1.9 percent³¹. As the District's low-income residents of color face this inequitable recovery, it is imperative that the Council act to ensure that these residents can find affordable housing for themselves and their families. This is an issue of both economic and racial justice.

For years, prospective renters searching for new housing in the District have faced a fast-moving and competitive rental housing market,³² requiring that tenants be quick and nimble when applying for units of interest. With this assistance of our housing case manager, our office often makes calls to landlords to ask questions of unit availability and tenant eligibility criteria. When we do so, we are often met with vague and dismissive answers -- likely instances of housing discrimination that are nonetheless difficult to address under the immediate pressure that our clients are under to find housing quickly.

These alarmingly common practices are barriers to District residents navigating the rental housing market, as prospective renters are routinely denied information they need to gauge whether applying for a unit is worth their time and money. If they do choose to apply, tenants have no way of knowing how long it will take for a potential landlord to make a decision. In our experience, prospective renters often must follow up with the housing provider multiple times to receive a determination, particularly if that determination is a denial. Tenants are therefore unable to make informed decisions on how to budget for expensive application and holding fees, how frequently their credit is pulled, and how long they should spend waiting for a decision to be made before moving on to the next unit.

²⁷ Heather Long et al., The Covid-19 Recession Is the Most Unequal in Modern U.S. History, Wash. Post (Sept. 30, 2020),

<https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>.

²⁸ *Id.*

²⁹ Rakesh Kochhar and Jesse Bennett, U.S. Labor Market Inches Back from the COVID-19 Shock, But Recovery is Far from Complete, Pew Research Center (April 14, 2021),

<https://www.pewresearch.org/fact-tank/2021/04/14/u-s-labor-market-inches-back-from-the-covid-19-shock-but-recovery-is-far-from-complete/>.

³⁰ *Id.*

³¹ *Id.*

³² Kathy Orton, Experts Weigh in on What the 2019 Rental Market Will Bring, Wash. Post (Jan. 14, 2020), <https://www.washingtonpost.com/business/2019/01/14/experts-weigh-what-rental-market-will-bring/>.

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

Voucher-holders face particularly steep obstacles to finding housing. Over the last 15 years, vouchers have made up an increasing share of subsidized housing, while public housing has decreased.³³ Just getting a voucher is a long journey. In 2013, the District closed the waitlist for several its subsidized housing programs.³⁴ At the time, there were 70,000 people on the waitlist.³⁵

Even once a tenant has a transferable voucher, actually placing it can be very challenging. Nationally, voucher take-up rates are low.³⁶ This is particularly true in large cities where voucher-holders are often only able to place their vouchers at a rate of about 50 percent.³⁷ Source of income discrimination compounds the difficulty of the housing search process for voucher-holders. Although source of income discrimination is illegal in the District, the lack of transparency in the housing application process allows landlords to engage in discriminatory practices without ever being caught. In addition to this, housing providers are currently able to automatically deny voucher holders based on credit score alone, without taking into consideration that their credit may not indicate their ability to pay their rent, which is, in part or in full, guaranteed by a public program.

As a result of the myriad barriers that voucher holders face, families that can use their vouchers are often concentrated in high poverty, low opportunity neighborhoods.³⁸ For the District's voucher program to work, the Council must take additional steps to ensure that low-income residents are able to use their vouchers.

Both this legislation and the Fair Tenant Screening Act of 2021 would provide tenants with necessary protections that are not currently in place. By requiring landlords to provide prospective tenants with specific grounds for adverse actions and any third-party literature used to make the determination, this legislation will make it harder for landlords to engage in racial discrimination, source of income discrimination or other forms of illegal discrimination during

³³ Jason Richardson et al., National Community Reinvestment Coalition, Shifting Neighborhoods: Gentrification and Cultural Displacement in American Cities (2019), <http://ncrc.org/gentrification>.

³⁴ See D.C. Access to Justice Commission, *supra* fn. 2 at 19.

³⁵ *Id.*

³⁶ Eric Chyn et al., Housing Take-Up and Labor Market Impacts, *Journal of Policy Analysis and Management*, Vol. 38, No. 1, 65 (2019).

³⁷ *Id.*

³⁸ *Id.*

the rental application process and allow tenants to contest erroneous and improper denials. This protection will be particularly beneficial to District residents as the long road to economic recovery begins.

Conclusion

Thank you for the opportunity to provide this testimony about the Eviction Protections and Tenant Screening Amendment Act of 2021. Legal Aid supports this legislation and looks forward to working with the Council to ensure that tenants in the District of Columbia benefit from strong protections that enable them to find and maintain stable housing.



April 12, 2021

Laura M.L. Wait
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VIA ELECTRONIC MAIL: laura.wait@dcsc.gov

Re: Comments on the Initial Filing Fee for Landlord-Tenant Action

Dear Ms. Wait:

Our organizations—Bread for the City, the Council for Court Excellence, the D.C. Bar Pro Bono Center, the Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly, Neighborhood Legal Services Program, Rising for Justice, and the Washington Council of Lawyers—submit these comments in response to the Court’s Request for Public Comment on the Initial Filing Fee for Landlord-Tenant Action. Our comments are directed to the impact that the proposed filing fee increase could have on low-income tenants in the District. We appreciate the opportunity to provide stakeholder input on this important matter.

The pandemic has created enormous hardship for District residents, particularly residents of color. Even before the pandemic, serial eviction filings and displacements disproportionately harmed communities of color.¹ In the wake of the pandemic, the District is likely to see a significant number of new eviction cases filed.²

Both the Council and the Court have used this time to consider new ways to address concerns about serial eviction filings and to prevent landlords from using the court system to pressure tenants in ways that lead to lasting harms.³ These efforts are laudable, and we support

¹ See Brian J. McCabe & Eva Rosen, *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability*, Georgetown University (Fall 2020), at 17-18, <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap> (demonstrating a “strong, positive correlation between the share of Black residents in a census tract and the eviction filing rate”).

² The Eviction Lab has tracked eviction filings in 5 states and 27 cities since the beginning of the pandemic and has found hundreds of thousands of evictions in jurisdictions that allowed filings, including dramatic spikes in filings when moratoria were lifted. See *The Eviction Tracking System*, Eviction Lab (Mar. 27, 2021), <https://evictionlab.org/eviction-tracking/>.

³ See Section I.C, *infra*.

them. Acting together, these measures will provide important protections to tenants that can protect them from becoming trapped in the cycle of poverty that can result from eviction filings, even filings that do not result in displacement.

It is possible that increasing the eviction filing fee may deter some eviction filings. However, under the current legal framework, it will also harm tenants as those higher fees will be passed onto them and increase the amount that a tenant must pay to stay in their home. Any increase in filing fees must be preceded by or coupled with protections for tenants, such as providing that filing fees are not recoverable in eviction actions and cannot be included in the redemption amount. These protections must be passed by the Council. The Court should not raise filing fees unless and until the Council has enacted these protections.

I. Background

A. Evictions in the District

As the Court noted in its Request for Public Comment, the eviction filing rate in the District is high: approximately 30,000 eviction cases are filed each year.⁴ This adds up to more than 15 eviction filings for every hundred households each year. Filing rates are even higher in Wards 7 and 8. In Ward 7, one in five renter households had at least one filing in 2018, and in Ward 8, that number was nearly one in four.⁵ Ninety-three percent of eviction filings in D.C. were for nonpayment of rent.⁶

Despite the high filing rates, most eviction cases do not result in a judgment for possession. In 2018, 69% of cases filed for nonpayment of rent were dismissed, 18% resulted in a settlement agreement or a consent judgment, and only 12% resulted in a judgment for the plaintiff.⁷

A number of factors help explain why more than two thirds of filed cases are dismissed. This section focuses on two primary reasons. First, many landlords use eviction filings as a debt collection tool rather than a means to actually evict tenants. Second, many tenants respond to an eviction action by moving out, rather than dealing with the time, stress, and cost of a lawsuit.

First, many landlords use eviction filings as a debt collection tool. This is particularly true of serial filings: “The literature suggests that serial filings are aimed less at removing the tenant and more at disciplining the tenant through state-sanctioned threat of removal. What has also become clear is that many landlords file evictions frequently but without a clear intention to remove the tenant.”⁸ Results of a recent study about evictions in D.C. “support previous research

⁴ District of Columbia Courts, Statistical Summary (2019), at 5, <https://www.dccourts.gov/about/organizational-performance/annual-reports>.

⁵ McCabe & Rosen, *supra* note 1, at 16.

⁶ *Id.* at 11.

⁷ *Id.* at 9.

⁸ Dan Immergluck et al., *Multifamily Evictions, Large Owners, and Serial Filings: Findings from Metropolitan Atlanta*, 35 Housing Studies 903, 903 (2020) (collecting studies).

that finds many landlords file for eviction as a tactic to collect rent, rather than to remove a tenant.”⁹ This research comports with our experience representing tenants in eviction actions.

Second, in response to learning of an eviction action against them, many tenants just leave. Attorneys at each of our organizations regularly speak with tenants who have either already moved out because they were sued for eviction or are considering moving instead of defending themselves in court. Tenants who have already moved out often tell us they thought they did not have any choice. Tenants who are considering moving out often explain that they do not have the time to go to court, that they have been to court in prior cases and did not think the process was fair, that they do not want to make trouble for their landlords, or that they simply do not know they have any other options. A recent study of eviction in the District noted that the number of executed evictions “does not account for informal evictions, where landlords threaten eviction and use intimidation to get tenants to leave the home informally.”¹⁰

Displacements have profoundly harmful consequences. One study examined the effect of “forced moves,” a category that includes moves “initiated by landlords or city officials . . . and involved situations in which tenants have no choice other than to relocate (or thought as much).”¹¹ Nearly half of these forced moves were informal evictions.¹² This study found that tenants with forced moves were 25-35 percentage points more likely to have long-term housing problems in their next unit, such as lack of heat, broken appliances, or exposed wires.¹³ Other research has found that families who are displaced may lose many of their possessions, especially larger items that are costly to move.¹⁴ Displacement also harms tenants’ physical and mental health and substantially increases their material hardship.¹⁵

Even when eviction filings do not result in eviction judgments or displacements, they are still very harmful to tenants. Eviction filings “result in a legal record that affect[s] tenants’ future

⁹ McCabe & Rosen, *supra* note 1, at 29.

¹⁰ *Id.* at 13.

¹¹ Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 *Social Servs. Rev.* 227, 237 (2015).

¹² *Id.* at 244.

¹³ *Id.* at 249-51.

¹⁴ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 *American Journal of Sociology* 88, 119 (2012).

¹⁵ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015) (studying the impact of involuntary displacement, including formal and informal evictions, on the health of mothers and children).

housing options.”¹⁶ On top of making it more difficult to get future housing, eviction filings can result in significant stress and social withdrawal.¹⁷

B. Georgetown Report

In 2020, Georgetown professors Brian J. McCabe and Eva Rosen released a report that analyzed eviction in D.C., specifically focusing on racial and geographic disparities.¹⁸ Among its many findings, this report found that eviction filings are common, impacting about 11 percent of renter households each year, including 20 percent of Ward 7 households and 25 percent of Ward 8 households.¹⁹ Evictions fall most heavily on D.C. residents of color: both eviction filings and executed evictions were most heavily concentrated in majority Black neighborhoods.²⁰ Most households face not one eviction, but “serial evictions,” meaning that the same landlord files more than one eviction filing against them.²¹ The overwhelming majority (93%) of eviction filings are for nonpayment of rent, but the amount of unpaid rent is relatively modest—just \$1,207 on average.²²

The authors of the Georgetown Report made a number of policy recommendations based on their findings, including “landlord-side interventions” that deter landlords from filing eviction actions.²³ These suggested interventions include: increasing the filing fee for eviction actions, banning evictions for nonpayment of rent below \$600 or another monetary threshold, banning lease language that would waive the tenant’s right to the 30-day notice of eviction filing, implementing an eviction diversion program, and sealing tenants’ eviction records.²⁴

¹⁶ McCabe & Rosen, *supra* note 1, at 8; *see* Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, *Social Forces* 1, 3-4 (2020) (“Because the loss of housing is significantly costlier than paying fines and fees associated with the eviction process, tenants are incentivized to pay these costs and remain in place. That incentive grows each time a property owner files for eviction, as each filing generates a court record that can limit tenants’ future housing options. In screening prospective tenants, property owners tend to view recent eviction records as disqualifying, even in cases where the court process did not render an eviction judgment.”) (internal citations omitted); Immergluck et al., *supra* note 8, at 906 (“In most places, where eviction filings are easily accessible, perhaps the greatest cost to the tenant is the scar that the filing leaves on the tenant in an already difficult search for affordable housing. Tenants with serial filings are likely to be relegated to a segment of low-end rental housing that is a form of housing of last resort, where they have even less power and their new landlords have even more.”).

¹⁷ Immergluck et al., *supra* note 8, at 905-06.

¹⁸ *See* McCabe & Rosen, *supra* note 1.

¹⁹ *Id.* at 15.

²⁰ *Id.* at 18, 20-21.

²¹ *Id.* at 12.

²² *Id.* at 11, 23.

²³ *Id.* at 29.

²⁴ *Id.* at 29-32.

C. Recent Action by the D.C. Council

In response to the hardship caused by the COVID-19 pandemic, the Council enacted temporary legislation that implemented a number of protections recommended by the Georgetown report. This legislation prohibited landlords from filing an eviction action seeking repossession for a nonpayment amount of less than \$600.²⁵ The legislation also required landlords to provide a tenant with a notice at least 30 days before filing any eviction action, including for nonpayment of rent, in effect prohibiting the common practice of leases waiving this right.²⁶ Finally, the Council also required the Superior Court to seal a significant number of eviction records and provided new discretion to seal others.²⁷ Altogether, this legislation provided important protections for tenants by both preventing the filing of certain eviction actions and by sealing a substantial number of records, reducing some of the collateral harms of the eviction process.

These protections are very recent and were enacted at a time when eviction filings are prohibited by a local moratorium. There has not yet been an opportunity to evaluate the impact that these measures will have on filing rates. While these recent legislative changes are temporary, Councilmembers have introduced legislation to make the same changes permanent, and those bills remain pending before the Council and could be subject to further amendments that might impact eviction filing rates.²⁸

In addition to enacting these protections, the Council expressed that “[i]t is the sense of the Council that the Superior Court should raise filing fees for eviction cases to \$100 so that serial filers seeking small sums of money from their tenants are deterred from using eviction filings as a mechanism to collect rent from their tenants.”²⁹ However, the Council has not yet taken steps to ensure that these fees do not get passed on to tenants. The current statutory scheme provides that landlords who are successful in eviction actions shall be awarded their costs.³⁰

²⁵ Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 3 (codified at D.C. Code § 16-1501(c)). This \$600 threshold aligns with the Georgetown Report’s findings that about 12% of D.C. households who are sued for eviction owe less than \$600. McCabe & Rosen, *supra* note 1, at 30.

²⁶ Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 2(a) (codified at D.C. Code § 41-3505(a-1)).

²⁷ The legislation provided for mandatory sealing of eviction records that do not result in a judgment for possession 30 days after the case is resolved and for records that result in a judgment for possession 3 years after the case is resolved. Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 2(c) (codified at D.C. Code § 42-3505.09). It also permitted tenants to move to seal eviction records in a number of other circumstances. *Id.*

²⁸ See D.C. B24-0096; D.C. B24-0119 (proposed legislation).

²⁹ Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23-255 § 4(g).

³⁰ D.C. Code § 16-1503.

Such costs include filing fees.³¹ Until the Council enacts further protections for the tenants, many of the serial filers that the Council hopes to deter will be able to recover much of the increased filing fees from tenants.

Future actions taken by the Court or the Council related to eviction filings should consider the effects or anticipated effects of these recent steps taken by the Council. Changes in the legal framework surrounding evictions do not operate independently. Instead, they work together to influence how, when, and why landlords file eviction actions. Additionally, each change can have distinct collateral effects on tenants. Before making additional changes, such as increasing the filing fee for evictions, it is important to weigh both the effect on the number of filings and the effect on each individual filing.

II. Under the Current Legal Framework, Raising Filing Fees May Reduce Filing Rates But Could Have Substantial Collateral Harms for Tenants.

Some studies suggest that increasing filing fees may reduce the rates at which evictions are filed. However, these studies also show that the factors affecting the legal landscape are varied and complicated. Many factors influence local eviction filing rates, and there is no simple causal link between raising filing fees and reducing filing rates. Instead, filing fees are just one factor that interact with many more to shape the legal landscape around evictions.

While raising filing fees may impact the number of cases that are filed, under the current legal framework this change could harm tenants who do face eviction filings, and in particular those tenants who want to pay off their balances and stay in their homes. Because filing fees are currently passed on to many tenants who exercise the right of redemption, higher filing fees make it more expensive for tenants to remain in their units. This change is especially significant for low-income tenants for whom a high filing fee would be the greatest burden.

A. The connection between filing fees and filing rates is complicated and inconclusive.

There is some evidence that higher filing fees may lead to lower eviction filing rates, including lower rates of serial eviction filings. The Georgetown Report compared filing fees and eviction rates in the 50 largest U.S. cities and noted that there was a correlation between these two factors.³² The Georgetown Report did not control for other variables that influence filing rates. Instead, the study plotted these two data points from the largest U.S. cities. Other reports, citing the same data, make this same connection.³³

³¹ This is acknowledged in the D.C. Rules of Procedure for the Landlord Tenant Branch, Rule 15 (b), which states that “the prevailing party must be awarded . . . all taxable costs in the action including the filing fee.”

³² McCabe & Rosen, *supra* note 1, at 28.

³³ Kyle Nelson, Philip Garboden, Brian J. McCabe & Eva Rosen, *Evictions: The Comparative Analysis Problem*, Housing Policy Debate (2021), at 10, <https://www.tandfonline.com/doi/pdf/10.1080/10511482.2020.1867883?needAccess=true>.

There are limitations to these studies because they do not control for other variables. Without this more rigorous statistical analysis, it is difficult to make any clear causal link between filing fees and filing rates. Although McCabe and Rosen argue that there may be a causal relationship, they acknowledge these limitations, cautioning that “these data alone do not provide evidence of a causal relationship between filing fees and filing rates.”³⁴

We have found one study that looked at filing fees in conjunction with other factors, in an effort to delve deeper into this correlation.³⁵ This study used statistical methods to determine which variables could be considered statistically significant. It looked at six factors that it labeled “legal barriers” to eviction: filing fees, the number of courts handling evictions, the median eviction processing time, the requirement that landlords have an attorney, automatic hearings, and notice requirements.³⁶

The results showed “limited associations between the six legal characteristics and serial eviction filing rates.”³⁷ The *only* one of these six factors that had a statistically significant relationship with filing rates was notice requirements.³⁸ For each of the other barriers, *including filing fees*, the researchers could not find any statistically significant connection to filing rates.³⁹ The researchers found more significant results when they looked at these legal barriers together instead of independently. Jurisdictions with more legal barriers tended to have lower filing rates.⁴⁰

In large part, it is difficult to show a clear connection between filing fees and filing rates because so many variables impact filing rates. Every jurisdiction is different. Local variations in housing markets, legal structures, demographics, and other variables all matter. Studies have linked higher filing rates and higher rates of serial filings to dozens of factors. A non-exhaustive list of these factors includes the nature of the housing market, the types of landlords that predominate in the market, the number of properties units owned by a particular landlord, the ease of filing, the length of time between filing and actual evictions, neighborhood characteristics, property size, the degree of computerization or automation that the property manager uses, and the availability of affordable housing.⁴¹ Each of these factors varies from city to city, making it extraordinarily difficult to compare filing rates across multiple cities.⁴²

To our knowledge, no study exists that examines the effect of *increasing* filing fees.⁴³ Existing research compares filing fees in different cities, rather than looking at shifts in filing

³⁴ McCabe & Rosen, *supra* note 1, at 28.

³⁵ *See* Leung et al., *supra* note 16.

³⁶ *Id.* at 15.

³⁷ *Id.* at 16.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 16-17.

⁴¹ Nelson et al., *supra* note 33, at 14; Immergluck et al., *supra* note 8, at 908-10; Leung et al., *supra* note 16, at 3-4.

⁴² For an explanation of the difficulties in comparing eviction data across jurisdictions, see Nelson et al., *supra* note 33.

⁴³ In fact, our research suggests that such significant increases in filing fees are relatively rare.

fees within a single city. These studies are necessarily limited because there are so many other significant differences between jurisdictions.

The limitations of jurisdictional comparisons can be illustrated through several examples.⁴⁴ Texas has seven of the 50 most populous cities in the U.S. In six of these cities, the eviction filing fee is between \$121 and \$146.⁴⁵ Houston is an outlier. In Houston, the filing fee is just \$46, around one-third of the fee in other large cities in Texas. If lower filing fees equate to higher filing rates, then the rate of eviction filings in Houston should be higher than in these other cities. That isn't the case. Despite Houston's low filing fee, it has a below-average filing rate for this group of cities (in Dallas, Fort Worth, and Arlington, the filing rate is around twice the rate in Houston). This example does not mean that filing fees and filing rates are unrelated. Instead, it shows that the issue is more complicated than a one-to-one connection between these two variables.

Other examples prove this same point. California has eight of the 50 most populous cities. Compared with Texas, California's filing fees are much higher (\$385 in most of the largest cities), and its eviction rates are much lower (ranging 0.39 to 2.76 eviction filings per 100 renter households in the eight largest cities). For filing fees, San Jose is the outlier: at \$85, its filing fee is less than a quarter of the fee in the other seven cities.⁴⁶ Yet, the city's filing rate is just 0.43 per 100 renter households—lower than every large California city except for Los Angeles. Again, this example does not disprove the link between filing fees and filing rates. It just shows that there are many other factors that are also at play.

Given the complexity of this issue, it is difficult to determine the relationship between filing fees and filing rates for eviction actions. Many factors contribute to filing rates, and these factors vary significantly between jurisdictions. Cross-jurisdictional analyses do not provide clear guidance on this issue.

B. In the District, filings fees are particularly unlikely to deter serial eviction filings.

Because of the complicated relationship between filing fees, filing rates, and other variables, it is important to consider the local context. This context shapes the way that a filing fee increase would play out.

In D.C., local factors make it particularly unlikely that raising filing fees will substantially decrease filing rates. This is true for two main reasons. First, most evictions in D.C. are filed by large landlords. For these landlords, \$100 may not be a particularly significant

⁴⁴ These examples use the data underlying the Georgetown Report, *supra* note 1, which the authors have generously provided to us and which is on file with the authors.

⁴⁵ The filing fees are: \$121 (Arlington), \$121 (Forth Worth), \$126 (Austin), \$141 (Dallas), \$146 (San Antonio), and \$146 (El Paso).

⁴⁶ In Los Angeles, San Diego, Fresno, Sacramento, Long Beach, and Oakland, the filing fee is \$385. San Francisco uses a tiered fee structures, with filing fees ranging from \$240 to \$450.

deterrent. Second, filing fees may be an especially weak deterrent because landlords can pass filing fees on to tenants.

In D.C., most evictions are filed by large landlords. 377 landlords own more than 100 units, and the largest 100 landlords are responsible for 71% of eviction filings.⁴⁷ For landlords that own hundreds of units, \$100 may not be a significant deterrent to filing eviction actions. The fee is more than outweighed by the amount that tenants owe: \$1,207 on average.⁴⁸ For example, WC Smith “filed more evictions against tenants than any other company or individual in the District between 2014 and 2019” and was responsible for 12% of all evictions filed in the first ten months of 2020.⁴⁹ W.C. Smith has 10,000 units and a residential portfolio of \$1.7 billion.⁵⁰ For such large filers, \$100 may not be a significant deterrent to filing.

Second, higher filing fees may be unlikely to deter landlords from filing eviction actions because, in most cases, the landlords will be able to pass them on to the tenants. D.C. gives tenants the right to redeem, meaning that even after an eviction filing, they can pay the balance owed and stay in their unit. In most cases, this is what happens.⁵¹ The amount required to “pay and stay” typically includes the filing fee. Under the current legal framework, when tenants exercise the right to redeem, they—not their landlords—are likely to be the ones responsible for paying the filing fee. Because landlords, in many cases, will not bear the cost of this fee, a higher filing fee is unlikely to be a significant deterrent.

C. Under the Current Legal Framework, Raising Filing Fees Could Reduce the Number of Tenants Who Are Able to Redeem.

For tenants who face an eviction filing, a higher filing fee would pose a significant burden. For most tenants who face an eviction action, \$100 is a substantial amount of money. A higher filing fee would raise the cost for many tenants who hope to stay in their homes. Indeed, the Georgetown Report acknowledges that court fees are one reasons that tenants become further in debt while eviction actions works their way through the court system.⁵²

Most tenants who face evictions are low-income. Nearly 1 in 4 evictions are filed against subsidized renters: those who live in public housing, receive a voucher, or live in housing constructed through the low-income housing tax credit program.⁵³ People who face eviction are

⁴⁷ McCabe & Rosen, *supra* note 1, at 26.

⁴⁸ *Id.* at 6.

⁴⁹ Amanda Michelle Gomez, *These Landlords File the Most Evictions in D.C.*, Washington City Paper (Oct. 30, 2020), <https://washingtoncitypaper.com/article/500983/these-landlords-file-the-most-evictions-in-d-c/>.

⁵⁰ About Us, WC Smith, <https://wsmith.com/about-us/>.

⁵¹ *See* Section I.A, *supra*.

⁵² McCabe & Rosen, *supra* note 1, at 24.

⁵³ *Id.* at 22.

particularly likely to have suffered a recent job loss⁵⁴ or live in high-poverty neighborhoods.⁵⁵ In D.C., more than half of eviction filings come from Wards 7 and 8, which have poverty rates of 26.6% and 34.2% respectively.⁵⁶ In Ward 7, the median household income is \$45,318, around half of the household average for D.C.⁵⁷ In Ward 8, the median household income is \$35,245, just 40% of the average household income in D.C.⁵⁸

For low-income tenants, \$100 is a lot of money. For a household of three living at the federal poverty line, \$100 is nearly one fourth of what a family has to live on for an entire week.⁵⁹ If a person receives SSI, the \$100 filing fee is more than one-eighth of their payment for the entire month.⁶⁰ If, like the median subsidized renter facing an eviction action, a tenant owes \$900 in unpaid rent,⁶¹ a \$100 filing fee increases the cost to stay in their unit by more than 10%. For tenants who face serial filings, this problem is even worse because these tenants have would have to confront the \$100 fee every time they face a new eviction filing.

Higher filing fees substantially increase the cost to stay in a unit. For many tenants, a \$100 filing fee could be the difference between being able to redeem and being forced to leave. To exercise the right of redemption, many tenants must pay not only the back rent but also court fees in order to stay in their unit. One national study found that, in the average tract, eviction filings led to \$180 in fines and fees, which “effectively rais[ed] monthly housing costs by 20%.”⁶² The higher filing fee may prevent some tenants from being able to redeem, thereby increasing the number of tenants who are put out of their units. Other tenants may still be able to redeem, but the cost is a significant one that low-income tenants cannot bear easily.

III. Protective Measures Should Precede Any Increase in Filing Fees.

Until the Council enacts protective measures to prevent filing fees from being passed onto tenants, a higher filing fee may not be the best solution to D.C.’s problem of serial eviction filings. In their study of serial filings in Atlanta, researchers at Georgia State University’s Urban Studies Institute cautioned:

⁵⁴ Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, Soc. Science Research (2016), at 8, https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.ssr_2016.pdf.

⁵⁵ Desmond, *supra* note 14, at 97.

⁵⁶ McCabe & Rosen, *supra* note 1, at 14-15.

⁵⁷ American Community Survey 5-year estimates: Ward 7, DC, U.S. Census Bureau (2019), <https://censusreporter.org/profiles/61000US11007-ward-7-dc/>.

⁵⁸ American Community Survey 5-year estimates: Ward 8, DC, U.S. Census Bureau (2019), <https://censusreporter.org/profiles/61000US11008-ward-8-dc/>.

⁵⁹ 2021 Poverty Guidelines, U.S. Department of Health and Human Services (Jan. 26, 2021), <https://aspe.hhs.gov/2021-poverty-guidelines>.

⁶⁰ SSI Federal Payment Amounts for 2021, U.S. Social Security Administration, <https://www.ssa.gov/oact/cola/SSI.html>.

⁶¹ McCabe & Rosen, *supra* note 1, at 23.

⁶² Leung et al., *supra* note 16, at 2.

In states where filing is inexpensive and quick, serial filing is effectively a state-favored practice However, merely raising the cost of evictions, without somehow limiting how much can be passed on to the tenant could backfire and leave tenants with even greater financial penalties.⁶³

Because of these potential downsides, the Court should not increase filing fees unless and until the Council takes action to say that filing fees are not recoverable from and cannot be charged to a tenant. This type of protection would operate similarly to the prohibition on shifting attorneys' fees to tenants.⁶⁴ This action must be taken by the Council.⁶⁵ If this protection were implemented, it would mean that tenants would not bear the cost of higher filing fees. This legislative action would also make filing fees a more effective deterrent to serial filings because landlords would bear the cost of mass filings.

Unless and until the Council enacts these protections, any effect on filing rates would be outweighed by the harms to the tenants who would bear the costs of such increases. This is especially true because other protective measures taken by the Council, such as record sealing, notice periods, and the \$600 filing minimum, are likely to reduce the number of eviction filings and corresponding harms without having similar adverse impacts for tenants. If the Council passes legislation to ensure that filing fees are not passed onto tenants, it might then make sense to consider the effects of a filing fee increase.

IV. Conclusion

Serial eviction filings pose a substantial problem for many low-income D.C. residents and residents of color, who are disproportionately impacted by serial filings. We appreciate the Court and the Council's efforts to consider ways to reduce serial filings and the harms that they pose for these communities.

It is possible that a higher filing fee could deter some evictions. However, the data are not conclusive, and under the District's current legal framework any deterrent effect would likely be outweighed by the harms to tenants who would have to pay this increased cost in order to stay in their units.

The recent legislative protections enacted by the Council to reduce serial filings should be studied and made permanent. Before the Court raises filing fees for eviction cases as a further deterrent to serial filings, the Council should take action to ensure that those filing fees will not be passed on to tenants. Unless and until the Council takes this action, the Court should not increase filing fees in eviction actions.

Although we think the Court should not increase filing fees without further protections passed by the Council, if the Court were to increase filing fees, it should do so first only with

⁶³ Immergluck et al., *supra* note 8, at 921.

⁶⁴ 14 DCMR § 304.4.

⁶⁵ The current statutory scheme provides that successful landlords are entitled to recover court costs. D.C. Code § 16-1503.

respect to Form 1B complaints. Because those cases do not involve redeemable judgments, the higher filing fees would not be passed along to tenants. Acting first with respect to Form 1B complaints would also allow the Court to see if the higher filing fees have an impact on filing rates. This data could help the Court decide whether to increase the fees for the larger universe of nonpayment of rent cases, although we recognize the deterrent effects might be different in different types of cases.

We appreciate the Court's consideration of these comments and recommendations.

Sincerely,

Bread for the City

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Council for Court Excellence

James Hulme, Civil Committee Co-Chair

Elizabeth Scully, Civil Committee Co-Chair

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