

**Testimony of Beth Mellen
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**Before the Committee of the Whole
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs

June 10, 2021

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (“DCRA”) and the administration’s proposed FY2022 budget for the agency. 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. Legal Aid therefore supports adding full funding for the Department of Buildings Establishment Act (Law 23-0269) to the Fiscal Year 2022 budget, to allow the implementation process to begin. This Committee also should

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.

continue to consider further legislative changes to ensure the Department of Buildings gets off the ground with a strong compliance and enforcement structure in place. Among the changes already enacted and awaiting implementation is the Residential Housing Environmental Safety Amendment Act of 2020 (Law 23-0188), which will require housing code inspectors to be certified in mold assessment and to issue notices of violation and infraction under the District’s mold statute. Legal Aid also supports full funding for this legislation in the Fiscal Year 2022 budget, to add a critical enforcement tool to protect families currently living with unhealthy mold in their homes.

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. Nearly 40 percent of District residents have lost employment income since mid-March 2020, including 49 percent of Black and 45 percent of Latinx adults.² As a result, 18 percent of tenants are not current in their rent payments, and 25 percent have little or no confidence in their ability to pay June 2021 rent, translating to approximately 30,000 to 45,000 households facing possible displacement.³ Many of these same families are having trouble paying other household expenses and are experiencing food insecurity.⁴ The burden of this economic and housing crisis is falling disproportionately on low-income Black and Latinx families. Ninety-five percent of the families that are not current in rent and 85 percent of the families with little or no confidence in their ability to pay June 2021 rent are Black or Latinx.⁵

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.⁶ 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

² U.S. Census Bureau, *Week 27 Household Pulse Survey: Mar. 17-29 – Detailed Tables*, “Employment Table 1,” available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp27.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.

³ *Id.*, *Week 30 Household Pulse Survey: May 12-24 – Detailed Tables*, “Housing Tables 1b., 2b.,” available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp30.html>.

⁴ *Id.*, “Spending Table 1.,” “Food Sufficiency & Food Security, Table 2.”

⁵ *Id.*

⁶ 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/>.

represent nearly 60 percent of all eviction cases filed.⁷ In these two wards, the population is more than 90-percent Black and poverty rates hover around 25 percent, twice District averages.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 the beginning of the pandemic in mid-March 2020, Legal Aid has received approximately 2,500 calls either to our tenant hotline or from tenants to our general intake line, all seeking advice and assistance.⁹ 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

⁷ 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>

⁸ DC Health Matters, Demographic Data - Households/Income, available at <https://www.dchealthmatters.org/demographicdata>.

⁹ 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.dccbarfoundation.org/post/critical-network-collaboration-for-eviction-defense>.

FY18, to only 7,586 in FY19 and 5,737 in FY 2020.¹¹ We also 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 FY20.¹² 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 FY20.¹³ We do not understand why this gap continues to exist. 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.

Legal Aid Supports Full Funding to Implement the Department of Buildings Establishment Act of 2020

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 year's DCRA oversight hearing and past hearings. Legal Aid supports moving rental housing inspections and enforcement out of DCRA altogether, as required by the Department of Buildings Establishment Act, Law 23-0269, which the Council enacted earlier this year with a unanimous override of the Mayor's veto. Given the Mayor's veto, it is perhaps not surprising that the Mayor did not include any funding for implementation in her Fiscal Year 2022 budget. Legal Aid supports full funding for implementation to ensure DCRA, the City Administrator, and others can begin the process of setting up the new agency. The Chief Financial officer has estimated the cost at \$11.749 million for FY22 and \$33.051 million total for the four-year financial plan.¹⁴

Wherever housing code inspections and enforcement 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, including this year's DCRA oversight hearing, and many of our recommendations can be found in other

¹¹ Dept. of Consumer & Regul. Affairs, "Responses to FY 2020 and FY 2021 to date Performance Oversight Hearing Questions" (Mar. 12, 2021), p. 105.

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

¹³ *Id.*, *Dashboard – Enforcement*.

¹⁴ Ofc. of the Chief Fin. Ofcr., Fiscal Impact Statement – Department of Buildings Establishment Act of 2020 (Dec. 1, 2020), available at http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%2023-91%20Department%20of%20Buildings.pdf. Legal Aid notes that both this fiscal impact statement and the one prepared on the Residential Housing Environmental Safety Amendment Act of 2020, linked below, come in quite high. This appears to be attributable to estimates from DCRA that each bill requires fairly significant increases in staffing and agency costs for implementation, at levels that appear somewhat incredulous. Legal Aid supports action by the Council to reform the fiscal impact statement process to address a variety of issues, including apparent over-estimates by agencies that may be reluctant to implement enacted legislation.

bills introduced last Council period.¹⁵ We hope some of these same ideas can be carried over into legislative proposals for this Council period. Among our long-standing recommendations:

1. The Committee should require the Department of Buildings to employ sufficient rental housing inspectors and to deploy them in the Landlord and Tenant Branch of D.C. Superior Court to be accessible to tenants facing eviction.
2. The Committee should codify and strengthen the proactive inspections program, including setting forth clear requirements for how often units are inspected, what factors trigger more-frequent inspections, and what enforcement actions follow for violations.
3. The Committee should strengthen and then enact the provisions in the Eviction Protections and Tenant Screening Amendment Act of 2021, Bill 24-0119, to strengthen the basic business license process as a tool to ensure code compliance.¹⁶
4. The Committee should engage in a comprehensive review of current statutory provisions and regulations and legislative proposals introduced and/or enacted but not funded over the past few years, with the goal of removing agency discretion and making enforcement automated and strong, shortening timelines for landlords to correct violations, and increasing penalties when they do not.

Legal Aid Supports Full Funding to Implement the Residential Housing Environmental Safety Amendment Act

Another necessary tool for effective enforcement of housing code violations by DCRA (or, in the future, DOB) is the ability to inspect, cite, and fine landlords for violations of the District’s mold statute. Five years ago, a coalition of organizations that included Legal Aid worked with the Council to enact one of the strongest mold statutes in the nation, the Air Quality Amendment Act of 2014. Unfortunately, the law relies on private enforcement, with no government agency charged with inspecting, citing violations, and enforcing the law. Legal Aid therefore advocated in strong support of Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which squarely addresses this gap in current law by requiring DCRA to certify its inspectors in mold assessment and to issue notices of violation and impose penalties when landlords fail to comply with the mold law.

We support full funding for implementation of these provisions, now enacted as part of the Residential Housing Environmental Safety Amendment Act of 2020, Law 23-0188. The

¹⁵ D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen, “Performance Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs” (Mar. 18, 2021).

¹⁶ Legal Aid testified at the May 25 hearing on this bill and our written testimony includes recommended revisions to the basic business license provisions. D.C. Council, Committee of the Whole, Written Testimony of Samantha Koshgarian, “Public Hearing Regarding B24-0119, the Eviction Protections and Tenant Screening Amendment Act of 2021” (May 25, 2021).

pandemic has only heightened our concerns that far too many families in the District are living with mold, negatively impacting their health and well-being. The Chief Financial Officer estimates that implementation of the Residential Housing Environmental Safety Amendment Act will require \$3.914 million in the first fiscal year and \$14.087 in the four-year financial plan.¹⁷ As with the Department of Buildings Establishment Act, the Mayor did not include this funding in her Fiscal Year 2022 budget, and Legal Aid calls on this Committee to add it.

Legal Aid meets with hundreds of low-income District tenants every year who are seeking our assistance to address poor conditions in their homes. Many of these tenants report – and our own investigations are able to confirm – that indoor mold is a primary concern. Legal Aid estimates that at least half of these tenants have issues with mold or mildew in their homes. The conditions that cause mold, including leaks and water damage, also are very common, a fact confirmed by investigations by the Office of the Attorney General finding that mold and water damage often are a problem at slumlord properties.¹⁸

Exposure to mold has been linked to upper respiratory tract symptoms, coughing, and wheezing in otherwise healthy people, as well as a higher risk of developing asthma, and to asthma symptoms in people with asthma.¹⁹ One in six District residents has asthma, a rate that is 50 percent higher than the national average.²⁰ Residents in Wards 5, 7, and 8 – and in particular low-income, children of color – are disproportionately affected.²¹ Children living in these areas are approximately 20 times more likely to visit an emergency room and 10 times more likely to be hospitalized for asthma than children living in Northwest. Doctors have identified mold and other poor housing conditions as one of the primary factors contributing to the District’s asthma epidemic.²²

¹⁷ Ofc. of the Chief Fin. Ofcr., Fiscal Impact Statement – Residential Housing Environmental Safety Amendment Act of 2020 (Dec. 1, 2020), *available at* https://lms.dccouncil.us/downloads/LIMS/41819/Other/B23-0132-FIS_Residential_Housing_Environmental.pdf.

¹⁸ Legal Aid represented tenants and brought in a professional mold assessor at Terrace Manor (owned by Sanford Capital) and found problems with leaks, water damage, and mold that likely had festered for years. Tenants we have worked with at Oak Hill (Sanford Capital), Bennington Road and Astor Place (Mehrddad Valibeigi/ Bennington Corporation and Astor Limited Partnership), and Forest Ridge/The Vistas (Joe Kisha/Vista Ridge Limited Partnership) similarly have experienced long-standing problems with mold. OAG has filed receivership cases at each of these properties and more.

¹⁹ See Centers for Disease Control and Prevention, “Facts About Mold and Dampness,” *available at* http://www.cdc.gov/mold/dampness_facts.htm.

²⁰ D.C. Asthma Coalition, *available at* <http://www.asthmafreedc.org/>.

²¹ Washington City Paper, “Doctors Blame D.C.’s High Asthma Rates in Part on Poor Housing” (May 22, 2019), *available at* <https://www.washingtoncitypaper.com/news/housingcomplex/article/21069963/doctors-blame-dcs-high-asthma-rates-in-part-on-poor-housing>.

²² *See id.*

Despite the Air Quality Amendment Act, tenants also continue to come to Legal Aid for help when their landlords have failed to follow the law. Some tenants are fighting just to have their landlords respond at all, following major floods that have damaged their property and left behind soaked carpet and mold. Others have been temporarily relocated from damaged apartments with no clear timeframe for when they can return home. Still others are dealing with landlords who have remediated mold improperly, creating unnecessary health risks. Government enforcement remains unavailable, and private enforcement is difficult, expensive, and time-consuming.

A tenant named W.J. contacted us in February of this year because of poor housing conditions in her home. A water leak in the roof had caused water damage and mold to develop in her kitchen. Ms. J attempted to clean the mold with bleach, but it kept growing back. Her landlord painted over the mold but did not perform professional remediation, and the mold kept growing back. Ms. J was concerned about the effects the mold might be having on her two young children.

At the time Ms. J contacted Legal Aid, we could not take on her case, because our attorneys were at capacity with all of the eviction-related work that has overwhelmed us and other legal services providers. Ms. J is a Spanish-speaker and likely would struggle to file and proceed with a case on the Superior Court's Housing Conditions Calendar as a result, especially through the current remote filing and hearing process. Legal Aid referred Ms. J to the Department of Energy and the Environment's Healthy Homes Program, but under current law DOEE lacks any authority to issue notices of violation or infraction or otherwise take enforcement action if landlords do not remediate mold.

What tenants like Ms. J need is the ability to have a government official inspect, issue a notice of violation and infraction, monitor abatement by the landlord through professional remediation, and take enforcement actions if the landlord fails to act.

Conclusion

Thank you for this opportunity to testify about our ongoing concerns about DCRA's lapses in enforcement and ways that the Fiscal Year 2022 budget can be enhanced to begin to address these issues. 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 and the Residential Housing Environmental Safety Amendment Act of 2020 will be fully funded and implemented and that other legislation addressing DCRA's systemic failures can be considered and move forward this Council period.