
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Chief Tenant Advocate

PUBLIC ROUNDTABLE

**PR18-0538, THE "RENTAL HOUSING COMMISSION PETER
SZEGEDY-MASZAK CONFIRMATION RESOLUTION OF 2009"**

**PR18-0539, THE "RENTAL HOUSING COMMISSION CHANTAL
JEAN-BAPTISTE CONFIRMATION RESOLUTION OF 2009"**

Committee on Housing and Workforce Development
The Honorable Marion Barry, Chairperson
Council of the District of Columbia

Monday, November 2, 2009
11:00 a.m.

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

INTRODUCTION

Good morning Councilmember Barry and members of the Committee on Housing and Workforce Development. I am Johanna Shreve, the Chief Tenant Advocate of the District of Columbia in the Office of the Tenant Advocate (OTA). Thank you for the opportunity to present testimony regarding Proposed Resolution 18-538, the “Rental Housing Commission Peter Szegedy-Maszak Confirmation Resolution of 2009,” and Proposed Resolution 18-539, the “Rental Housing Commission Chantal Jean-Baptiste Confirmation Resolution of 2009.” Mr. Szegedy-Maszak has been a Commissioner for almost 2 years and has been re-nominated to serve his first complete 3-year term. Ms. Jean-Baptiste has been nominated to serve a 3-year term filling the seat of current Commissioner Ronald Young, who has provided the Commission with years of distinguished service and also now serves as the Chairperson.

THE COMMISSION’S ROLE

The Rental Housing Commission plays a critical role in the administration and enforcement of the Rental Housing Act, the District’s bedrock tenants’ rights law, and is an integral component of its regulatory structure. That regulatory structure includes: the rent stabilization program; protections against eviction and retaliatory action; the tenant right to

organize; other important tenants' rights; and an adjudicatory process that includes an administrative level of appeal – to the Commission – prior to a judicial level of appeal.

Under section 202 of the Act, the specific duties of the Rental Housing Commission are:

1. Issuing, amending, and rescinding rules and procedures for the administration of the Act;
2. Deciding appeals brought to it from the decisions of the Rent Administrator and the Office of Administrative Appeals; and
3. Certifying and publishing the annual adjustment of general applicability, based on the Consumer Price Index, which is the maximum standard annual increase in the rent charged for a rent-controlled apartment.

(D.C. Official Code § 42-3502.02)

To merely reiterate the Commission's statutory functions, however, is to vastly understate its vital importance to the well-being of the District's rental housing community and affordable rental housing stock. Unlike the Office of Administrative Hearings, from which rental housing decisions are appealed to the Commission, and unlike the D.C. Court of Appeals, to which Commission decisions may be appealed, the Commission has jurisdiction

over *no cases* other than rental housing cases. Thus, the Commission has the institutional knowledge and the singular expertise necessary to serve as an effective back-stop against decisions from below, which, due to the Act's many complicated moveable parts, might well conflict with each other, or with the Act's own remedial purposes. Even subtle fissures in the law have the potential to undermine the statutory intent and design. Only a long-standing "single-mission" entity like the Commission is able to prevent such fissures in the law from occurring, and to develop a consistent jurisprudence that conforms to the Act's remedial purposes.

We understand that historically the Court has affirmed 92 to 95 percent of cases on appeal from the Commission. This statistic is a strong testament to the Commission's role and stature in rental housing adjudications.

OTA'S ROLE REGARDING THE NOMINATIONS

Needless to say, these nominations are of extreme interest to District tenants and housing providers alike as well as to the OTA, which was established in 2005 as a division within the Department of Consumer and Regulatory Affairs, and became an independent agency of the District government on October 1, 2007. Among the statutory functions of the OTA is to "represent the interests of tenants and tenant organizations in

legislative, executive, and judicial issues.” (D.C. Official Code § 42-3531.07(2))

In the absence of some extenuating circumstances, it is my belief that OTA should not endorse or oppose any particular nomination to the Rental Housing Commission, or to any other judicial or quasi-judicial post in the District government. Rather, the more appropriate role for the OTA to play is to facilitate the meaningful review of a nomination, and to help frame the criteria and the questions that we believe are most pertinent to the tenant community.

Towards that end, we provided our stakeholders with the Proposed Resolution for each nomination, including the candidates’ resumes; a copy of the notice of this roundtable; a summary of 12 decisions we identified that Commissioner Szegedy-Maszak either wrote or joined since his tenure began in January 2008; and a list of the questions and criteria that we believe are most important in considering any nomination to the Rental Housing Commission. We also provided this material to the Committee for its consideration.

At our most recent well-attended stakeholder meeting, we discussed the nominations and the important role of the Commission. We also reported that it is our sense that, collectively, the 12 decisions we identified

which Commissioner Szegedy-Maszak either wrote or joined appear to represent a reasonable balance between those decided in favor of tenants and those decided in favor of housing providers.

QUALIFICATIONS TO BE A COMMISSIONER

The Act sets forth the minimal qualifications that any prospective Rental Housing Commissioner must have. The nominee must be a resident of the District, must be admitted to practice law before the District of Columbia Court of Appeals, and may be *neither* a housing provider nor a tenant. (D.C. Official Code § 42-3502.02))

FURTHER CRITERIA AND CONSIDERATIONS

As we previously communicated to the Committee, we identified the following considerations as important ones to explore with each Rental Housing Commission nominee:

1. What areas of legal experience and expertise would the candidate bring to the Commission?
2. Does the candidate's legal experience and expertise include public interest law generally and housing law in particular?
3. Does the candidate have experience with and knowledge of the Rental Housing Act?

4. Does the candidate have working knowledge of the District's rent control system, and does the candidate have a working knowledge of the recently abolished rent ceiling system (which remains applicable to cases initially filed as recently as August 2009)?
5. Does the candidate have a solid understanding of administrative law? For example, can the candidate site key differences between the rules of evidence in a judicial setting versus those that pertain under the Administrative Procedure Act?
6. Does the candidate have an understanding of and an appreciation for the purposes of the Rental Housing Act, including the fact that the Act is remedial legislation intended to alleviate chronic problems within the rental housing market?
7. Is the candidate aware of the Court's pronouncements that the tenant who has filed a tenant petition in effect acts as a "private attorney general" with respect to enforcement of the Rental Housing Act, and what significance should that have for the Commission's review of cases?
8. Is the candidate familiar with the standard set forth in the "Goodman" case (573 A2nd 1293 (1990)) regarding procedural or technical errors committed by a *pro se* litigant, and the relaxed

application of the procedural or technical rules under relevant circumstances?

9. Is the candidate aware of the “plain error” standard for review of issues not specifically raised in a notice of appeal?
10. Would the candidate take a pro-active approach toward Commission-initiated reviews under 14 D.C.M.R. § 3808, which gives the Commission 20 days after the deadline for party-initiated appeals to initiate its own appellate review of a decision by the Rent Administrator or the Office of Administrative Hearings?

THE THIRD SEAT ON THE COMMISSION

I wish to take this opportunity to emphasize how important it is not only to have Commissioners with the right experience and qualities, but also to have all three seats on the Commission filled. The Commission’s workload is generally a heavy one, but that work will be all the more challenging upon losing Chairperson Young, when any new panel’s combined experience will be drastically reduced. Our understanding is that Chairperson Young may serve on hold-over status only 180 additional days after the expiration of his term on July 18, 2009, or until mid-January 2010. While two Commissioners constitute a quorum to conduct Commission

business, any extended vacancy in the third seat would be a detriment to the Commission's functioning.

Thus, filling the third seat on the Commission is of the utmost importance to tenants and housing providers alike. Whatever differences of opinion may exist between the OTA and the Apartment and Office Building Association (AOBA), as we recently discussed, we do *agree* on this much: so long as the Rental Housing Act charges the Commission with performing its prescribed functions, it is imperative that there be a full Commission to do so. Again, this is in the *mutual interest* of the District's tenants and housing providers. We are gratified to learn from the administration that it is working on that third nomination, and we are hopeful that it will be made in the near future.

This concludes my testimony. I thank you Chairperson Barry for your continued leadership in the area of tenants' rights in the District, and I would be happy to provide the Committee with any further assistance that I can. Thank you for considering these remarks.