Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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OFFICE OF THE TENANT ADVOCATE (OTA) PERFORMANCE OVERSIGHT HEARING

Council of the District of Columbia
Committee on Public Services and Consumer Affairs
The Honorable Yvette Alexander, Chair

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Introduction

Good morning, Chairperson Alexander and members of the Committee on Public Services and Consumer Affairs. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia. I am here this morning to discuss the performance of the Office of the Tenant Advocate (OTA) during Fiscal Year 2010. The OTA was established in 2005 as an office within the Department of Consumer and Regulatory Affairs. I began my service as the Acting Chief Tenant Advocate in April 2006, and the OTA became an independent agency in October 2007. In June 2008 I began my full tenure as the District's first Chief Tenant Advocate.

The tenant community's challenges and the OTA's mission

I would like to begin my testimony today by discussing the OTA's mission and the critical challenges that confront the District's tenant community, both historically and particularly in these economic hard times. The OTA was created, first and foremost, because the District's relatively strong tenant protections laws historically have tended to exist more on paper than in reality for too many tenants. This has largely been due to: (1) the lack of awareness of renters' rights among tenants themselves; (2) the lack of tenant attorneys on the tenant side of the landlord-tenant bar;

and (3) the tendency of competing concerns and interests to stifle or mute the tenant perspective on government policy and enforcement matters.

These factors have served to exacerbate chronic needs in the tenant community: the need to improve housing code enforcement; to preserve and grow our affordable housing stock; to assist tenants who have been displaced by fires, floods, and government closures; to better educate tenants about the tenant protection laws; to provide more tenants with quality legal representation; to broaden tenant participation at all levels of policy-making in the District; and to ensure that the tenant community always has a seat at that policy-making table.

At last year's oversight hearing, I noted that tenants were hit particularly hard by the worst economy since the Great Depression. The wave of foreclosures led to too many illegal tenant evictions or attempted evictions. And the downturn in the housing market only aggravated price pressures in the rental housing market. In February 2010, the DC Fiscal Policy Institute (DCFPI) issued a report (*Nowhere to Go: As DC Housing Costs Rise, Residents Are Left With Fewer Affordable Housing Options*) that addressed the emerging affordability crisis in rental housing. According to that DCFPI report:

1. Rents are rising faster in the District than in most large urban areas -- only four (4) other U.S. jurisdictions had a larger average rent increase between 2000 and 2007 than D.C.'s average rent increase of 23 percent;

2. Since 2000 the District's low-cost rental housing stock -- the number of apartments renting for $750 or less -- has decreased by 33 percent, while the number of apartments renting for $1,500 or more increased by more than 50 percent;

3. Four of five D.C. households with incomes below 30 percent of the area median income spend more than 30 percent of their income on housing costs; that is the prevailing definition of a "housing cost burden" -- and two-thirds of these households are renter households;

4. Since 2000, the number of households with *severe* housing cost burdens -- those whose housing costs are 50 percent or more of their income -- has increased by one-third, and renters comprise "the vast majority" of these households.

The agency's establishment act sets forth our mission which includes: (1) providing technical and legal support in a variety of forms to tenants regarding disputes with their landlords; (2) advocating for policies in the legislative, regulatory, and judicial contexts that will protect and promote the rights and interests of District renters; (3) educating the tenant community about tenant rights and rental housing law and policy; and (4) administering and managing the Emergency Housing Assistance Program, which provides emergency housing assistance to tenants displaced by

government closures and other emergency circumstances. (the "Office of the Chief Tenant Advocate Establishment Act of 2005," Subtitle G of Title II of Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005," effective October 20, 2005; D.C. Official Code § 42-3531.01 *et seq.*)

As the Chief Tenant Advocate, I am ever mindful that our small staff of fourteen (14) FTEs serves a constituency consisting of the 60 percent of District residents who are renters. I am also ever mindful of our constituency's wide-ranging and seemingly ever-growing needs and concerns. Thus, my goal is to optimize our use of resources to make maximum inroads with respect to each aspect of our mission, and to keep broadening our impact and keep improving and refining what we do, so that we constantly build upon our progress to date. I will now discuss how over the past year the OTA has pursued these goals and our mission regarding each of our major programmatic areas, as well as our internal operations.

New space

First, I should note that the agency's move to the 3rd Floor of the Reeves Center, at 2000 14th Street, NW, begins on Friday, March 11th, and the office will reopen on Tuesday, March 15th. All contact information

other than our street address will remain the same, and we expect all personnel, procurement, facilities management, and information technology systems to remain the same. Our new space is considerably smaller than our current temporary location, but we have been able to do more with less. Accordingly, when we reopen, tenants and advocates and others will have access to a wide variety of electronic and paper resources and rental-housing related information at our new Tenant Resource Center.

Technology and Data Management

Due to the size of our caseload and the wide scope of our programs and activities, it is imperative that we make the best possible use of the best available technology. In FY 2010, we pursued the following technological improvements:

- Case Intake Application: We have further developed and revised our electronic case intake application to enhance the accessibility and utility of vital information.

- "Emergency housing assistance" electronic tracking system: Similarly, our emergency housing assistance tracking system now stores all key information in order to promote its accessibility and utility.

- Database of rental housing case decisions: Our "rental house case" database and case abstracts have been expanded and made searchable.

- Attorney Case Management System: Late last year, we acquired an attorney case management program called Amicus to enhance attorney efficiency as well as the accessibility and utility of information related to the cases we litigate. In January we executed an MOU with OCTO to provide space on an OCTO server to host the software.

- Case Property Management System and FileNet: OTA has executed an MOU with DCRA that will provide us with access to DCRA's CPMS and FileNet systems, which will enable us to view, respectively, records of DCRA inspection activity at specific properties, and Rent Administrator records that have been transmitted to DCRA, including rent control registration and exemption forms, rent increase filings, and certificates of occupancy.

Legal Services Division

Our growing impact can be measured in terms of the significant and steady increase in the number of tenants who come through our doors seeking assistance. In FY 2010, our five case management specialists handled a total of 2,261 individual cases -- 23 percent more than FY 2009, 61 percent more than FY 2008, and 104 percent more than FY 2007. The top issues were (1) landlord-tenant disputes regarding such matters as the security deposit, the lease or rental payments; (2) housing code violations; (3) unlawful evictions and retaliation; (4) construction and maintenance complaints; and (5) unlawful rent increases. I should also note that more

clients came from Ward 7 than from any other Ward, followed by Wards 5, 4, and then 8.

It has only been about a year since OTA has been able to directly represent tenants regarding disputes with their landlords. As our establishment act requires, we provide in-house representation on a discretionary basis taking into account such factors as financial need, the merits of the case, and the potential District-wide public interest impact. Last year at this time, Andy Gibbs was just starting his service as the OTA's first litigating attorney. I could not be more pleased that our second litigating attorney, Amir Sadeghy, came on board in October 2010.

Our legal service initiatives include more proactive outreach to unrepresented tenants who have contested cases or who may be unaware that they have a right to a hearing and/or the OTA's assistance. We have already done so as a matter of statutory obligation in "section 501(f)" cases. These cases involve a landlord's application for Rent Administrator approval to issue to the tenants notices to temporarily vacate so that alterations and renovations may safely be made. Also, based on a chronic need identified on an interagency basis, we will soon start sending letters to tenants with an upcoming mediation or hearing before OAH inviting

them to a case review session with the OTA. Similarly, we will soon start sending tenants who have filed tenant petitions a form letter inviting them to a case review session with the OTA. This outreach effort is aimed at unrepresented tenants who failed to seek OTA's assistance before filing the petition, perhaps because they did not know about our services. We will also soon start sending an explanatory chart regarding the relevant law and proceeding to tenants who have received in the mail an oftentimes mystifying document from the Rent Administrator regarding a "housing provider rent increase petition" under the Rental Housing Act, or a housing provider's offer of purchase under the tenant right of purchase (TOPA) law.

Education and Outreach

As a matter of practical necessity, all OTA staff contributes to our education and outreach efforts, but as now structured our Community Services Division is staffed by our five Case Management Specialists. This Division will soon be reorganized and headed by veteran Case Management Specialist Delores Anderson who is a true education and outreach specialist. Policy initiatives in the Community Services Division in FY 2010 include:

- Elderly Tenant Registration Program: The OTA finds that too many elderly tenants in rent controlled apartments remain unaware of the extra affordability protection the law provides tenants who qualify as "seniors" defined as age 62 or over, or "disabled" as defined in the Americans with Disabilities Act. For these tenants, the maximum standard annual rent increase is the annual CPI instead of the annual CPI plus two (2) percent -- the corresponding rent increase cap for non-elderly, non-disabled tenants. For many seniors who are aware of this protection, it too onerous a task to complete the required form and go to the RAD to file the form once it is completed.

  Thus in FY 2010 the OTA started taking the initiative to meet seniors where they live, or places they may frequent, to (1) educate them that they are entitled to this additional affordability protection, and (2) provide on-the-spot registration assistance. We have had four formal information and registration events and, in collaboration with the DC Office of Aging and senior wellness centers such as IONA Senior Services, have scheduled approximately ten more.

- The Tenant Education Institute (TEI): The TEI is a series of educational classes that we have already begun and which will soon be expanded upon. A special curriculum is being developed in collaboration with the Carlos Rosario School in Ward 1 aimed at serving the particular needs of tenants in the District's underserved Latino population.

- Students in rental housing: At the request of Catholic University and in collaboration with campus police, we have engaged student concerns regarding off-campus rental housing, including how to find an apartment, the leasing process, security deposits, and how to deal with housing code violations. We anticipate becoming more engaged with concerns regarding students in rental housing, which clearly is an emerging issue on multiple fronts.

- Brochures and Tools: The agency also develops brochures and pamphlets designed to help tenants understand their rights, whether for general purposes or for targeted situations. Examples include

such material as the D.C. Tenant Bill of Rights, a rent control FAQ, and the "section 501(f) application" material I previously noted. These documents are available on our website and we will also post the legal division's outreach tools currently under development that I also previously noted.

Legislative/Policy Division

The legislative/policy division provides a voice for tenants in the District government, whether in the legislative, regulatory, or judicial arena (D.C. Official Code § 42-3531.07(2)). To fulfill this aspect of our mission, this division regularly engages tenants, tenant associations, advocates, attorneys, and other stakeholders, as well as the Council, the Mayor's office, and sister agencies, regarding matters of concern to the tenant community.

In FY 2010, the OTA stayed busy in all three arenas -- legislative, regulatory, and judicial. We helped draft legislation that led to improved criteria for would-be Rental Housing Commissioners, the extension of rent control, the right of tenant associations to have standing to sue on behalf of their members, and, after an adverse judicial decision, the preservation of the statutory timeframes for tenants to exercise the right of purchase. Additionally, we provided testimony or comments on other legislative proposals covering a host of other concerns, including lead safety, tenant

actions to enforce the housing code, problems with housing provider petitions for "hardship" rent increases, violations of the rent control cap for elderly and disabled tenants, and the protection of the tenant right to stay in rental accommodations that are subject to foreclosure.

In the judicial arena, we were very pleased this past April when the D.C. Superior Court started up its new "Housing Conditions Calendar" (HCC) in the Civil Division. The Court's initiative fulfilled the purposes of Bill 18-104, the "Tenant Access to Justice Reform Act of 2009," while avoiding the inevitable delays that would have resulted from a legal battle between the Council and Court regarding separation of powers. At a relevant Council hearing in November 2009, the OTA made the recommendation that the Council suspend consideration of a legislative mandate to first give the Court's own initiative a chance to succeed. Now, as of April 2010, District tenants indeed finally do have a summary process to compel derelict landlords to cure housing code violations, similar to the summary action District landlords have always had to evict tenants for cause. Judge Melvin Wright, who presides over the HCC, explained this new tenant action and the process at a "packed house" OTA stakeholder meeting last June, and

we are pleased that he will come back this April to present to our stakeholders a first anniversary progress report.

In the regulatory arena, in FY 2010 we provided comments setting forth the tenant community's perspective on a number of other agencies' proposed rule-making, including:

- OAH's procedural rules for rental housing cases;
- DCRA's housing business licensing regulations; and
- The Construction Code Coordinating Board's (CCCB) proposed revisions to the property maintenance code, particularly regarding changes in the landlord and the tenant's responsibilities for pest exterminations.

Emergency Housing Assistance Program

We also developed draft rule-making soon to be published in the D.C. Register as our own proposed rule-making for the agency's Emergency Housing Assistance Program. Under this program, the OTA provides hotel stays and other relocation assistance to tenants who have been displaced by a government closure or fire or flood. As previously noted, we have also improved our electronic tracking system for this program to enhance the accessibility and utility of collected case information.

On a related note, I wish to thank you, Chairperson Alexander, and Councilmembers Michael Brown and Jim Graham, for co-introducing at the

last legislative session legislation that is very relevant and long overdue. Bill 19-134, the "Nuisance Abatement Special Purpose Revenue Fund Amendment Act of 2011," would make derelict housing providers liable for the costs of tenant relocations under the OTA program, just as they are now liable for nuisance abatement costs incurred by DCRA.

I should also mention that in our discussions with the OAG regarding the draft rule-making, it was pointed out that we may need specific statutory authority to allow us to secure the return of any tenant security deposit that we may pay on behalf of relocated tenants. We look forward to discussing this matter further with the Committee.

Conclusion

Thank you, Chairperson Alexander and members of the Committee, for this opportunity to report on the progress of the OTA in the past fiscal year. This concludes my testimony and I am happy to answer any questions you may have.