D.C. Office of the Tenant Advocate
Comments on the Rental Housing Commission's Proposed Rulemaking on Law 24-115, the "Fairness in Renting and Eviction Record Sealing Amendment Act of 2022"
January 27, 2023

Overview

Please see the OTA's comments on the Commission's Proposed Rulemaking for Law 24-115, the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022" (ERSA-FIRA), which amends existing section 501 and creates a new section 510 of the Rental Housing Act of 1985 (D.C. Official Code § 42-3501.01 *et seq*.)(the Act). The OTA commends the Commission's thorough consideration of the issues presented in its earlier Request for Proposals (RFP), particularly on topic of language access. We also thank the Commission for incorporating the suggestions the OTA made in response to the RFP -- particularly our suggestions that the $600 threshold explicitly be made applicable to notices of intent to file for eviction for nonpayment of rent; clarifying the meaning of "subtenant" under D.C. Official Code § 42-3505.01(q); and restating the statutory tenant screening requirements (D.C. Official Code § 42-3505.10) in the regulations.

1. **Naming of the "Notice of Intent to File"**

Concern: Proposed section 4300 uses the term "notice of nonpayment and possible eviction" to refer to the notice that ERSA-FIRA refers to as the "notice of the housing provider's intent to file a claim." We believe the Commission's proposed term appropriately captures the intent and purpose of this particular Notice. We are concerned, however, that the use a of a different term than the statutory term may cause confusion. We note there was considerable confusion about terms for notices relating to nonpayment cases when the emergency and temporary measures were in place (at a time when multiple terms, and indeed multiple notices, were in play).

Recommendation: We recommend for § 4300 and any other relevant provisions that the Commission adopt a term similar to the statutory term. At least in the first instance, we suggest either (1) the precise statutory phrase at D.C. Official Code §42-3505.01(a-1)(1) – "notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit for the non-payment of rent"; or (2) "notice of housing provider's intent to file an eviction claim for nonpayment of rent." Thereafter, the phrase can be shortened to "notice of intent to file." While we acknowledge that the full term is cumbersome, we believe that consistency with the statutory term will help to avoid confusion, and that shortening it after the first usage in the regulations will help make it less cumbersome.

2. **Language Access**

Concern: Regarding the landlord's ascertainment of the tenant's "primary language" pursuant to D.C. Official Code § 42-3505.01(a)(3) & (4)(D), we appreciate the Commission's incorporation of two separate OTA suggestions: (1) the first is regarding consideration of a "safe harbor" provision, which we intended to be more or less contemporaneous with the issuance of a notice to vacate; and (2) the second "that landlords be encouraged to include space on the lease, or lease addendum, for the tenant to indicate their primary language" – which if the tenant does so should resolve the "notice language' matter for the duration of the tenancy. We did not necessarily

intend that these two suggestions be conflated. Our concern is that the tenant's failure to identify their primary language at the outset of the tenancy does not mean that the landlord will not subsequently learn the tenant's primary language in some other way, and therefore *should* still be held accountable for failing to provide notice to the tenant in that language.

Moreover, subsequent to our response to the RFP, we have noted the advantages of encouraging the housing provider to include an "I speak" card -- as recommended by the Office of Human Rights (OHR) for the lease agreement -- in the rental application packet. That way the tenant can convey their "primary language" at the earliest possible time, later to be ratified when the lease is executed. Finally, we note that the timing of the presentation of an "I speak" card to the tenant is a potentially sensitive matter. In short, inevitably there are competing considerations and concerns regarding both "safe harbor" and the timing of the presentation of the "I speak" card.

Recommendation: The tenant's right to receive notice under section 501 of the Act in their primary language is a critical new protection. Accordingly, we are inclined to think that a fuller discussion of the timing of the "safe harbor" concept, as well as the optimal logistics for housing provider's presentation of the "I speak" card, is warranted. We recommend that the Commission include in this discussion OHR and other practitioners who regularly handle cases on behalf of low and non-English speaking tenants. We further recommend that the Commission convene this discussion at the earliest practicable time, whether or not the discussion and the regulatory amendment can happen in time for purposes of the final iteration of the instant rulemaking.