D.C. Office of the Tenant Advocate
Comments on the D.C. Housing Authority's Second Emergency and Proposed Rulemaking on 14 DCMR Ch. 49, *et seq.*, published September 8, 2023

Overview

The D.C. Office of the Tenant Advocate (OTA) hereby submits the comment below in response to the D.C. Housing Authority's (DCHA) September 8, 2023 Second Emergency and Proposed Rulemaking (EPRM) to address issues identified in the 2022 U.S. Department of Housing and Urban Development (HUD) report on DCHA operations. Our comments focus specifically on the proposed process for determining rent reasonableness.[1] For context, the proposed rules on rent reasonableness are identical to those in the agency's first EPRM issued in July. The OTA appreciates the fact that DCHA is addressing rent reasonableness and appreciates this opportunity to comment on this important matter.

Please note that the Chief Tenant Advocate (CTA) testified in favor of a comparable amendment to the Rental Housing Act in the context of rent-controlled properties (see the legislative record for Bill 25-227, the "Rent Stabilization Protection Amendment Act of 2023.") That legislation would require DCHA to make a rent reasonableness determination when a rent-controlled unit is leased to a voucher tenant, and to apply the lower of (1) the reasonable rent or (2) the rent that would be permitted under rent control but for the subsidy exemption at D.C. Official Code § 42–3502.05(a)(1).[2]

Comment: The reasonable rent for an occupied unit should be re-determined at a regular interval

Problem: The OTA notes that the proposed rules at 14 DCMR 5602 do not provide for regular re-evaluations of the reasonable rent for an occupied unit. Rather the rules provide that DCHA will determine the reasonable rent for a unit only in the following scenarios:

1. Prior to approving a new HAP contract (5602.1);
2. When the owner requests a rent increase (5602.6);
3. When there is a 10% decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date (5602.9);
4. When DCHA determines that the initial determination of the reasonable rent was in error (5602.10(a));
5. When DCHA determines that the information provided by the owner about the unit or other units on the premises was incorrect (5602.10(b));
6. When directed to do so by HUD (5602.9); or
7. At any time DCHA deems necessary (5602.9).

Our understanding is that the "reasonable rent" for a given unit could well be less than the current rent for a given unit subsidized by a HCVP voucher. Therefore, the OTA foresees many owners opting to forego rent increase requests in order to avoid triggering a reasonable rent reevaluation, thereby also avoiding the risk of a decrease in the contract rent amount. In such instances, a contract rent that was determined prior to the implementation of these rent reasonableness rules -- and may no longer be reasonable -- would persist indefinitely unless and until one of the triggers in the proposed rule happens to materialize. We

[1] 14 DCMR 5602.
[2] See Chief Tenant Advocate Shreve's testimony submitted to the Committee on Housing in regard to the Committee's June 29, 2023 hearing on Bill 25-227.

believe that would run contrary to the spirit if not the intent of the HUD rule at 24 C.F.R. § 982.507(a)(4).[3]

Solution: The OTA therefore recommends the addition of an eighth trigger for a rent reasonableness determination at proposed 14 DCMR 5602, along the following lines:

5602.9 HUD requires DCHA to decide rent reasonableness (even if the owner has not requested a change) if there is a ten percent (10%) decrease in the fair market rent that goes into effect at least sixty (60) days before the contract anniversary date. HUD also may direct DCHA to make a determination at any other time. *After the initial rent reasonableness determination for a given tenancy, DCHA must make an [annual or biennial] rent reasonableness determination [X days prior to] the contract anniversary date for a unit occupied by an HCV family or household. This rule shall apply to units that are occupied as of the [effective date of the rulemaking], whether or not a rent reasonableness determination was previously made for that unit.* DCHA may *otherwise* decide that a new determination of rent reasonableness is needed at any time.

Comment: Zero-Tolerance Policy for Source-of-Income Discrimination

Problem: Relatedly, we are concerned that the new rule we propose above could have unintended adverse consequences for voucher households that currently occupy relevant units. Specifically, we fear that such households could be displaced where the landlord -- seeking to protect the unit's current profit level against any decrease -- deliberately fails to engage in the rent reasonableness process.

Solution: To help prevent this possible ramification, we urge DCHA to commit to a zero-tolerance policy for source-of-income discrimination and to a policy of referring bad actors to OAG for enforcement action.

[3] 24 C.F.R. § 982.507(a)(4) ("At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA").