D.C. Office of the Tenant Advocate
Comments on the Rental Housing Commission's Second Proposed Rulemaking on
Law 24-115, the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022,"
and Law 25-65, the "Fairness in Renting Clarification Amendment Act of 2023"
April 29, 2024

Overview

The Office of the Tenant Advocate ("OTA") thanks the Commission for the publication of this Second Notice of Proposed Rulemaking, and for continuing to take a thoughtful and careful approach to the implementation of Laws 24-115 and 25-65. We also appreciate the Commission's attention to the agency's comments on the First Notice of Proposed Rulemaking for Law 24-115 regarding language access and eviction notices for nonpayment of rent. The OTA hereby submits the following comments to the Second Notice of Proposed Rulemaking for the Commission's consideration. We look forward to working with the Commission further on these matters. Please contact the OTA with any questions or concerns you may have with respect to the recommendations below.

OTA Comments

1. Include downstream license and registration/exemption requirements on Notices to Vacate

   Concern: The proposed rules ***remove*** provisions included in the First Notice of Proposed Rulemaking ("1st NPRM") that would have required a landlord to provide both its rental housing business license number and its registration or exemption number on any notice to vacate, notice to correct or vacate, or notice of intent to file a claim (collectively referred to herein as "NTVs"). We appreciate the Commission's explanation[1] in the rulemaking's preamble that (1) the Rental Housing Act of 1985 ("the Act") does not require a valid business license or registration/exemption in order to issue an NTV; and (2) the license number requirement in particular was removed because the statute contemplates a possible judicial waiver (as extenuating circumstances may justify) of that requirement for the filing of the action and/or the eviction itself.

   Nevertheless, we believe the first proposed rulemaking got it right – we emphatically agree it is preferable to "document compliance as early as possible."[2] Here we believe it important that the NTV rules reflect what parties should be aware of in terms of what follows from an expired NTV: (1) a valid registration/exemption number is a non-waivable requirement in order for a housing provider to *file* an eviction claim;[3] and (2) while the licensing requirement for filing an eviction action or executing an eviction order may be waived by the Court in extenuating circumstances,[4] it nonetheless applies to both the filing of an eviction claim[5] and the actual eviction itself[6] in the first instance.

   Accordingly, the OTA urges the Commission to consider a middle-ground solution – one that would not require registration/exemption or licensing compliance any earlier in the process than is required by

[1] 2nd NPRM at p. 2.
[2] 2nd NPRM at p. 2.
[3] D.C. Official Code § 16–1501(c)(1).
[4] D.C. Official Code § 16–1501(c)(2).
[5] D.C. Official Code § 16–1501(c)(1).
[6] D.C. Official Code § 42–3505.01(q).

statute -- but would help to inform the respective parties of important downstream requirements and establish documentation of compliance earlier in the process.

Recommendation: The OTA recommends that the Commission consider amending proposed sections 4300.7, 4301.4, and 4302.1 to:

1. Plainly state – for the information of both parties – the requirements regarding both licensing and registration /exemption documents pertaining to the filing of an eviction action and the execution of an eviction order;
2. Provide space on the NTV form for the housing provider to provide (a) either the registration / exemption number or an acknowledgement that one needs to be obtained prior to filing an eviction action; and (b) either the landlord's rental housing business license number or an acknowledgement that one needs to be obtained prior to filing an eviction action, and if applicable the extenuating circumstances that have prevented the landlord from becoming properly licensed.

2. Annually publish a notice updating the covered "language access" languages for Notices to Vacate purposes

Concern: In the preamble, the Commission explains that it does not anticipate updating the rules each year to reflect changes in the list of spoken languages that meet the NTV "language access" requirement. Rather it anticipates reflecting such changes in periodic rulemakings as public comment may suggest is warranted.[7] As the Commission itself notes,[8] the list of covered languages -- as indicated by its own demographic data source -- has changed twice (regarding both Korean and Tagalog) since the 1st NPRM. Accordingly, it seems to us that (1) the list of "covered languages" that meet the statutory standard could well continue to be highly fluid; and (2) rulemaking may prove over time not to be the most efficient or practical *modus operandi* for keeping up with necessary adjustments.

Recommendation: Instead, we encourage the Commission to consider adding to the list of fluid or variable information it publishes annually an updated list of NTV "language access" languages. Currently, the Commission publishes some relevant items pursuant to its statutory duties under section 202(a)(3) of the Act. These items include the annual adjustment of applicability; the most recent Social Security COLA; the maximum rent adjustment that can be charged to a tenant with elderly or disability status; and the maximum income for an elderly / disability tenant to qualify for the exemption from rent increases pursuant to housing provider petitions. The Commission publishes other items – including the annually indexed cap on rental application fees -- not pursuant to any particular statutory duty, but rather because doing so makes eminent good sense pursuant to its responsibility for good administration of the Act. We believe such an annual publication of an updated list of NTV "language access" languages would fit well in this second category. Should the Commission choose to do so, we recommend amending the proposed rules at 4300.22 to remove the list of enumerated NTV "language access" languages in favor of a reference to the annual publication.

3. Explicitly state the prohibition on cleaning fees where the unit is returned within the standard of ordinary wear and tear

Concern: Law 25-65 newly provides that "[a] housing provider shall not charge a tenant a professional cleaning fee so long as the tenant returns the premises to the housing provider in a condition within the

[7] 2nd NPRM at p. 4.
[8] 2nd NPRM at p. 3.

standard of ordinary wear and tear […]."[9] However, the proposed rules do not explicitly reflect this statutory prohibition. Rather, it only mentions cleaning fees in the context of the following *permissive* statement at 301.4: "Nothing in Subsection 301.3 shall prohibit a landlord from withholding monies from a security deposit in accordance with § 309.1(2) or charging a professional cleaning fee for expenses incurred due to damage to the habitation beyond ordinary wear and tear[…]" (emphasis added). While this statement certainly does not contradict the law, our concern is that it may fail to capture the spirit of the law and unintentionally serve to obfuscate the intended cleaning fee prohibition (by embedding the prohibition only implicitly within an explicit permission).

Recommendation: To avoid unintentional obfuscation of the new cleaning fee prohibition, the OTA recommends that the Commission provide a rule explicitly prohibiting a landlord from charging a cleaning fee to a tenant where the unit is returned within the standard of ordinary wear and tear, per D.C. Official Code § 42–3505.10(b-2)(2).

4. Clarify the Notice of Intent to File a Claim re the $600 threshold for eviction actions for nonpayment of rent

Concern: D.C. Official Code § 16-1501(b) prohibits a landlord from filing an eviction claim for nonpayment of rent in an amount less than $600. Therefore, if a tenant were to pay down the past due balance to less than $600 before the Notice to Vacate period expires, the landlord could not file the claim.

Here we note a conflict between the statutory requirement and the statutory notice language. The Act's recommended language for a notice of intent to file at § 501(a-1)(2) includes the statement that "[Name of housing provider] has the right to file a case in court seeking your eviction if the amount of rent you owe is equal to at least $600 and you do not pay the balance of unpaid rent *in full* within 30 days of this notice" (emphasis added). [10] This language *incorrectly* suggests -- contrary to D.C. Official Code § 16-1501(b) noted above-- that a landlord may file an eviction action for nonpayment of rent where the past-due balance is below $600 but not paid *in full.*

Our concern is that the proposed rule at 4300.7(d) closely paraphrases the recommended *notice* language at § 501(a-1)(2), rather than the clear statutory prohibition at § 16-1501(b).

We acknowledge that both the recommended notice statutory language at § 501(a-1)(2) – and the Commission's paraphrasing in the subsequent proposed rule at 4300.7(e) – go on to state that the landlord may *not* file the eviction claim if the unpaid amount is less than $600 – but again, only after having suggested exactly the opposite in the previous sentence.

As we discern the plain text, it simply cannot be true that the landlord both may file the claim if the tenant does not pay the unpaid balance *in full* and may not file the claim if the unpaid balance is less than $600.

Recommendation: As this is primarily an issue with the statute itself, we will discuss a clarifying statutory amendment with the Committee and the Council. In the meantime, we recommend that the Commission consider clarifying the rule with singular reference to the clear statutory threshold requirement, rather than to both that clear requirement and the contradictory language in the statutory notice language. It should be made clear that the landlord may file an eviction claim for nonpayment of

[9] D.C. Official Code § 42–3505.10(b-2)(2).
[10] D.C. Official Code § 42–3505.01(a-1)(2).

rent if and only if the unpaid balance remains at $600 or more upon the expiration of the NTV. Likewise, we recommend that the proposed rule at 4300.7(d) unambiguously state the same.