Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

PUBLIC HEARING

Bill 17-778, the "Rent Control Protection Amendment Act of 2008"

Committee on Housing and Urban Development
Honorable Marion Barry, Chair

Council of the District of Columbia

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Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
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1:00 p.m.

Good afternoon Chairperson Barry and members of the Committee on Housing and Urban Affairs. I am Johanna Shreve, the Chief Tenant Advocate for the District of Columbia and Director of the Office of the Tenant Advocate. I am here today to testify on Bill 17-778, the "Rent Control Protection Amendment Act of 2008."

I thank you, Chairperson Barry, for holding this hearing; Councilmember Cheh, for introducing the legislation; and the attorneys and advocates, some who testified today, who worked closely with the OTA in drafting Bill 17-778.

Just two years ago, the Council passed the Rent Control Reform Amendment Act of 2006, thereby addressing a serious threat to the affordability of the District's stock of rent controlled apartments. By abolishing a rent ceiling system that was clearly being used to circumvent rent control, the Council reaffirmed its commitment to one of rent control's fundamental purposes -- to preserve moderately priced rental housing, while ensuring that housing providers and developers receive a reasonable rate of return on their investments. D.C. Code § 42-3501.02(5).

However, the elimination of rent ceilings appears to have resulted in increased use of the "Voluntary Agreement" petition in unintended ways that now threaten to further erode the stock of moderately priced rental housing -- in many instances for the sake of providing landlords with rents as high as the market can possibly bear. Currently, we see efforts to use the law against itself, and to undermine the concept of rent control in the District.

Today I will address (1) the purposes of the Voluntary Agreement provision as reflected in the legislative history; (2) why we have recommended the proposed statutory reform; and (3) what Bill 17-778 does to restore the Voluntary Agreement to its original purposes.

VA's purposes and legislative history

Section 215 of the Rental Housing Act provides tenants and their landlord with the opportunity to enter into a "Voluntary Agreement" to increase the rent charged on all units in a building, subject to being filed with and approved by the Rent Administrator. The agreement must include the signatures of at least 70 percent of the tenants, the specific amount of increased rent each tenant will pay, and a statement that the housing provider engaged in no coercion. It is an alternative to the standard annual rent adjustment and the four rent adjustments that can be made through a housing provider petition: capital improvement, substantial rehabilitation, increase or decrease in services and facilities, or hardship when the landlord is not receiving the guaranteed 12 percent return on equity.

The purpose of section 215 is to be found in the statutory and regulatory history over the course of successive rent control laws. Under home rule, the District has had four rent control programs -- enacted respectively in 1975, 1977, 1980, and 1985. The original Voluntary Agreement provision appeared in the Rental Housing Act of 1977. It was not included in a separate section as it is now, but rather fell under section 208, "Qualifications for Increases Above Base Rent." The Voluntary Agreement provision was in subsection 208(c), and,

significantly, each of the surrounding provisions -- subsections 208(a), (b), (d) and (e) -- dealt with ***housing code compliance*** as a precondition to a rent increase.

Thus, the original 70 percent Voluntary Agreement provision was placed squarely in the context of building conditions and housing code compliance. It included a requirement that the Rent Administrator must immediately approve the agreement where rents were adjusted ***for all units*** by a specified percentage, and no coercion was used. The only logical inference from this placement and content is that the purpose of the original 1977 provision was to fast-track rent increases ***to resolve building condition/quality of life issues for the tenants***.

The next Voluntary Agreement provision was in section 216 of the Rental Housing Act of 1980. Section 216 used language virtually identical to that of section 208(c) of the 1977 Act, except that reporting "***the specific amount of increased rent each tenant will pay***" was added as a condition for approval. Thus, it was presumed that each current tenant would pay a share of the aggregate cost of the building repair or improvement, and not place the burden of the rent increase solely on future tenants.

The current Voluntary Agreement provision is found in section 215 of the Rental Housing Act of 1985. The relevant regulations are virtually identical to those issued pursuant to the1980 Act. They set forth the same ***broad standards*** under which the Rent Administrator ***may*** reject a Voluntary Agreement. In 1980, however, the regulations that were initially proposed enumerated ***specific circumstances*** under which the Rent Administrator would be ***required*** to reject

a Voluntary Agreement. (DCR, Vol. 28 No. 19, p. 2092, May 8, 1981). Thus, the 1981 rule-makers clearly anticipated some of the potential abuses of the Voluntary Agreement that appear to be on the rise. These proposed standards for disapproving a Voluntary Agreement are therefore instructive:

"(a) If tenant approval of the agreement has been accompanied by coercion by the landlord or other tenants. ***Coercion shall include the threat of selling or discontinuing the use of the housing accommodation;***

"(b) If substantial evidence is found which leads to the conclusion that the tenants did not understand the terms of the agreement;

"(c) ***If tenants agree to establish rent ceilings beyond their ability to pay and to vacate the housing accommodation in return for a cash payment;***

"(d) In all other instances where the Rent Administrator determines that the agreement contradicts the purposes and intent of the Act, including ***instances where a minority of the tenants are forced to assume a disproportionately large and unequal burden of the increase."***

This tells us that the rule-makers explicitly intended for the Rent Administrator to disapprove a VA where the owner imposes the burdens of the increase disproportionately on a specific category of tenants; or offers cash buyouts for tenants who won't have to pay the increase they voted for; or threatens to discontinue the housing use if the tenants fail to execute a Voluntary Agreement.

These specific circumstances informed the broader standards that were ultimately adopted in 1981, which were also adopted in 1985. The broader standards give the Rent Administrator wider latitude to disapprove Voluntary Agreements, including any circumstance where the Voluntary Agreement is contrary to the purposes of the Rental Housing Act as set forth in section 102 (D.C. Code § 42-3501.02).[1]

Why we need VA reform

Earlier this year, the Rent Administrator issued strong rulings denying several Voluntary Agreements that were contrary to the purposes of both the Voluntary Agreement provision and the Rental Housing Act. I am gratified that this appears to be a continuing pattern with more recent rulings. In no way, however, does this diminish the urgency of this legislation. Should the Council fail to enact Bill 17-778, statutory and regulatory ambiguities and infirmities will continue to make the Voluntary Agreement a potential tool for undermining rent control.

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[1] Under 14 DCMR § 4213.19 (2004), the Rent Administrator may disapprove a voluntary agreement that has been approved by seventy percent (70%) of the tenants only in the following circumstances:

(a) If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;

(b) If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or

(c) If the voluntary agreement contradicts the provisions of § 102 of the Act or results in inequitable treatment of the tenants.

Specifically:

1. Statutory language: Some of the statutory language, which has been stripped from the original 1977 VA provision, requires clarification. For example, under section 215(c), the Rent Administrator must "immediately certify approval of the increase" where the rent charged for all rental units is adjusted by a specified percentage. But this language fails to include the building condition or housing code compliance context for the 1977 provision. But that context is critical in order to make any sense of the "immediate approval" requirement. It is readily understandable as analogous to section 210(g) of the 1985 Act, which allows a housing provider to begin a Capital Improvement absent approval if they are necessary to maintain the health or safety of the tenants.
2. Terms and conditions: The current regulations at 14 DCMR 4213.11(c) and (d) require that all terms and conditions be included. But recent filings consist merely of rent schedules, with no indication of the benefit being provided to the tenants.
3. Passive approval: Under the regulations, the Voluntary Agreement is deemed approved if the Rent Administrator does not act on it within 45 days of its filing (14 DCMR 4213.14). We do not know how many VA's have been passively approved over the years.
4. Timetable for required work: There is now no requirement of a timetable for work promised by the housing provider in exchange for the rent increase. In Dixon v. Majeed (TP 20,458 Oct. 4, 1989), the Rental

Housing Commission has ruled the tenants bear the burden of negotiating a completion date for any work to be done, or that term may not be enforced.

5. Coercive tactics: Tenants have been drawn into inequitable side deals, and have made required to sign a Voluntary Agreement as condition of moving into the building (which we also believe should be considered a prohibited lease provision).

What Bill 17-778 does

First let me now mention a provision of the bill that does not address Voluntary Agreements per se, but does address an issue that arose in the context of a Voluntary Agreement and the threaten of a substantial rehabilitation petition. While there was no question that the tenants would have the right to return to their apartments, the owner threatened to remove at least some units from rent control by reconfiguring them. The current law is ambiguous in this regard. Thus the bill would amend section 205 of the Rental Housing Act of 1985, which sets forth the exemptions from rent control, to clarify that the "newly constructed unit" exemption does not apply to "reconfigured, renovated, rehabilitated, or otherwise altered" units.

Bill 17-778 would amend section 215 of the Rental Housing Act, the Voluntary Agreement provision, as follows:

1. It defines "head of household" -- using the TOPA definition -- as to who is eligible to sign a Voluntary Agreement to be counted toward the 70 percent of the tenant/units. This is intended to resolve issues as to

whether the signee was truly speaking for, or was authorized to speak for, the household.

2. It restricts the use of a Voluntary Agreement as an alternative to one of the housing provider petitions: capital improvement; increase or decrease of related services and facilities; hardship; or substantial rehabilitation.
3. It requires that the agreement be supported by any documentation that the alternative provision would require, and meet the relevant criteria for approval including any cap on the rent increase. It would also require that the housing provider waive the right to file any petition under the identified provision for any purpose within the scope of the Voluntary Agreement.
4. It counts as "NO" votes any unit that is vacant as of the date of the VA's filing.
5. In those instances where more than 30 percent of the units are vacant, the landlord and tenants may still enter into a Voluntary Agreement, but the Agreement only applies to occupied units.
6. It caps the amount of the increase at the level justified by the supporting documentation.
7. If work is to be done to the building, it requires a timetable for the commencement and the completion of the work.
8. It authorizes the Rent Administrator to revoke or suspend the rent increase, and order rent refunds, if the housing provider has not commenced or completed the work within a reasonable period of time.

9. It allows the housing provider or the tenant to withdraw his or her signature within 14 days following the submission of the signatures to the Rent Administrator. The purpose here is to allow for a "cooling off" period during which the individual may reflect on the decision in the absence of any group or other pressures that might have been present.
10. It prohibits certain individuals from being counted toward the 70 percent agreement, including any employee or agent of the owner; any person receiving any compensation from the owner; or any tenant who moved into the housing accommodation after the date of the filing of the proposed Voluntary Agreement.
11. It prohibits the imposition of any rent increase pursuant to the Voluntary Agreement unless it is imposed at the same time and by the same dollar or percentage amount for all covered units.
12. It prohibits the housing provider and any tenant from assigning any right or obligation under the Voluntary Agreement.
13. It repeals section 215(c), which suggests that the Rent Administrator must certify approval of the Voluntary Agreement where rents for all units are adjusted by a specified percentage.
14. It creates a rebuttable presumption of coercion if the housing provider initiates any communication with an individual tenant or group of tenants without the opportunity for all tenants to be present.
15. It requires the Rent Administrator to disapprove the Voluntary Agreement if:

a. All or part of the tenant approval has been induced by duress, harassment, intimidation, coercion, fraud, deceit, mistake, omission or misrepresentation of material facts, or the offer of any benefit that is not provided to all current and all future tenants covered by the Voluntary Agreement;
b. The Voluntary Agreement would result in the inequitable treatment of any tenant including any current tenant and any covered future tenant;
c. The housing provider conditions the leasing of any rental unit on agreement by the applicant to sign the Voluntary Agreement;
d. The Voluntary Agreement fails to include any term or condition imposed on the housing provider or on any tenant, or fails to identify with sufficient specificity the benefit to the tenants, or fails to adequately support the basis upon which the Voluntary Agreement is sought; or
e. The Voluntary Agreement contradicts any provision of §102 (the purposes) of the Rental Housing Act.

16. Finally, it instructs adjudicators to favor resolution of any ambiguity in a Voluntary Agreement toward strengthening the legal rights and interests of the tenants.

Conclusion

Finally, I note that an OTA working group took on the task of addressing problems with all of the housing provider petitions. The Voluntary Agreement

provision quickly became a matter of urgency due to the nature of the complaints, the blatancy of the abuses, and the potential impact on rent control. While somewhat cumbersome, this legislation was drafted with the simple intention of restoring the use of the Voluntary Agreement to its original purposes and those of the underlying Act.

The bill includes so many remedial provisions for a simple reason -- the open-endedness of the Voluntary Agreement over the years has given rise to so many abuses. Some of these remedial provisions may be too restrictive and therefore exclude considerations and uses of the Voluntary Agreement that would not and do not undermine rent control or the purposes of the Act. We are happy to discuss these matters with all stakeholders, but I would also urge that any discussion be framed in terms of the integrity of the rent control law.

Thank you once again Chairperson Barry for this opportunity to testify on Bill 17-778, the "Rent Control Protection Amendment Act of 2008." I look forward to working with you, the Committee, and all stakeholders towards improving and perfecting the legislation in the coming months.