Government of the District of Columbia

D.C. Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Joint Public Hearing:

B19-0190 "Tenant Security Deposits Clarification Amendment Act of 2011"

Council of the District of Columbia

Committee on Housing and Workforce Development
The Honorable Michael Brown, Chairperson

Committee on Public Services and Consumer Affairs
The Honorable Yvette Alexander, Chairperson

Monday, November 28, 2011
11:00 a.m.

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Alexander and Chairperson Brown, for this opportunity to testify about Bill 19-190, the "Tenant Security Deposits Clarification Amendment Act of 2011." As the Chief Tenant Advocate, I am here on behalf of District renters to urge you and the Council to quickly move this somewhat technical, but important, legislation. Bill 19-190 provides a legislative fix for two unintended consequences of the "Interest on Rental Security Deposits Amendment Act of 2006" (Law 16-276, effective March 14, 2007, 54 DCR 889). The first has to do with the jurisdiction of the DC Office of Administrative Hearings (OAH) over tenant security deposit disputes, and the second has to do with damages when the landlord refuses in bad faith to return the security deposit.

OAH Jurisdiction

The purpose of Law 16-276 was to enhance tenant rights by better ensuring that when a tenant moves out of a rental unit, the security deposit is returned in a timely manner and includes a fair amount of interest. As of the October 2006 transfer of rental housing adjudications from the Rent Administrator's office (RA) to OAH, OAH had jurisdiction over all contested cases previously heard by the RA. Nevertheless, Law 16-276 explicitly gave OAH jurisdiction over the interest on security deposits, and in so doing gave rise to the inference that OAH does *not* have jurisdiction

over the security deposit itself. This construction is eminently reasonable and indeed is the one that OAH adopted.[1]

Thus, for the past five years, tenants have had an administrative remedy at the OAH for claims regarding the non-payment of interest on the security deposit. For claims regarding the underlying security deposit itself, however, tenants have had to seek relief at D.C. Superior Court's Civil Division or Small Claims branch. The problems this causes go beyond the obvious ones associated with partial administrative jurisdiction. Unlike administrative jurisdiction which is limited by statute, a judicial action gives the landlord the opportunity to raise irrelevant and specious counterclaims, which may prolong the case and hamper the tenant's ability to pursue the action to its rightful conclusion. Bill 19-190 would address this problem by giving OAH jurisdiction over both security deposits and the interest on security deposits.

---

[1] Subsequent legislation intended to fix the problem actually compounded this technical error by giving OAH jurisdiction over the "nonpayment of interest on tenant security deposits" *twice*. Section 2(h) of the "Housing Regulation Administration Amendment Act of 2008" (Mar. 25, 2009, D.C. Law 17-366, § 2(h), 56 DCR 1332.)(amending section 217 of the Rental Housing Act of 1985 (DC Official Code sec. 42-3502.17; July 17, 1985, D.C. Law 6-10, § 217, 32 DCR 3089)).

Treble Damages for landlord's bad faith conduct

Bill 19-190 would also clarify that any housing provider who in bad faith fails to return a security deposit rightfully owed to a tenant, or fails to pay the interest on the security deposit, is liable to the tenant for treble damages. This would rectify two technical problems that DC Law 16-276 created in amending the tenant security deposit regulations at 14 D.C.M.R. §§308-311.[2]

First, DC Law 16-276 removed the "bad faith damages" provision from 14 DCMR §309, which applies to the security deposit itself, and moved it to 14 DCMR §311, which applies only to the interest on the security deposit. Of course this provision should apply to the landlord's bad faith conduct regarding *both* the security deposit and the interest on the security deposit.

Second, the 2007 amendment inexplicably made "bad faith" damages payable to the Rent Administrator or Rental Housing Commission. Of course damages should be payable to the tenant.

---

[2]Any housing provider violating the provisions of this section by failing to pay interest on a security deposit escrow account that is rightfully owed to a tenant in accordance with the requirements of this section, shall be liable to the Rent Administrator or Rental Housing Commission, as applicable, for the amount of the interest owed, or in the event of bad faith, for treble that amount. 14 D.C.M.R. §311.2.

Bill 19-190 would remedy these problems with the regulatory provisions regarding "bad faith" damages.

Scope of security deposit issues

Along with poor housing conditions and unlawful rent increases, security deposit disputes rank among the most frequent issues raised by clients of the OTA. Usually the complaint involves the non-return of the security deposit, but frequently at least one of a number of related complaints is also involved. For example:

14 D.C.M.R. § 308.3 requires tenant security deposits to be "deposited by the owner in an interest bearing escrow account established and held in trust in a financial institution in the District of Columbia insured by a federal or state agency for the sole purposes of holding such deposits or payments." Sometimes this provision is simply flouted upon landlord's receipt of the security deposit. Other times the escrow account is not subsequently transferred to the purchaser of a rental accommodation. Thus an ex-tenant who finds him or herself in this situation must sue the previous owner, who is often hard to find.

There are a number of other problems associated with security deposits. Under 14 D.C.M.R. § 308.2, the amount of the security deposit cannot exceed the amount of one month's rent, and under 14 D.C.M.R. §

308.7 the landlord is required to post in the lobby of the building information as to where the security deposits are being held and what the prevailing rate was for each 6-month period of the past year. The OTA sees too many instances of overcharging, and we believe non-compliance with the posting requirement is commonplace.

Additionally, many landlords appear to be moving in the direction of alternative fees -- whether in lieu of or in addition to the security deposit, and whether refundable or non-refundable. Examples include move-in and move-out fees, and when another individual is added to the lease, a fee that is often significantly greater than either the amount of the security deposit or the original application fee for the first tenant.

Tenants report that these fees can be as onerous as they are creative. The OTA is concerned that some of them may cross the line in terms of the regulatory definition of "security deposit": "all monies paid to the owner by the tenant as a deposit or other payment made as security for performance of the tenant's obligations in a lease or rental of the property." (14 D.C.M.R. §308.1).

The OTA remains vigilant about these and other issues regarding tenant security deposits. Bill 19-190 is a good and necessary first step, but we believe further reform in this area may be warranted. We look forward

to working with both Committees on these and other matters of concern to District renters, and we thank you for your leadership on their behalf. This concludes my testimony and I am happy to answer any questions you may have.