
Government of the District of Columbia



D.C. Office of the Tenant Advocate

Testimony of

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Public Hearing

**FY 2013 and FY 2014 Performance Oversight
of the Office of the Tenant Advocate**

Council of the District of Columbia

Committee on Business Consumer and Regulatory Affairs
The Honorable Vincent C. Orange, Chairperson

Wednesday, February 19, 2014
10:00 a.m.

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

Good morning, Chairperson Orange and members of the Committee on Business Consumer and Regulatory Affairs. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia, at the Office of the Tenant Advocate. I began my tenure as the District's first Chief Tenant Advocate in FY 2006, and the OTA became an independent agency at the start of FY 2008. I am here this morning to discuss the OTA's performance since the start of FY 2013.

The OTA's mission

First, however, I would like to discuss the OTA's mission, and the philosophy I bring to the execution of this mission. Our mission is set forth in the agency's establishment act, and is squarely based on legislative findings reflecting the tenant community's experience over decades. Despite being among the strongest in the nation, tenant rights in the District have remained far too illusory for far too many tenants. This has been due to chronic resource gaps between tenants and landlords -- gaps in terms of access to legal and policy information; access to affordable legal representation; and access to a seat at the policy table within government when it counts the most. Not only does this deprive individual tenants of their rights, it destabilizes

communities and erodes the District's stock of clean, safe, sanitary, and affordable rental housing.

The OTA's fundamental purpose is to empower tenants to help themselves, their neighbors, and their communities, and ultimately to help preserve the District's affordable rental housing stock. Our purpose is not to give tenants any unfair advantage over landlords, or to foster the myth that the "good guys" are all on one side and the "bad guys" are all on the other. What we do is to simply help level the playing field, which we do by helping to fill the chronic resource gaps that historically have plagued the tenant community.

Accordingly, our mission is to provide tenants and tenant associations with (1) legal assistance when disputes with landlords arise; (2) policy advocacy at the legislative, regulatory, administrative, judicial and quasi-judicial levels; and (3) education and outreach about tenant rights. Additionally, the OTA has been charged with the task of providing emergency housing assistance to tenants displaced by government closures and fires.

Needless to say, this is an expansive mission, especially given that the District has a renter population of approximately 350,000.

The OTA's development

Just before we became an independent agency on October 1, 2007, the OTA had grown into an agency consisting of nine (9) FTE positions. That was too few staffers to make discrete agency divisions -- much less strict divisions of labor -- possible. Thus all staffers were expected to assist in multiple agency functions. Today we have fourteen (14) filled FTE positions and one (1) vacant FTE position. I note that six (6) OTA staffers reside here in the District, and another is actively looking to move here. So we hope to have 50 percent of our staff residing here in the District soon.

While our FTE growth seems incremental, our capacities grow exponentially with each extra resource we are given. Over the last fiscal year we implemented a long-term goal -- to create four (4) discrete agency divisions corresponding to our four (4) key statutory missions: legal assistance; policy advocacy; education and outreach; and emergency housing. Three (3) of those four (4) divisions, however, are formally staffed with a single FTE. Thus it remains imperative that each staff continues to serve multiple functions. Indeed, we pride ourselves as a team on being as collaborative and as multi-functional as is necessary to get the job done.

The OTA's functions and activities

I will now specifically discuss each of our four (4) mission areas, in terms of the relevant statutory mandate; the relevant division and its functions; and some of the goals and challenges we have in each area.

EDUCATION AND OUTREACH

Statutory mandate

Our first statutory duty is to “[p]rovide education and outreach to tenants and the community about laws, rules, and other policy matters involving rental housing, including tenant rights under the petition process and formation of tenant organizations.” (D.C. Code § 42-3531.07(1)).

Functions and activities

Education and outreach about tenant rights takes many forms. Through the Tenant Educational Institute, we collect and maintain key legal materials for the Resource Center; develop a curriculum of tenant rights classes and other educational forums; and create informational brochures. The Education and Outreach Division works in tandem with the Policy Division regarding regular stakeholder updates and meetings. Each fall we hold the Tenant and Tenant Association Summit to connect all parts of the tenant community with policy experts and elected

officials. This past year we developed two power-point presentations (“Lease 101” and “Tenant Rights 101”) which we adapt to meet the needs of a variety of audiences. We continue to widely circulate the “D.C. Tenant Bill of Rights” document and other informational material. The Friday Washington Post’s “Ready to Rent” section now regularly runs a segment called “Ask the Advocate,” in which the OTA responds to rental housing questions posed to the editor by tenants.

Goals and challenges

Ever expanding our outreach into all parts of the tenant community is our most significant goal and challenge in terms of education and outreach. In the current fiscal year, we are focused on expanding publicity for our hotline and educational services, particularly for the District’s student population. The student demographic accounts for the largest increase in the number of OTA cases. Our plans include producing a Public Service Announcement and a webinar targeting the student off-campus rental housing market; distributing jointly with area universities a letter educating housing providers about renter rights in the District, which of course apply equally to students; participating in student education “rallies” aimed at educating students about their tenant rights and responsibilities; and

distributing a student satisfaction survey regarding off-campus rental housing.

LEGAL ASSISTANCE

Statutory mandate

Our legal assistance mandate falls under three distinct statutory duties: to “advise tenants and tenant organizations on filing complaints and petitions, including petitions in response to disputes with landlords”; to “represent tenants, at its discretion and as it determines to be in the public interest, in Federal or District judicial or administrative proceedings”; and to “operate a Tenant Phone Hotline and Tenant Center.” (D.C. Code § 42-3531.07(3); (5A); & (7)) Thus our “legal assistance” categories involve (1) general, non-case-specific legal questions; (2) fact-specific tenant disputes with landlords; and (3) attorney referrals or direct “in-house” representation.

Functions and activities

“Hotline” inquiries

“Hotline” or general legal questions take the form of inquiries through the on-line “Ask the Director” forum; periodic “Live OTA Q&A Chats” staffed by the Legal Division; and “cold calls” generally to the Director, Legislative Director, or General Counsel. In FY 2013, the OTA

received and responded to 701 formal “Ask the Director” inquiries -- compared to 216 the previous year -- and we held nine (9) “Live Chats,” tripling the FY 2012 number.

Case intake

In FY 2013, three (3) case management specialists handled a total of 3,396 tenant cases, whether as walk-ins or by appointment, a 22.7 percent increase over the previous fiscal year. A case manager works with an attorney-advisor if any legal review or legal drafting is required. As in previous years, the issues most frequently encountered through case intake included security deposits; housing code violations; business licensing and registration; evictions and retaliation; reductions in services and facilities; and rent increases.

Legal representation

When the tenant requests legal representation, we may refer the client either to a legal service provider, or to another outside attorney to assist the agency in handling the overwhelming demand. Legal service providers and attorneys may qualify through an RFQ process to receive OTA funding to represent tenants in certain cases. In the last fiscal year, \$250,000 was appropriated for this purpose. If certain criteria are met, primarily a public interest impact, an OTA attorney may directly

represent the client for the duration of the case, whether at the Office of Administrative Hearings, Superior Court's Landlord and Tenant Branch, or the Court's Housing Conditions Calendar.

I note that legal funding in tenant cases has consistently resulted in even more money being returned to the community through monetary awards and rent roll-backs, not to mention improved living conditions and other widespread benefits. We know this from annual reports submitted by legal service providers who receive OTA funding, and from our own case-work.

Goals and challenges

A perennial challenge is of course ensuring that any tenant who needs an attorney can secure one.

POLICY ADVOCACY

Statutory mandate

Our policy advocacy mission is to "represent the interests of tenants and tenant organizations in legislative, executive, and judicial issues, including advocating changes in laws . . ." (D.C. Code § 42-3531.07(2)) Accordingly, the OTA engages each branch of District government to promote the public policy interests of tenants and the tenant community.

Functions and activities

A key Policy Division function is to help identify statutory, regulatory, and other gaps in the District's system of tenant protections; and work with stakeholders, Council staff, sister agencies, and others to develop proposals to fill those gaps. The Division also keeps the community apprised of relevant legislative and regulatory developments -- at both the federal and District levels -- through regular listserv notices, and helps to lead regular stakeholder meetings in tandem with the Education and Outreach Coordinator.

The OTA's legislative priorities include six (6) bills now pending at the Council. We are pleased that the Economic Development Committee will hold a hearing on March 11th on Bill 20-58, the "Tenant Bill of Rights Act of 2013" -- a long-standing agency priority.

On regulatory matters, in March 2012, the OTA became a voting member of the Construction Code Coordinating Board's (CCCB) "Property Maintenance" Technical Advisory Group (PM-TAG). The CCCB and about a dozen TAGs work in three-year cycles to review international model codes and recommend revisions to the District's construction codes. Final rulemaking on all subtitles, including the Property Maintenance Code (D.C.M.R. Title 12G), is now pending before

the Committee. The rulemaking includes a number of revisions reflecting OTA recommendations. They include the enumeration of landlord and tenant responsibilities for pest control including bedbugs; a minimum timeframe for air conditioning if it is a provided service; and new notice and due process protections for tenants to minimize the disruption to their lives when a building closure causes or threatens tenant displacement.

On judicial matters, the Policy Division regularly consults outside attorneys about the Rental Housing Act and other tenant protection laws. It also advises the Legal Division regarding statutory and regulatory interpretation, and helps develop relevant legal arguments and briefs. For example, the OTA represents a tenant association battling what we believe is the largest capital improvement surcharge request in DC history. A decision from the Office of Administrative Hearings is pending on a range of legal challenges, including a question of statutory interpretation regarding the selective implementation of yet-to-be-approved “surcharges.” The underlying question is whether the landlord may shift the cost burden away from certain units at the expense of other units, so as to defeat the statutory *pro rata* formula.

Goals and challenges

Other than matters addressed in pending legislation, policy goals and challenges include the need for the Council to revisit the District's rent control law. We believe the rent control program is an essential affordable housing tool, one that costs District taxpayers relatively little and serves to stabilize communities as well as rents. Over time, however, certain practices inevitably start to undermine the program's core purposes; competing interests once thought to be carefully balanced become imbalanced. Thus, periodic review and revision is imperative to ensure the continued vitality and relevance of rent control as an affordable housing tool.

I will note two parts of the rent control law in particular that I believe are causing rents to escalate unreasonably: (1) vacancy increases particularly in high-turnover student rentals; and (2) housing provider petitions generally, but in particular the Hardship Petition and the "70 Percent Voluntary Agreement" (VA). Relevant legislation is pending: Bill 20-113 would cap *conditional* hardship rent increases, but reforms regarding *permanent* hardship rent increases are also needed; Bill 20-52 would improve the VA *procedurally* by giving dissenting

tenants their day in court prior to VA approval, but *substantive* VA reforms are also needed.

We have numerous other policy concerns, and I will discuss another important one in the context of the Emergency Housing Assistance Program (EHAP).

EMERGENCY HOUSING ASSISTANCE

Statutory mission

The OTA has a statutory duty to “provide emergency housing and relocation assistance to qualified tenants, as determined by the Office.”
(D.C. Code § 42-3531.07(3))

Functions and activities

The agency fulfills this mandate through the Emergency Housing Assistance Program (EHAP). Due to financial and other considerations, we have had to limit EHAP assistance to those tenants who are displaced by government building closures and fires. The scope of EHAP services to tenants who qualify may include: (1) the short-term relocation of tenants to hotels, motels, or other appropriate accommodations, generally up to fourteen (14) days; (2) the moving and storage of personal property; (3) rental application fees, security deposits, and utility deposits; and (4) first month's rent.

In FY 2013, the agency provided EHAP services in 104 separate cases. By the end of April 2013, we had spent the entire \$250,000 allocated in the approved FY 2013 budget for EHAP, and then spent an additional \$150,000 that we received through reprogramming.

Goals and challenges

Clearly the demand for EHAP services is intense, is growing, and is somewhat unpredictable. This raises another legislative goal, one that I believe is critical in terms of both landlord accountability and the EHAP program itself. Namely, the OTA should have lien authority so that we may recoup emergency housing expenditures directly caused by an owner's failure to properly maintain a rental accommodation. At least four (4) other agencies -- DCRA, DDOE, DPW, and DC Water -- currently have analogous lien authority. Relevant legislation (Bill 19-134) was last introduced in 2011 on the OTA's behalf.

A recent emergency housing situation is "Exhibit A" for OTA lien authority. It involved multiple housing code violations and **three** property tax liens, by DC Water, DCRA, and DPW. The liens collectively amounted to about \$80,000. As a result of the owner's dereliction, however, the OTA spent \$74,000 on hotel stays for 43 tenants, some for an extended period of time. That amount approximates the budget for

the entire EHAP program on a quarterly basis. OTA lien authority would enable us to recoup that money on behalf of taxpayers, and on behalf of tenants who will need EHAP services in the future.

Let me be clear – my point here is less about the EHAP funding level than about landlord accountability and a policy change that will help ameliorate any funding shortfall. I hope to discuss this matter with you, Mr. Chairperson, and with the Committee in the near future.

Conclusion

In conclusion, the OTA has come a long way despite many challenges. This is due not only to the hard work and dedication of the staff, but also to the support of the community, the Mayor, the Council, and this Committee. I am reminded of what Henry Ford said about achieving a common purpose: *"coming together is a beginning; keeping together is progress; working together is success."* I believe this principle is critical to the OTA's success -- past, present, and future -- and I look forward to all of us continuing to work together. Thank you, Mr. Chairperson, for your leadership and for this opportunity to testify about the performance of the OTA. This concludes my testimony and I am happy to answer any questions you may have.

