
Government of the District of Columbia



D.C. Office of the Tenant Advocate

Testimony of

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Public Hearing

**FY 2016 and FY 2017 Performance Oversight
of the Office of the Tenant Advocate**

Council of the District of Columbia

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson

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1350 Pennsylvania Avenue, NW
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Thank you, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization, for giving me this opportunity to discuss the OTA's performance during Fiscal Year 2016, and to provide a summary of the Agency's accomplishments and new challenges facing us in Fiscal Year 2017. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia, at the Office of the Tenant Advocate.

I will start today by noting that ten years ago I became the District's first Chief Tenant Advocate. October 1st of FY 2016 marked the tenth anniversary of the OTA becoming an independent agency within the District government. I still start every single day energized and ready to tackle the agency's challenges, and asking myself how can we best serve those on whose behalf we are here to advocate. My touchstones remain the chronic needs of the tenant community, which became the core reasons for the agency's creation a decade ago. They include accessible information about tenant rights; affordable legal advice and representation when those rights are threatened; and a strong policy voice within District government when those rights, or the administration and enforcement of those rights, prove to be inadequate.

I am gratified by what the agency has been able to accomplish over the past ten years. Thanks in large part to the leadership of then-Councilmember

Muriel Bowser, every rental applicant and tenant in the District is now entitled by law to receive a copy of the OTA's Tenant Bill of Rights -- a giant leap forward for the agency's education and outreach mission. In 2010, the OTA played a major role in the establishment of D.C. Superior Court's "Housing Conditions Calendar," which provides an expedited process for tenants seeking relief from poor housing conditions. We established an Emergency Housing Assistance Program (EHAP), the first government program of its kind in the country, to provide emergency housing assistance to tenants who have been displaced by government closures and fires.

Since our move to independence in 2007, agency staff has doubled from nine (9) to seventeen (17) FTEs, and our Legal Division has increased from one (1) to six (6) litigating attorneys. One measure of our success has been the monetary returns to clients resulting from successful litigation by OTA attorneys, and by outside attorneys who receive OTA funding. Over the last three (3) years, the total combined return on taxpayer investment has been \$13,733,520. I will also discuss the numbers for the past fiscal year, as I have at each of the last several oversight hearings.

But the measure I wish to emphasize today -- one that eludes such easy cost-benefit calculation -- is the simple fact that tenants who are empowered to

pursue their own rights, also serve the interests of each and every District resident, and the District as a whole. By becoming educated about their individual rights, and by deciding to stand on their rights, tenants help to preserve the quality or the affordability of rental housing in the District, and thus the stability and the diversity of the community.

The OTA's mission and programmatic areas

I will now briefly discuss the agency's four (4) programmatic areas, and the accomplishments, challenges, and future plans for each. Each programmatic area reflects a key agency statutory mandate: (1) education and outreach regarding tenants' rights; (2) policy advocacy in the legislative, regulatory, administrative, and judicial contexts; (3) legal advice and representation when there are disputes with landlords; and (4) emergency housing assistance.¹

LEGAL ASSISTANCE

Statutory mandate

The agency's Legal Division is responsible for the following three (3) distinct statutory duties: (a) to "advise tenants and tenant organizations on filing complaints and petitions"; (b) to "represent tenants, at its discretion and as it

¹D.C. Official Code § 42-3531.07

determines to be in the public interest”; and (c) to “operate a Tenant Phone Hotline.”²

Functions and activities

(a) Case Management Services

The first step in the legal assistance process is the case management intake system. We have three (3) Case Management Specialists who serve as the frontline for legal and technical advice. They use an automated data system which was designed to capture all relevant information from each tenant who seeks our help. The case manager will consult with or transfer the matter to an attorney advisor as appropriate.

In FY 2016, the OTA handled approximately 3,166 formal intake cases. As in previous years, more tenants came to us from Ward 1 (491) than any other Ward, with Ward 6 (429) a close second. The five (5) most common issues recorded through the case intake process were: (1) lease issues (937); (2) housing conditions and housing code violations (577); (3) notices to vacate and evictions (186); (4) disputed rent increases (177); and (5) the tenant right of purchase (174). In the first quarter of FY 2017, there were a total of 1,109 formal intake cases.

²D.C. Official Code § 42-3531.07(3), (5A), & (7)

(b) "Tenant 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 2016, the OTA received and responded to 750 formal "Ask the Director" and "Ask the Mayor" inquiries, almost the same number as in the previous year (749). We held nine (9) "Live Chats" and responded to 56 inquiries.

(c) Legal representation

The "legal representation" function may take one of two forms – in-house representation or referral to one of the agency's contracted legal service providers.

In determining whether to provide in-house representation, the case must meet criteria that address two underlying questions: what role should the government play?; and what is the public interest impact? If these criteria are met, an OTA attorney may represent the client for the duration of the case. Alternatively, the OTA may refer a client to an outside legal service provider. Several receive funding from the OTA's "Legal Service Provider Program" after qualifying through an RFQ process.

In FY 2016, during which the agency had only three (3) attorney-advisors for much of the year, the OTA Legal Division provided full representation to tenants in a total of 47 cases. With the addition of two (2) new attorney advisor FTEs, and a total of three (3) new attorney advisor hires in FY 2016 -- thanks to the Committee and especially you Chairperson Bonds and Councilmember Silverman – we now have a total of six (6) attorney advisors. In FY 2017 to date the team has provided full representation to tenants in a total of 53 cases.

Accomplishments

Several years ago we began to maintain data regarding the financial returns – including damage awards and rent rollbacks – derived from both in-house representation and the “Legal Service Provider Program.” In FY 2016, the operational budget for the Legal Division was \$855,631, and the return to our clients was \$2,465,279. This represents a 288 percent return on the District’s investment in the OTA’s litigation team. With a combined appropriation for the OTA Legal Division and the Legal Service Provider funding program of \$1,155,631, the total return to tenants in FY 2016 was \$6,494,972, including \$3 million in a single case handled by an outside provider. This represents a 562 percent return on the taxpayer investment.

As I have pointed out in the past, however, the actual bang for the buck extends beyond these numbers. A legal win for a tenant promotes future compliance and enforcement by the housing provider who is a party to that particular case, but by others as well. And when the case involves one or more illegal rent increases, affordability is preserved; when the case involves poor housing conditions, the quality of rental housing is likely to improve.

Future Considerations

Our dialogue with sister agencies and other partners in government regarding “problem properties” and “problem landlords,” especially those with larger portfolios, is long-standing. I am pleased that “carrot and stick” approaches to these matters are gaining traction. As a member of the Mayor’s FY 2016 Housing Preservation Strike Force last year, I recommended that the District create a “small housing provider fund” to help bring “challenged” smaller rental accommodations up to code, where warranted. I look forward to working with the DMPED, DCRA, and DHCD and others to help develop an effective program based on the pilot program created last year.

The “stick” should include any and all available legal tools, including Law 17-319, the “Abatement of Nuisance Properties and Tenant Receivership Amendment Act of 2008” (effective March 21, 2009), to hold recalcitrant housing

providers accountable. I believe effective action requires greater cooperation between all relevant agencies to help identify and prosecute slumlord cases. I thank the OAG for the good dialogue and our growing partnership in this area.

POLICY ADVOCACY

Statutory mandate

The Agency’s policy advocacy mission is to “represent the interests of tenants and tenant organizations in legislative, executive, and judicial issues, including advocating changes in laws . . .”³ 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 work with stakeholders, the Council and the Mayor’s office, sister agencies, and others to help identify statutory, regulatory, and other gaps in the District’s system of tenant protections, and to develop proposals to help fill in those gaps. The Policy Division also keeps the community apprised of relevant legislative and regulatory developments – at both the federal and District levels – through regular listserv notices and stakeholder meetings, working in tandem with the OTA Education and Outreach Division. The

³D.C. Official Code § 42-3531.07(2)

Policy Division also regularly collaborates with non-governmental policy organizations such as the DC Preservation Network, the Coalition for Non-Profit Housing and Economic Development, the Urban Institute, the DC Fiscal Policy Institute, and the National Low-Income Housing Coalition (of which the OTA is a member).

Accomplishments

1. Enacted legislation

In FY 2016, the OTA helped draft or provided the Council and/or the Mayor's Office with testimony or recommendations regarding rental housing-related legislation in a broad range of issue areas. Attached to this testimony is a list of legislative items that the District enacted in the last Council Period, which are now either pending Congressional review or have already become law.

2. OTA lien authority

I will now discuss a legislative item that has been a top agency priority for a long time, for which I am very grateful. Under this program we provide emergency housing assistance to tenants who have been displaced from their homes generally due to a government closure or fire. The agency's largest single EHAP expenditure in FY 2016 was \$264,000 at 5509 9th Street, N.W. This was the amount necessary to provide emergency housing for 13 households and 28

individual tenants, who had been displaced due to DCRA's closure of a building rife with serious housing code violations. The owner, not District taxpayers, should have been required to bear that cost.

DC Law 21-211, the "Relocation Expenses Recoupment and Lien Authority Amendment Act of 2016" -- which allows the agency to make that happen -- became effective just a couple weeks ago on February 18th, so it did not apply to the 5509 9th Street incident. But under this new law, if the housing provider's own dereliction created the need for tenants to relocate from their homes, the District will indeed start holding the housing provider accountable for the cost of any emergency housing assistance the OTA provides to displaced tenants.

I thank Councilmember Nadeau for working so closely with the OTA and other relevant agencies in developing and introducing this measure, and securing its passage through the Consumer Affairs subcommittee and the Council last year. We are now consulting closely with the OAG -- which has enforcement authority - - and with the Office of Tax & Revenue (OTR) to implement the legislation.

3. Regulation: Property Maintenance Code

The OTA is also intimately involved in revisions to regulations that impact tenants. Two sets of regulations that are of utmost concern to tenants are the

“Housing Code”⁴ and the “Property Maintenance Code.”⁵ These regulations are intended to protect and promote quality rental housing, and to help ensure that every tenant in the District enjoys a clean, safe, and sanitary home. The OTA is a voting member of the “Property Maintenance” Technical Advisory Group (PM-TAG), one of about twenty TAGs that advise the Construction Code Coordinating Board (CCCB).

This past year each TAG, including the PM-TAG, completed a review of the relevant sections of the 2015 model construction codes published by the International Code Council (ICC), an international association of experts that develops model construction codes in three (3) year cycles. In FY 2016 the PM-TAG approved several proposed revisions to the District’s Property Maintenance Code at Title 12G of the D.C.M.R. The CCCB is now considering these and other recommendations as it develops proposed rulemaking to be published we believe in late 2017. The PM-TAG’s approved recommendations included:

- a. More explicit annual inspection and maintenance requirements for *smoke and carbon monoxide detectors* (section 310);

⁴ D.C.M.R., Title 14

⁵ D.C.M.R., Title 12G

- b. Conformity with laws governing *gender neutral signage* for single-occupancy facilities, as recommended by the Office of Human Rights and the Department of Health (section 503.5);
- c. Enumeration of *emergency repair costs, including costs associated with tenant relocations*, which the code official may impose on the property owner as deemed appropriate (sections 106.5; 108.6.1; 109.5.1).

4. *Regulations pursuant to the Rental Housing Act*

I also wish to commend the Rental Housing Commission for developing a comprehensive update of the rent control regulations at D.C.M.R. Title 14, Chapters 38-44, and for including both the OTA and the Housing Provider Ombudsman in an in-depth review of those draft revisions. We look forward to the Commission's publication of this important proposed rule-making.

Despite any number of major legislative amendments to the Act, it has been 30 years since these regulations underwent significant revisions. Given the final rule-making's likely volume and complexity, my plan is to have the OTA offer training programs, in partnership with sister agencies including the Housing Provider Ombudsman, to educate the rental housing community about the important changes in the regulations.

Future considerations

Regarding the agency's ongoing policy concerns, first I would like to commend you Chairperson Bonds and the Committee for your impressive work and productivity in Council Period 21, as the "Enacted Legislation" attachment to my testimony shows. A number of bills that were introduced but not enacted represent both "unfinished business" and the start of a discussion regarding policy challenges that are adversely impacting tenants and the District's affordable rental housing stock. They include: (1) so-called "rent concessions" in rent controlled units, which create *de facto* rent ceilings, violate the rent control law's "rent ceiling abolition" provision, and threaten the affordability of rent-controlled units; (2) rent increase mechanisms under the rent control law -- including "plus 2 percent" and vacancy increases -- that are failing to "stabilize" rents, and indeed are only helping to escalate rents to the market rate and beyond; and (3) expanding access to justice and affordable and *pro bono* legal representation for tenants confronting the loss of their homes.

Bill 22-24, the "Expanding Access to Justice Act of 2017," was reintroduced last month by Councilmember McDuffie, you Chairperson Bonds, Councilmembers Silverman, Allen, and Evans, together with six co-sponsors. Within the last couple weeks, New York Mayor Bill DeBlasio and the City Council

chair jointly announced their commitment to a right to counsel law for New York City's Housing Court. It is becoming ever clearer to policy-makers in more and more cities that reducing homelessness depends in part upon reducing the number of unwarranted evictions. In terms of the FY 2016 eviction statistics for the District, we are still awaiting a response from DC Superior Court.

EDUCATION AND OUTREACH

Statutory mandate

The OTA's 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."⁶

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 Agency's Resource Center; we develop curriculums on basic tenant rights in various educational forums; we help to establish tenant associations and tutor them about board governance; and we create informational brochures. The Education and Outreach Division works in tandem with the Policy Division

⁶D.C. Official Code § 42-3531.07(1)

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.

Accomplishments

During FY 2016 the OTA continued to expand its outreach and educational activities. The OTA participated in over 47 outreach events that were attended by over 5,900 people. A list of those events is attached to my testimony. The agency continues to respond to requests from tenants interested in forming a tenant association and sustaining their organization. These presentations include information on how to file Articles of Incorporation and how to draft and secure approval of an Association's By-Laws. A ten-point curriculum is being developed for tenant associations to enhance leadership skill-sets.

We continue to regularly appear in the Washington Post's Friday "Ready to Rent" section, both as a "go-to" source for feature articles, and in a separate periodic column called "Ask the Advocate," in which the OTA responds to rental housing questions that tenants commonly ask.

Future considerations

Ever expanding the Agency's outreach into all parts of the tenant community is the Division's most significant goal and challenge. Plans for FY 2017

include producing PSAs about off-campus student housing; webinars to include our existing “Tenant Rights 101” and “rental lease” curriculums; and further collaboration with area universities. Our plans also include using ‘cartoon format’ material – which have proven to be effective communication tools in other jurisdictions – to get high school students to start thinking about the importance of reading a lease and other basic housing matters.

I would also like to strategically place informational kiosks in libraries and other public buildings to further expand the OTA’s outreach into all parts of the District. Yes, these programs will cost taxpayers some money. But they will also promote awareness of, and compliance with, the District’s rental housing laws, and thus will more than pay for themselves over time.

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.”⁷

Functions and activities

The Agency fulfills this mandate through the Emergency Housing Assistance Program (EHAP), generally in collaboration with others including DHS Strong

⁷D.C. Official Code § 42-3531.07(6A)

Families, DCHA, and the Red Cross. EHAP assistance is provided primarily to those tenants who are displaced by fires and government building closures. Over the past several years, the average annual expenditure on this program has been \$417,000. However in FY 2016 that number reached \$713,725.55. Benefits 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; and (3) payment of rental application fees, security deposits, and utility deposits. In FY 2016, the Agency provided EHAP services to 186 households and 385 individuals.

Conclusion

I wish to thank you, Chairperson Bonds, and Mayor Bowser for your combined support for this Agency's role and ensuring that the District of Columbia stands out as a progressive city and leader in providing the citizens with the highest level of public service.

Your leadership Chairperson Bonds and that of this Committee stand out as evidence that tenant rights do matter. This concludes my testimony and I am happy to answer any questions you and members of the Committee may have.