
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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PUBLIC ROUNDTABLE

**PR22-0481, The “Rental Housing Commission Lisa M. Gregory
Confirmation Resolution of 2017”**

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

Friday, December 8, 2017, at 10:00 a.m.

Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Introduction

Thank you, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization, for this opportunity to submit written testimony regarding Proposed Resolution 22-0481, the “Rental Housing Commission Lisa M. Gregory Confirmation Resolution of 2017.”

As the Director of an independent agency within the executive branch, it is my policy neither to endorse nor oppose a Mayoral nominee, unless warranted by extreme circumstances. Given the immeasurable impact that the Rental Housing Commission has on the District’s rental housing community, however, I do believe it is important that the OTA help inform the Council’s and the community’s deliberations regarding any such nominee. Accordingly, for any such confirmation hearing, the OTA provides written testimony (1) underscoring the critical role of the Rental Housing Commission; (2) setting forth the statutory and other criteria for evaluating a nominee; (3) providing a rough assessment of an incumbent’s even-handedness to date in terms of tenant and housing provider wins and losses (keeping in mind that raw statistics alone do not tell the whole story); and (4) reiterating questions previously submitted to the Committee that the OTA believes should be explored with any individual who is nominated to serve on the D.C. Rental Housing Commission.

The Commission's Role

Under section 202 of the Rental Housing Act of 1985, the specific duties of the Rental Housing Commission are to:

1. Issue, amend, and rescind rules and procedures for the administration of the Act;
2. Decide appeals brought to it from the decisions of the Rent Administrator and the D.C. Office of Administrative Hearings; and
3. Certify and publish:
 - a. The annual adjustment of general applicability, based on the Consumer Price Index, which is the maximum standard annual rent increase for a rent-controlled apartment;
 - b. The most recent annual social security cost-of-living adjustment (COLA);
 - c. The maximum annual rent adjustment that may be imposed on a unit occupied by an elderly tenant or tenant with a disability.

(D.C. Official Code § 42-3502.02)

To merely reiterate the Commission's statutory functions, however, is to vastly understate its vital importance to the rental housing community's well-being, and indeed to the District's affordable rental housing stock.

Unlike the D.C. Office of Administrative Hearings, from which rental housing decisions are appealed to the Commission -- and unlike the D.C. Court of Appeals, to which Commission decisions may be appealed -- the Commission has jurisdiction over *no cases* other than rental housing cases.

Thus the Commission has developed singular institutional knowledge and expertise, which is necessary to ensure that case decisions are consistent with each other and with the remedial purposes of the Act. The significance of such a body cannot be overstated, particularly given the many complexities and nuances of the Rental Housing Act of 1985. Indeed, it is our understanding that since 1985 the D.C. Court of Appeals has affirmed at least 92 to 95 percent of cases on appeal from the Commission, and has not reversed a Commission decision in any case filed since 2013. This level of judicial deference is a testament to the Commission's importance in terms of setting precedent that will have a lasting impact, both on the community and on the utility and vitality of the Act itself.

Statutory qualifications

Section 202 of the Act also sets forth the minimal qualifications that any prospective Rental Housing Commissioner must have. The nominee must be a resident of the District, must be admitted to practice law before the

District of Columbia Court of Appeals, and may be *neither* a housing provider nor a tenant. (D.C. Official Code § 42-3502.02))

In 2010, the OTA worked with the relevant Council committee on legislation -- the “Rental Housing Commission Reform Amendment Act of 2010” (Law 18-863; D.C. Code § 42-3502.01, effective March 11, 2011) -- to stagger the terms of the three Commissioners. The purpose of staggering terms was to help avoid a reoccurrence of what happened in 2010 -- multiple simultaneous vacancies resulting in a lack of quorum to do the Commission’s business.

The same legislation also enhanced the criteria that a candidate must meet in order to serve on the Commission. Accordingly, a member of the Rental Housing Commission “shall possess skills and experience relevant to the following:

1. Litigation, preferably including both appellate practice demonstrated by written work product and exposure to the concerns of pro se litigants;
2. Administrative law, preferably in an area of complex regulation; or
3. Housing law, preferably in the area of rental housing and rent control or “rent stabilization.”

Other considerations

To facilitate the Committee’s consideration of the additional criteria and the candidate’s overall fitness for the position, the OTA has submitted

the following questions to the Committee for purposes of this (and any) confirmation hearing:

1. What areas of legal experience and expertise would the candidate bring to the Commission? Does the candidate have a background in public interest law or government affairs?
2. Does the candidate's legal experience and expertise include housing or rental housing law? Does the candidate have experience with or knowledge of the Rental Housing Act in particular?
3. Does the candidate have working knowledge of the District's rent control system? Is the candidate aware of the 2006 reform of the Act which abolished the rent ceiling system for calculating rent increases? Is the candidate aware that rent ceilings remain applicable only to those cases initially filed prior to August 2009?
4. Absent rental housing and rent control expertise, does the candidate have experience and expertise in another area of law involving complex regulations or a complex regulatory regime?
5. To what extent does the candidate have appellate litigation experience either with judicial or administrative bodies?

6. Does the candidate have a solid understanding of administrative law? For example, can the candidate cite key differences between the rules of evidence in a judicial setting versus those that pertain under the Administrative Procedure Act?
7. Does the candidate have an appreciation for the statutory findings and purposes of the Rental Housing Act? Is the candidate aware that the Act is remedial legislation intended to alleviate the chronic problem of affordability within the rental housing market? How would the candidate assess the significance of the Act's remedial nature?
8. Is the candidate aware of the D.C. Court of Appeals' pronouncement that the tenant who has filed a tenant petition in effect acts as a "private attorney general" with respect to enforcement of the Rental Housing Act? (See *Ungar v. DC RHC*, 535 A.2d 887, 892; *Hampton Courts Tenants' Ass'n*, 573 A.2d at 12, 13; *Tenants of 500 23rd Street, N.W. v. DC RHC*, 617 A.2d 486, 488.) How would the candidate assess the significance of this pronouncement in terms of the Commission's review of cases?
9. Is the candidate familiar with the standard set forth in the "Goodman" case (*Goodman v. RHC*, 573 A.2d 1293 (1990))

regarding procedural or technical errors committed by a *pro se* litigant (i.e., the need in relevant circumstances to relax the procedural or technical rules so long as this does not result in unfairness to other side)?

10. Is the candidate aware of the “plain error” standard for review of issues not specifically raised in a notice of appeal?
11. Would the candidate take a pro-active approach toward Commission-initiated reviews under 14 D.C.M.R. § 3808 (this provision gives the Commission the discretionary authority -- within twenty (20) days after the deadline for party-initiated appeals has expired -- to initiate its own appellate review of a decision issued by the Rent Administrator or the Office of Administrative Hearings)?

Finally, I note that with the retirement and replacement of the current Chairman, the longest tenure on the three-member panel will be eighteen months. In no way is it a criticism of the nominee or any Commissioner to indicate the value of institutional knowledge and continuity on the Commission, particularly given how complicated and challenging the District’s ever-evolving rental housing laws can be. We have no particular policy recommendation on this matter, other than to suggest that the

Committee and others consider how best to encourage a longer average tenure among the Commissioners.

Thank you, Chairperson Bonds and the Committee, for your continued leadership on matters of concern to District of Columbia renters.

Please do not hesitate to contact me if I can be of any further assistance.

