Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing on:

Bill 22-0461, the "Eviction Prevention Act of 2017"

Bill 22-0804, the "Housing Conversion and Eviction Clarification Amendment Act of 2018"

Bill 22-0809, the "Eviction with Dignity Act of 2018"

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

on

Monday, September 24, 2018
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good day, Chairperson Bonds, and members of the Committee and staff. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate (OTA). I am here to testify on the three bills being considered today: Bill 22-461, the "Eviction Prevention Act of 2018," Bill 22-804, the "Housing Conversion and Eviction Clarification Amendment Act of 2018," and Bill 22-809, the "Eviction with Dignity Act of 2018."

Bill 22-0804, the "Housing Conversion and Eviction Clarification Amendment Act of 2018"

The purpose of the bill, as I understand it, is to discourage the reduction of the District's rental housing stock when owners decide to reduce units in a rental accommodation. This bill would:

1. Impose a 5 percent "conversion fee" on an owner who converts a housing accommodation containing 10 or fewer units that results in fewer rental units in the housing accommodation;
2. Establish the amount of the fee at 5 percent of the appraised value of the most valuable unit in the building, multiplied by the net decrease in the number of units; and

3. Require the Mayor to deposit the fee into the Housing Production Trust Fund in order to help preserve rental units or create new ones.

While maintaining the supply of affordable rental units is certainly one of the District's biggest challenges, I believe the legislation would benefit from further consideration of potentially competing public interest factors. Examples of such competing factors may include: (1) where the owners plan to rent their house to multiple tenants, thus expanding the rental housing stock for a certain period of time, before resuming personal use and occupancy; or (2) where the owners wish to upsize smaller vacant units to a single large family-sized rental unit, particularly where the larger unit is deemed to be affordable.

Recommendations

I have two other specific recommendations. First I recommend that the Committee consider calling the fee something other than a "conversion fee," perhaps a "unit reduction" fee. This would help avoid confusion, given that "conversion fee" is already a defined term under the Rental Housing Conversion and Sale Act (D.C. Official Code § 42-3402.04) (specifically, the housing provider must pay a fee equal to 5 percent of the sales price for each condominium or cooperative unit).

Second, I believe these funds could best be deployed to help meet the resource and staffing needs of DHCD's Conversion and Sales Division, Rental Accommodations Division, and Rental Housing Commission, which serve critical functions on behalf of the rental housing community.

Finally, in addition to the "conversion fee," I note that the legislation would also impose a penalty where a landlord re-rents a unit within 12 months after recovering possession for personal use and occupancy. I whole-heartedly support this provision and note that the OTA has strongly recommended inclusion of such a provision in previous legislation.

Bill 22-461, the "Eviction Prevention Act of 2018"

The "Eviction Prevention Act of 2018" as introduced would:

- Require the housing provider to send the OTA a copy of any Notice to Vacate within two days after the notice is served on the tenant;
- Prohibit a housing provider who fails to comply with this requirement from recovering possession of the housing unit; and
- Require the OTA to then send certain documents to the tenant within four days of receipt, including:
    - A notice of basic housing rights and resources;

- A list of tenant rights organizations and legal service organizations that specialize in eviction cases; and
- A list of organizations that provide rental payment assistance.

This bill is intended to better ensure that tenants who receive a Notice to Vacate are made aware of their legal rights and of the fact that legal and financial resources are available to assist them.

Tenant rights education and outreach is one of the OTA's core missions. The need for such services takes on an added urgency when legal action is taken that directly impacts tenants who may not sufficiently understand the interests at stake. In 2009 the OTA created a Rapid Response program due to a conspicuous information gap that too often resulted in tenants losing the meaningful opportunity to vindicate their rights.

Thus, for the past ten years or so, the OTA has sprung into action when tenants receive an Offer of Sale under the Tenant Opportunity to Purchase Act (TOPA) or a housing provider rent increase petition, or a notice of foreclosure. Specifically, the OTA sends affected tenants a letter alerting them to the importance of the legal interest at stake, that it is

imperative that tenants respond promptly, and that the OTA is available to provide legal assistance.

Effective July 3rd of this year, the OTA is charged by statute to perform this same function in the context of TOPA Offers of Sales sent to tenants who reside in a single family dwelling, and who retain TOPA rights notwithstanding the new TOPA exemption for single family dwellings (DC Law 22-120, the "TOPA Single-Family Home Exemption Amendment Act of 2018"). Attached to this testimony is a chart reflecting the OTA's relevant activity to date. The OTA has received 136 TOPA filings, all of which have included Offers of Sale. We have issued 136 Rapid Response letters to affected tenants.

The OTA is not currently mandated to send Rapid Response letters in the eviction context. Nevertheless, the agency created a demonstration Rapid Response letter program last month in the context of scheduled evictions. We did so in response to (1) the Council's enactment of eviction procedure emergency legislation, and (2) the concurrent US Marshal Service's (USMS) implementation of new eviction procedures (I will discuss both of these changes later in my testimony). Our purpose was to help facilitate the implementation of these important changes, and to help

determine the "value added" of OTA services to tenants in preparing for the eventual eviction.

While I appreciate the legislative intent behind this bill I believe there is a better way to achieve its purposes in the context of Notices to Vacate. Under current law, the housing provider must serve the ***Rent Administrator*** with a copy of the Notice to Vacate. The Rent Administrator may review each Notice to determine whether it meets all statutory and regulatory requirements, and may deny a Notice that fails to do so (14 D.C.M.R. 4300.4 & .5). This required submission to an enforcement agency is appropriate and indeed necessary.

I do not believe, however, that requiring the OTA to send a Rapid Response letter to each affected tenant is the best way to go, both for reasons of agency capacity and "value added."

In terms of agency capacity, we believe upwards of 1,500 Notices to Vacate were issued last year, according to data provided by DC Superior Court. This estimate is based on the fact that about 31,000 eviction actions were filed at Landlord and Tenant Court, five percent of which were *not* on the basis of non-payment of rent. Non-payment of rent is the sole basis for eviction for which the tenant may waive in the lease agreement the right to

receive a Notice to Vacate prior to an eviction action being filed. Thus, notwithstanding the bill's reference to nonpayment of rent cases, few Notices to Vacate are issued on that basis.

Moreover, the OTA handles as many as 15 Notices to Vacate inquires and complaints every day, whether through case intake or the agency Hotline. Indeed, walk-in clientele generally has begun to outpace our capacity. Somewhere between 15 and 20 tenants are in the office daily in addition to 20 calls-a-day. I do believe that requiring the OTA to issue "Rapid Response" letters to all tenants issued a Notice to Vacate would place a substantial additional burden on relevant staff, and could compromise available resources for any number of other agency activities.

Regarding "value added," the OTA Rapid Response letter in the TOPA and rent control context provides the tenant with a simple, straightforward alert as to the legal rights at stake -- rights that will be lost unless the tenant takes timely action. This alert can be critical where the tenant has received a complicated and voluminous legal document without further explanation. In the context of scheduled evictions, the "value added" includes information regarding the new emergency law and the offer of a distinct service, namely boxes for moving.

In the context of Notices to Vacate – especially when one considers what I believe is a common-sense alternative -- none of these "value added" factors are present. There is an additional concern regarding a specific type of Notice – the Notice to Correct or to Vacate. This is the notice that applies where the tenant is alleged to have violated an obligation of tenancy (D.C. Official Code § 42-3505.01(b)). A Notice to Correct or to Vacate often contains sensitive and even embarrassing information. It is not uncommon for a tenant to express discomfort at having the information shared with anyone other than her own attorney.

Recommendation

Accordingly, I recommend that this legislation be amended to require that relevant contact information be included on, or along with, the Notice to Vacate form itself. Contact information should be included not only for the OTA, but also for the legal service providers who receive DC Bar Foundation grant dollars under the "Expanding Access to Justice" program. After all, that program was created to provide legal representation to more tenants confronting the prospect of eviction. This will achieve a significant efficiency by giving the tenant the information

necessary to immediately reach out either to the OTA, or to a legal service provider attorney whose organization is dedicated to eviction cases.

I also recommend that the Committee consult with the OTA, the Rent Administrator's office, the Rental Housing Commission, and the relevant legal service providers regarding this suggested amendment to the legislation.

Bill 22-809, the "Eviction with Dignity Act of 2018"

The "Eviction with Dignity Act of 2018" as introduced would require the housing provider to store the property of an evicted tenant in the unit for a period of ten days following an eviction, and permit the tenant access to the unit to recover the property without paying rent or storage fees. It would also require that the tenant be given notice upon eviction that explains their rights and provides contact information so the tenant may arrange to recover the property. After the ten-day period, the housing provider would be allowed to dispose of the property without notice to the tenant.

Since Bill 22-809 was introduced, the USMS announced that it would no longer oversee the removal of an evicted tenant's property to the street. Instead, the USMS announced that it will only oversee the eviction of all

members of the tenant household, and remain present for the changing of the lock to ensure that the housing provider has regained possession of the unit. What should happen regarding the tenant's property was a question left unanswered. In order to allow the Council to address that question, the USMS agreed to delay the implementation of its policy change until August 13th.

As previously mentioned, emergency legislation is now in place that answers the question by requiring the housing provider to maintain the evicted tenant's property in the unit for a seven-day period excluding Sundays and holidays. Under Act 22-426, the housing provider must also give the tenant a minimum of eight continuous hours of access to the unit during the seven-day period in order to reclaim and remove the property. Upon the expiration of the seven-day period, any property the tenant leaves behind is deemed abandoned, and the tenant loses the right to recover any such property. This approach is substantially similar to the requirements of Bill 22-809 regarding the property disposition issue, except that the required "in-unit" storage period for the latter is ten days.

As you know, Chairperson Bonds, the Council initially adopted a very different approach. Before it was repealed in favor of Act 22-426, Act 22-

425 would have required the housing provider to give the tenant at least 14 days-notice in advance of the scheduled eviction date (as is also true for Act 22-426). Act 22-425, the "Eviction Reform Emergency Amendment Act of 2018" (repealed July 10, 2018) would have made the housing provider responsible for packaging the tenant's property, transporting the property to a private storage facility, and paying for storage for a period of 30 days.

It is my understanding that both the in-unit storage option and the private facility storage option are still on the table for purposes of permanent legislation. I continue to have serious reservations about the in-unit storage approach. They include ongoing concerns regarding liability for property that is damaged or missing, and the enhanced prospect of altercations to the extent that landlord and tenant contact is more likely at a time when emotions are running high. The emergency period for Act 22-426, which expires on October 24th, provides the Council and the community with a basis upon which to assess the merits and flaws of the "in-unit storage" approach. I look forward to comparing notes and further considering other options as we move further into this emergency phase.

Regardless, the OTA will remain committed to its current efforts to assist evicted tenants by sending our "Rapid Response" letter, and also

offering to provide boxes during the two-week notice period. The intent is to facilitate the tenant who wishes to vacate the unit prior to the scheduled eviction date, so that post-eviction storage does not become an issue.

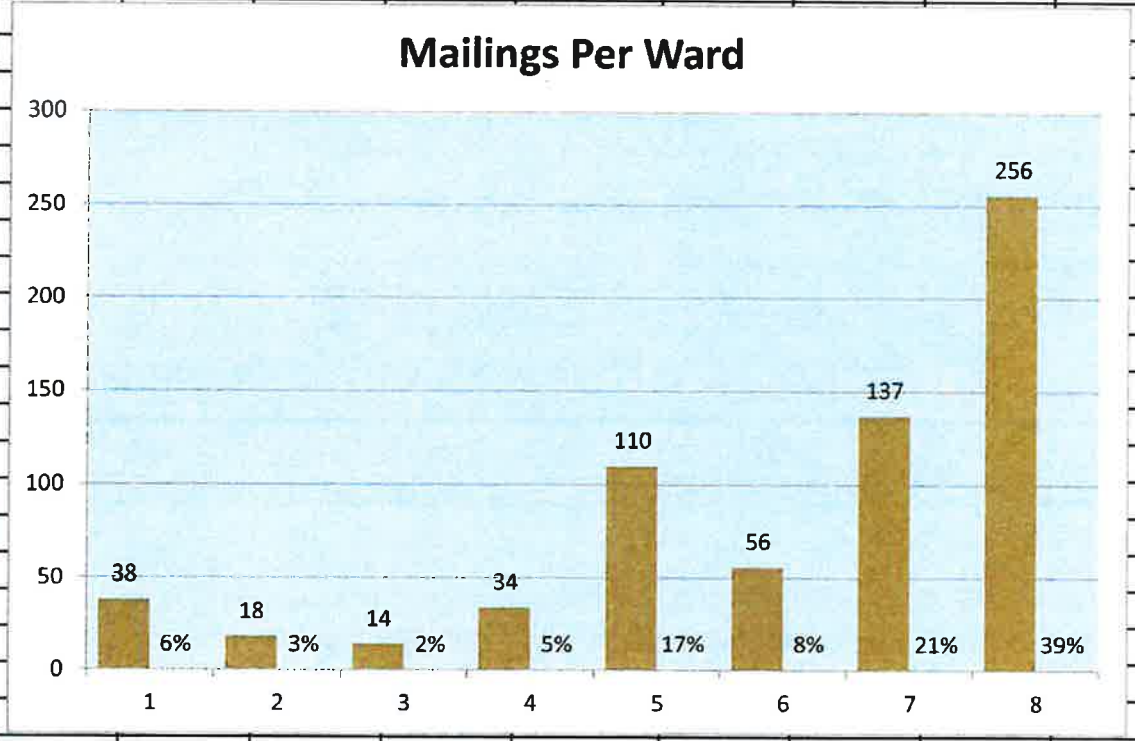
A second chart is attached to this testimony to reflect the OTA's activity to date regarding scheduled evictions.

Conclusion

Thank you, Chairperson Bonds for this opportunity to testify and for your leadership on these important issues. This concludes my testimony and I am happy to answer any questions you may have at this time.

OTA
EVICTIONS SCHEDULED
between AUG 13-SEPT 30, 2018
UPDATED: 9/19/2018

	S	T	U
1			
2	Ward		
3	1	38	6%
4	2	18	3%
5	3	14	2%
6	4	34	5%
7	5	110	17%
8	6	56	8%
9	7	137	21%
10	8	256	39%
11	Total:	663	
12			
13	Total Boxes delivered:		171
14			
15	Total Responses:		12
16	Percentage responded:		1.8%
17			
18	Mailings per month:		
19	July	99	7
20	August	366	8
21	September	198	9
22	October	0	10
23	November	0	11
24	December	0	12
25	January	0	1
26	February	0	2
27	March	0	3
28	April	0	4
29	May	0	5
30	June	0	6



Total cost to mail:	$331.50	
Total cost of supplies:	$771.45	
Total cost:		$1,102.95

TOPA-SINGLE FAMILY MAILINGS BY OTA
as of JULY 23, 2018

	AE	AF	AG
1			
2			
3	Ward		
4	1	22	16%
5	2	25	18%
6	3	25	18%
7	4	11	8%
8	5	12	9%
9	6	26	19%
10	7	9	7%
11	8	6	4%
12	Total:	136	
13			
14	Discrepancies	37	Discrepancies include: one form per tenant; tenant no longer residing at property; no form 1 (notice to tenant)
15			
16			
17