
Government of the District of Columbia



D.C. Office of the Tenant Advocate

Testimony of

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Public Hearing

**FY 2019 and FY 2020 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

Thursday, February 6, 2020
10:00 a.m.

Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Bonds -- and members of the Committee on Housing and Neighborhood Revitalization -- for giving me this opportunity to report on the OTA's operational performance during FY 2019 and FY 2020 to date. I am Johanna Shreve, Chief Tenant Advocate and Director of the D.C. Office of the Tenant Advocate.

In my testimony today, I will address each of the agency's programmatic areas, its activities and accomplishments in FY 2019 and FY 2020 to date, and its goals and priorities for the coming months. I wish to begin, however, by noting that as the agency continues to grow in terms of staff, we also grow in terms of its level of activity and results, and how well we connect with tenants all around the District.

The key to our growth -- and our ability to make a difference in people's lives -- is our continuous search for new ways to be *innovative, proactive, and responsive*. This has been my mantra since I first became the Chief Tenant Advocate, and I believe this approach is paying dividends like never before. I am happy to report that in FY 2019 and FY 2020 to date, the agency has continued to forge new governmental and community partnerships; expand our Educational and Outreach activities; and carve out new agency roles and functions to fulfill our mandates and meet the needs of residents.

I will now discuss in turn each of the agency's four programmatic areas.

Policy Branch

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 and rules. . ." ¹ Accordingly, the OTA engages each branch of District government to promote the public policy interests of tenants and the tenant community.

Legislation

The agency's legislative priorities in FY 2019 included (1) continuing to promote affordable rental housing by strengthening rent control; (2) facilitating and monitoring implementation of the District's new eviction procedure law; and, (3) improving the District's response to poor housing conditions at rental properties.

Regarding rent control, the OTA has long advocated for reforms to deal with so-called "rent concessions" that in fact operate as unlawful "rent ceilings," which the Council abolished in 2006. This practice involves "discounting" the tenant's initial rent while reporting to the Rent Administrator a much higher amount of "rent charged" for the unit. The landlord can then raise the rent by an

¹D.C. Official Code § 42-3531.07(2)

amount well in excess of the legal limit. Thus a previously affordable rental unit suddenly becomes unaffordable. In FY 2019, by codifying a seminal Rental Housing Commission decision,² the Council clarified that “rent charged” means the amount that the tenant actually has to pay after a concession is granted. This was a critical step in curtailing illicit “rent concession” practices.³

The OTA has also long advocated for two other reforms that the Council addressed in FY 2019, both of which have been culprits behind rent escalation in the District’s rent controlled units. One was the statutory formula for calculating the “base rent” for units that revert to rent control after a subsidy exemption expires.⁴ The Council replaced the previous market-based formula with one based on annual CPI increases that would have served as the limit on rent increases had the unit been subject to rent control.

The other was the vacancy increase. While the maximum five percent cap the OTA had advocated for was not adopted (indeed I have advocated for the elimination of what I’ve called “just because” vacancy increases), the Council did limit vacancy increases to either ten or twenty percent, depending on the

² Fineman v. Smith Property Holdings Van Ness LP, RH-TP-16-30,842, (RHC 1/18/18).

³ Law 22-0223, the “Vacancy Increase Reform Amendment Act of 2018,” effective 2/22/19.

⁴ Law 22-0202, the “Rental Housing Affordability Re-establishment Amendment Act of 2018,” effective 2/22/19.

duration of the previous tenancy. The Council also finally eliminated the “comparable unit” increase altogether.⁵

Regarding evictions, since August 2018, the OTA has participated in the implementation of the District’s new eviction procedure law.⁶ We have shared with D.C. Superior Court’s Landlord & Tenant Branch and the U.S. Marshal Service our goal of improving the quality and the quantity of data now collected throughout the eviction process. Our goal is to gather geographical, demographical, and other data that could help us develop more data-driven and targeted solutions to the scourge of evictions in the District.

Regulation

In August 2019, the Rental Housing Commission published a proposed rulemaking to update the Rental Housing Act regulations (the first major update of these critical regulations in thirty-five years). The OTA submitted formal comments on the proposed rulemaking in October 2019. Previously, along with other relevant agencies including the Housing Provider Ombudsman, the OTA participated in an interagency review process on the Commission’s draft regulations, and submitted a series of detailed comment letters. They included

⁵ Law 22-0248, the “Rent Charged Definition Clarification Amendment Act of 2018,” effective 3/13/19.

⁶ Law 22-0245, the “Eviction with Dignity Amendment Act of 2018,” effective 3/3/19.

comments clarifying the legislative intent behind rent ceiling abolition in light of the growing “*de facto* rent ceiling” problem.

Every three years, the Construction Code Coordinating Board (CCCB) a component of DCRA considers whether to adopt revisions to the international model construction code. As a voting member of the “Property Maintenance” Technical Advisory Group (PM-TAG) – (one of about twenty TAGs that advise the CCCB) – the OTA monitors and helps to improve the regulations that relate to occupied residential buildings. These are the regulations that most impact tenants where they live. In recent years, the OTA has helped to secure better protections for tenants regarding:

1. Housing provider responsibilities regarding the elimination of bedbug and other pest infestations;⁷
2. The minimum duration of air conditioning, where it is a provided service;⁸
3. Balancing code enforcement with the tenant’s Constitutional right to privacy;⁹
4. Maximizing the government’s opportunity to recoup the costs of emergency housing expenditures from derelict landlords whether through DCRA’s or the OTA’s lien authority.¹⁰

⁷ 12G D.C.M.R. sec. 309

⁸ 12G D.C.M.R. sec. 608

⁹ 12G D.C.M.R. sec. 104.3.1.

¹⁰ 12G D.C.M.R. sec. Section 108.5.1 & Section 106.

Goals and priorities

Regarding the OTA's ongoing policy goals and priorities, we want to work with the Committee and the Council to strengthen rent control in particular by reigning in the abuse of housing provider petitions and Voluntary Agreements; and to further protect the tenant's reasonable contractual expectations regarding the lease. For example, too many tenants are unaware of the lease's "joint and several liability" clause, which means that a tenant who leaves a group house can be held responsible for the rent until the last tenant named on the lease also leaves.¹¹ Our other goals fall into the categories of affordability and the right of purchase in all housing types; the access to rental housing regardless of income source; and building code compliance and enforcement.

Relevant pending legislation includes:

Affordability and right of purchase

- Bill 22-100, the "Preservation of Affordable Rent Control Housing Amendment Act of 2017" (prohibiting tenants and housing providers from forming certain agreements that shift the burden of rent increases to other current or future tenants, unless those rent increases would also apply to the tenants who are parties to the agreement);
- Bill 23-0433, the "Rental Housing Act Extension Amendment Act of 2019 (extending the sunset provision of rent control to December 31, 2030);

¹¹ See Law 21-210, the "Residential Lease Clarification Amendment Act of 2016," effective 2/18/17.

- Bill 23-0074, the “LIHTC TOPA Exemption for Transfers of Interest Act of 2019” (exempting low income housing tax credit redevelopment projects from TOPA notice requirements);

Eviction and access to rental housing

- Bill 23-0048, the “Housing Conversion & Eviction Clarification Amendment Act of 2019” (providing for damages when a housing provider repossesses a rental unit from a tenant in order to personally use and occupy or sell a housing unit for personal use and occupancy and subsequently receives rent within the following 12-month period, and other purposes) *which passed on final reading this past Tuesday*;
- Bill 23-0338, the “Eviction Record Sealing Authority Amendment Act of 2019” (authorizing the Court to seal certain eviction records and establishing penalties for those who publish such records);
- Bill 23-0149, the “Fair Tenant Screening Act of 2019” (prohibiting housing providers from inquiring about sources of income and credit history of a prospective tenant; requiring that certain information be provided to potential tenants via posting or in writing prior to obtaining any information or collecting a fee from a prospective tenant).

Code compliance and enforcement

- Bill 23-0045, the “Bedbug Control Act of 2019” (creating regulations that govern the removal of bedbugs, require landlords to provide notice to tenants sharing party walls, floors and ceilings of units infested with bedbugs; and other purposes);
- Bill 23-0091, the “ Department of Buildings Establishment Act of 2019” (establishing the Department of Buildings as a subordinate agency within the Executive branch with oversight of construction compliance, rental housing safety, and residential property maintenance activities in the District, and other purposes);
- Bill 23-0132, the “Indoor Mold Remediation Enforcement Amendment Act of 2019” (requiring DCRA housing inspectors to be certified to conduct indoor mold assessment and remediation; requiring DCRA to issue a notice of violation to property owners to remediate indoor mold and impose penalties on owners who do not comply);

- Bill 23-0394, the “Tenant and Homeowner Accountability and Protection Amendment Act of 2019” (requiring housing providers to provide documentation of a Basic Business License at the time of filing an action for possession or when attempting to raise the rent);

We are also following relevant federal legislation, including S. 3030, the “Eviction Crisis Act of 2019”¹² and S 787 , the “American Housing and Economic Mobility Act.”¹³

Legal Branch

The Legal Branch includes Case Management services, immediately advising tenants as to the state of the law and assisting tenants with needed documents; the Legal Representation Section, representing tenants, at its discretion and as it determines to be in the public interest, in Federal or District judicial or administrative proceedings; and the Tenant Hotline Section, responding on a daily basis to tenant needs expressed electronically.

The Legal Branch also coordinates with other Branches to provide tenants with wrap-around services when appropriate to, meet the varying aspects of a tenant’s need. In so doing, the Legal Branch coordinates with the Policy Branch to develop agency positions on public interest matters and to

¹² This measure would “improve data to better understand the contours of the national eviction crisis, to expand support for efforts to prevent evictions, and to mitigate the consequences when an eviction is unavoidable.”

¹³ This measure would “help millions of the lowest income seniors, people with disabilities, families with children, and individuals who struggle to pay rent each month.”

draft *Amicus Curiae* briefs to be filed in the DC Court of Appeals. The Legal Branch also coordinates with the Education and Outreach Branch by maintaining the Tenant Resource Center, developing new educational materials, and conducting educational sessions, both during the year and during the Annual Tenant Summit.

Legal guidance and representation

In FY 2019, over 7,489 tenants contacted the OTA for advice and assistance. Approximately 4,349¹⁴ tenants resolved their issues with the aid of attorney advisors, while the remaining tenants were able to resolve their issues with the assistance of a paralegal or case management specialist. In addition to providing limited legal representation by coaching tenants who were representing themselves (*pro-se*) in-court and drafting complaints, petitions, and other court documents, attorney advisors also provided in court representation and negotiated in 46 judicial and administrative proceedings.

In FY 2019, the most common issues reported by tenants were (1) 2,382 lease issues; (2) 2,099 housing code violations; (3) 574 security deposits; (4) 546 rent increases; and (5) 454 evictions as shown in Figure 1. Lease issues include questions about the legal meaning of lease terms, utilities, and basic tenant

¹⁴ Ramona Quillet 841; Sean Treanor 664; Harrison Magy 1031; Umar Ahmed 751; Johan Fatemi 579; and Shavannie Braham 483.

rights. Common housing code violations included bed bugs, rodents, pests, water damage, and malfunctioning appliances. (The OTA initially included mold questions in the housing code violations category, but subsequently added mold as a separate category due to an uptick in demand. Mold came in a close sixth place with 445 reports.) Rent increase questions arose in subsidized housing units, rent controlled units, and exempt units. Lastly, security deposit questions are new to the Top 5 list, although they have always been frequently reported.

TOP 5 ISSUES OF FY19

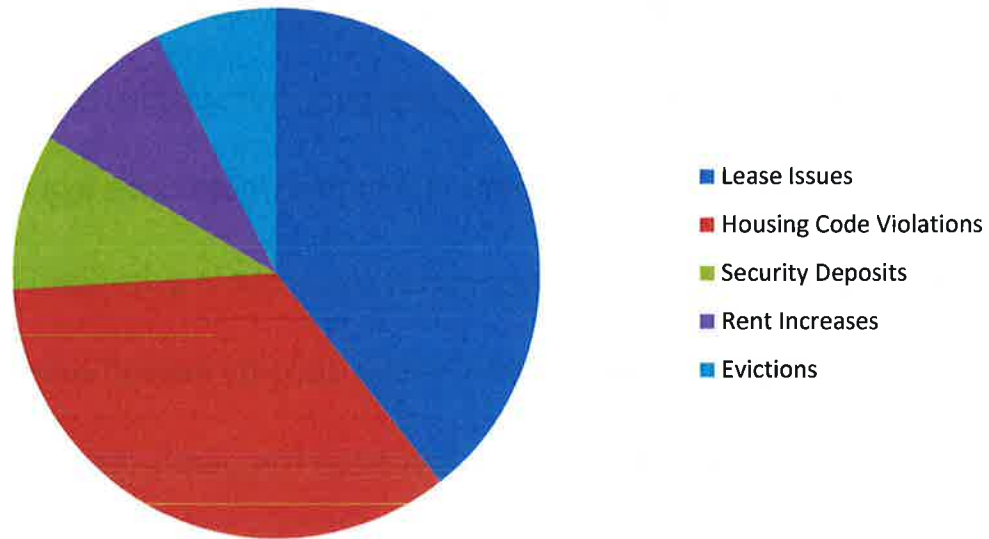


Figure 1

MOST COMMON ISSUES BY WARD

	WARD 1	WARD 2	WARD 3	WARD 4	WARD 5	WARD 6	WARD 7	WARD 8	NO WARD	TOTAL
LEASE ISSUES	458	259	219	173	294	349	362	208	60	2382
HOUSING CODE VIOLATIONS	332	229	144	175	278	295	281	316	49	2099
SECURITY DEPOSITS	112	87	61	49	80	114	28	29	14	574
RENT INCREASES	99	71	75	56	77	81	40	39	8	546
EVICCTIONS	70	34	35	48	66	64	65	64	8	454
MOLD	57	58	38	25	60	61	54	84	8	445
TOPA	65	38	11	44	56	61	45	44	5	369
PETITIONS	7	6	3	4	10	6	6	5	0	47

Figure 2

In FY 2013, OTA began to collect data regarding the financial returns to tenants, including damage awards and rent rollbacks. From FY 2013 to FY 2017, the OTA secured the return of a total of \$18,620,921 to the tenant community. In FY 2018 and FY 2019, the OTA secured the return of a total of \$2,982,855 to the tenant community.

Tenant Hotline

Members of the tenant community rely on OTA, and the Tenant Hotline, for learning about their tenant rights, locating and downloading educational materials, requesting workshop facilitation, and helping them to stay abreast of any news or events that will keep them informed. The Tenant Hotline Section currently has three components: Direct Phone Contact, “Ask the Director,” and “Ask the Mayor.”

Direct phone contact

Many tenant services are initiated when a tenant calls OTA at **(202) 719-6560**. The tenant will be professionally greeted by an OTA representative, who will then take directory information and inquire about the issue prompting the call. Following the initial inquiry, the tenant is then transferred to either a Case Management Specialist or Attorney Advisor as appropriate. When Case Managers are unavailable to take phone calls, the Paralegal Specialist, the Attorney

Advisors, and the General Counsel step in to make sure each call receives prompt assistance. In FY 2019, OTA responded to 5,351 direct telephone inquiries.

“Ask the Director”

Some tenants prefer the convenience of contacting OTA through the online “Ask the Director” program, accessed through the OTA website at <http://ota.dc.gov>. Questions come from all eight Wards of the District, from other states, and even from foreign countries. Most responses are drafted by OTA’s Paralegal Specialist, an attorney and member of the DC Bar. In FY2019, OTA responded to 789 inquiries through the “Ask the Director” program.

“Ask the Mayor”

Some tenants take their inquiry directly to the Mayor through the Ask the Mayor page on the District’s webpage, <http://dc.gov>. The Mayor’s Correspondence Unit will then forward tenant-related inquiries to OTA for a response on behalf of the Mayor. Each inquiry is given the same careful treatment as a question received through the “Ask the Director” system, which may include a referral to an OTA litigator. In FY2019, OTA responded to 10 “Ask the Mayor” inquiries.

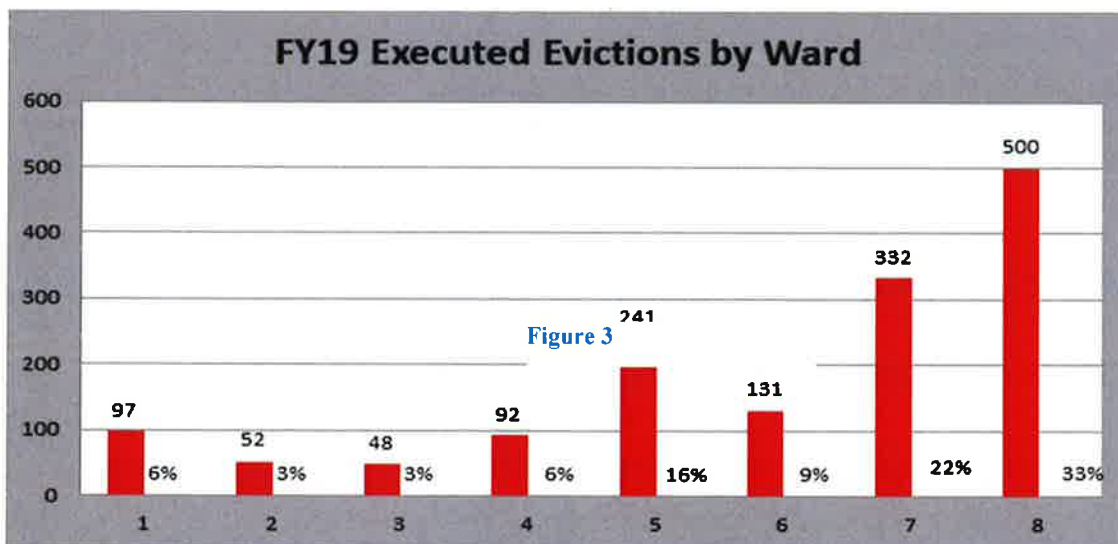
Evictions

The United States Marshals Service (USM) carries out all legal evictions in the District. When USM changed its procedures in August, 2018, it partnered with OTA to make the process more tenant-friendly.

In FY 2019, the Superior Court's Landlord/Tenant Branch issued 3,808 writs to evict tenants; however, with full tenant awareness of the process, only 1493 evictions (38.1% of the writs issued) were actually executed.

OTA now receives reports from the USM regarding the exact date that evictions are scheduled. In order to assist tenants that must leave their homes, OTA places this information online, to assist in tenants' planning, and OTA sends a letter to affected tenants, offering to provide boxes and packing materials to ease the pressure of a sudden, forced move.

Figure 3 shows a ward-by-ward distribution of the executed writs.



In addition, OTA receives reports from the US Marshals Service regarding the reasons why an issued Writ is cancelled prior to execution. The patterns are informative. The vast majority of cancellations (85%) are the result of requests by the housing provider. Typically such a request is the result of the tenant paying the rent arrearage. In addition, approximately 11% of the cancellations are the result the tenant paying the rent arrearage directly to the US Marshal at the scheduled time of eviction.

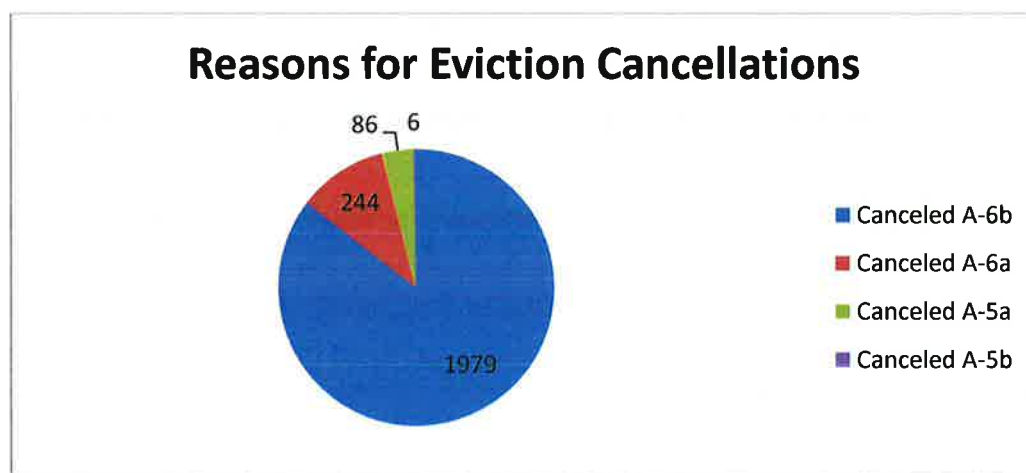


Figure 4

Key: A-6b: Canceled by Housing Provider via phone/email; A-6a: Onsite – Tenant paid
A-5a: Onsite – no management representative present, no address on apt/house; A-5b: Indicate 3 attempts made, disconnected number, or any discrepancies with the writ

Tenant Opportunity to Purchase (TOPA)

The revision to the single-family Tenant Opportunity to Purchase Act (TOPA) provision resulted in added administrative for the Agency. Housing providers seeking to sell a single-family dwelling must provide a Notice of Intent

to Sell (Notice) to both the tenant(s) and the OTA. Upon OTA receipt of the Notice, OTA reviews the Notice for legal sufficiency. If a legal problem is found in the document, OTA notifies the Conversion and Sale Division of DHCD for further action. In addition, OTA also sends the tenant(s) a letter detailing their applicable tenant rights. In FY 2019, OTA reviewed 1,882 single-family TOPA Notices, and sent appropriate tenant rights information to the tenant(s). Additionally, OTA forwarded 14 problematic Notices to DHCD for further action. Figure 5 shows the Ward-by-Ward distribution of the 1,882 single-family TOPA Notices.

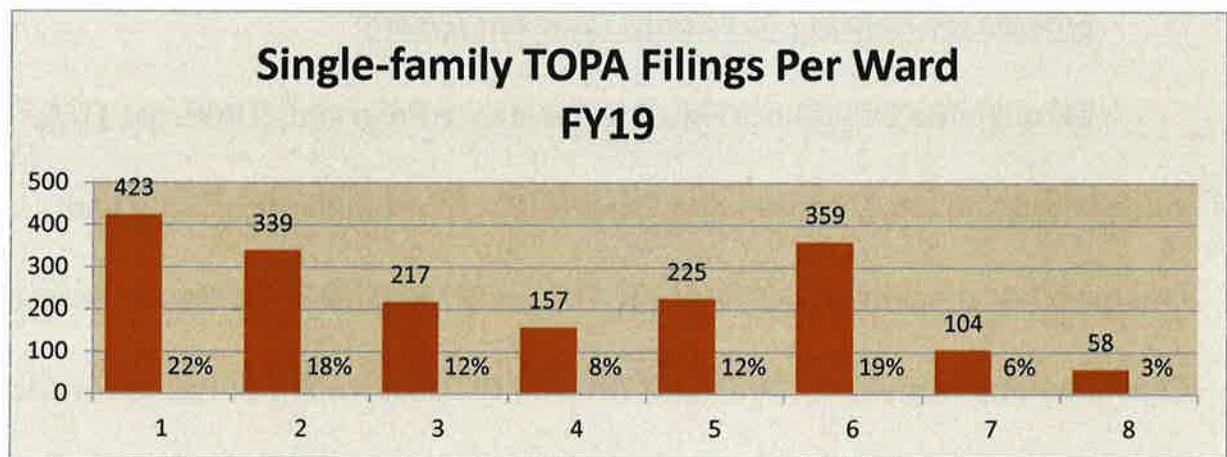


Figure 5

A top priority for the Legal Branch in FY 2020 is the launch of a Mold Initiative.¹⁵ Mold has become a constant irritant for many District tenants. When the landlord fails to abate a mold problem, a tenant in the District now has a

¹⁵ The DC Council has appropriated \$105,000 for a pilot version in FY 2020.

statutory private right of action. The significance of this right, however, largely depends on having an attorney that the tenant can afford, and an expert witness who can testify about the problem. When a tenant alleges the presence of ten or more square feet of mold -- which is the threshold for requiring professional assessment and remediation -- the OTA will send a licensed Mold Assessor to the tenant's unit. Upon confirmation that the criteria have been met, an OTA attorney will provide the tenant with appropriate legal assistance, including representation.

Emergency Housing Assistance Program (EHAP)

Through the Emergency Housing Assistance Program (EHAP), the OTA works alongside the American Red Cross (ARC), DC Homeland Security and Emergency Management (HSEMA), DC Fire and EMS (FEMS), DC Department of Consumer and Regulatory Affairs (DCRA) and DC Department of Human Services (DHS) to provide the tenants of the District with services that no other jurisdiction in the country provides. We work together as a government and with community partners to ensure that families affected by emergencies are given a chance to regain housing stability.

In FY 2019, OTA's Emergency Housing Program successfully sheltered a record 433 families. These families were displaced as a result of 234 fires, 8

floods, and 181 government closures for uninhabitable conditions. Created in 2009, OTA's Emergency Housing Program has now served over 2,000 families.

Our emergency housing goals for 2020 include developing operational policies and procedures to incorporate lessons learned, and to explain OTA's critical role in helping tenants who have been displaced by fires, floods, and closures. We will also develop a new user-friendly EHAP brochure.

Education and Outreach Branch

During FY 2019, the OTA Education and Outreach Branch were very busy educating tenants and promoting OTA's services. The OTA participated in 119 outreach events and educated 3,679 District Tenants on their tenant rights and the services of the OTA.¹⁶ (These events exclude radio or television interviews of Chief Tenant Advocate Shreve and her staff.¹⁷) Figure 6 identifies the number of attendees by ward per event.

¹⁶ The stats only focus on the location of the events, not the ward attendees reside in.

¹⁷ Radio stations: 96.3 WHUR and La Nueva interviewed Chief Tenant Advocate and her staff. WJLA's Good Morning Washington interviewed Education and Outreach Coordinator Stephen Dudek about the 12th Annual Tenant Summit.

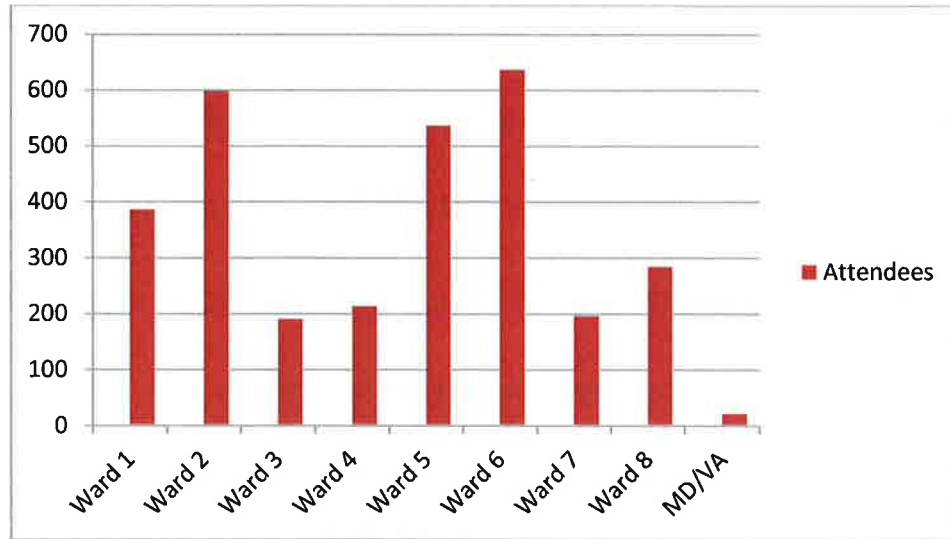


Figure 6

Figure 7 breaks down the number of events per ward. Ward 1 (19 events) and Ward 6 (42) hosted the most events. The OTA's office is located in Ward 1 and hosts a monthly Renters' Rights 101 session and a quarterly stakeholder meeting. The OTA has an agreement with Community Partnership to conduct two sessions of Renters' Rights 101 on a monthly basis. We present at Community Partnership's office in Ward 6.

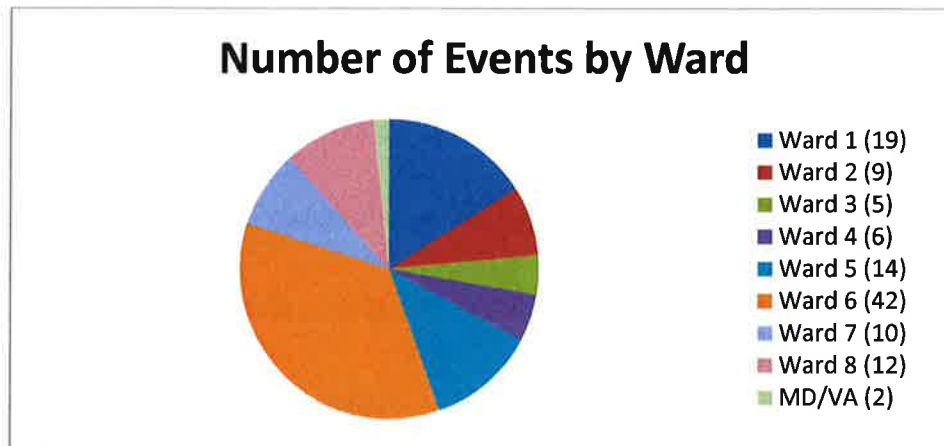


Figure 7

The Agency continues to respond to requests from government agencies, nonprofits, and interested tenants to give presentations on the OTA's services and on tenant rights. The presentations on tenant rights include forming a tenant association, the drafting and passage of by-laws, a self-representation presentation also known as "This Is Not Court TV," and Renters' Rights 101.

College students

The agency continues to be a part of a consortium of educational institutes of higher learning. The OTA continues to maintain its outreach efforts in this area by attending on-campus events for each individual institution in the consortium of colleges and universities: George Washington University, American University, Howard University, Trinity College, Georgetown University, Catholic University, Gallaudet University and the University of the District of Columbia. The OTA hosted its inaugural meeting of all off-campus housing offices of the District of

Columbia. It provided local colleges and universities to discuss the opportunity of having the OTA host an on-site clinic that answers students' questions and review students' leases. The OTA visits Georgetown University on a monthly basis to host an on-site clinic. In the winter, the OTA attended numerous off-campus housing fairs and presented Renters Rights 101 to Gallaudet University students.

Partnership Development

The agency continues to explore new endeavors and partnerships with nonprofit organizations and government agencies. In 2018, the OTA joined forces with Community Partnership, an organization that focuses on homeless prevention through providing shelter management and financial assistance to District's residents. After a successful year of presenting Renters Rights 101 to its cohort, Community Partnership requested the OTA to continue its monthly presentation of Renters Rights 101 for the next fiscal year. The goal of these presentations is to inform the Community Partnership's cohort about the rights of District tenants.

In addition, the OTA established a partnership with the DC Superior Court's Court Navigator Program. The Navigator's Office is located at 510 4th Street, NW and serves court participants with Small Claims Court and Landlord-Tenant matters. On a monthly basis, the OTA hosts an information session outside the

Navigator's Office informing the court participants of their renter rights, assisting them with questions on the court process and making referrals to the OTA's Legal Branch. The goal is to continue the partnership into the new fiscal year with the intention of hosting an afternoon session on various topics of landlord-tenant matters.

Stakeholder meetings

Tenants and housing advocates were able to network through the OTA's stakeholder meetings held throughout the year. The subject matters included legislative briefings, updates on the law, and government agencies assisting the tenant community. At July's stakeholder meeting, the OTA invited Attorney General Karl Racine and Office of the Attorney General (OAG) staff to discuss the advocacy work OAG is doing for the District's tenant community. OTA regularly sent information on housing matters to members of its stakeholder distribution list.

Annual Summit

In September 2019, the OTA hosted its 12th Annual Tenant and Tenant Association Summit at Gallaudet University. The OTA focused on the housing affordability crisis in the District. Attendees learned about the national housing affordability crisis, its impact on the District, the importance of advocacy, and the

status of rent control in the District. The highlight of the Summit was the presentation of “Rent Control—A 100-Year Look Back,” where the presenter, OTA’s Attorney-Advisor Sean Treanor, inspired attendees to get involved and testify to DC Council on rent control. Video of all sessions are available on the OTA’s website or OTA’s YouTube Page.

Webinars

During FY 2019, the OTA hosted television personality Derek McGinty to record seven webinar sessions. The webinar sessions, globally titled “OTA A²Z,” covered various landlord-tenant topics. The first episode is “OTA 101,” where Mr. McGinty interviewed Chief Tenant Advocate Shreve about the history of the OTA. Other episodes covered tenant rights on security deposits, housing code issues, renters insurance, and evictions.

The acclaimed “100 Years of Rent Control” presentation at the 2019 Summit has prompted calls to the agency from across the country. Accordingly, our FY 2020 goals for the Education and Outreach Branch include (1) publishing the document to help educate the country about the District’s significant role in the development of rent control laws; and (2) launching a research section to further work on the history of rent control in the nation and other housing concerns.

Other FY 2020 goals and priorities include the development of courses focusing on: Outreach Program for Students (College and High School); Property Management Course leading to certification; Tenant Associations Empowerment; Online Access Initiative; Protecting Your Security Deposit Initiative; and Establishing Pop-up Clinics in Each Ward

Conclusion

I wish to thank you, Chairperson Bonds and the Committee, as well as Mayor Bowser, for all the support given to the OTA and the services we provide to the tenant community. This concludes my testimony and I am happy to answer any questions you and members of the Committee may have.

