Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Public Hearing on

B23-237, the "Rent Concession Amendment Act of 2019"

B23-530, the "Rent Stabilization Affordability Qualification Amendment Act of 2020"

B23-877, the "Substantial Rehabilitation Petition Reform Amendment Act of 2020"

B23-879, the "Capital Improvement Petition Reform Amendment Act of 2020"

and

B23-878, the "Voluntary Agreement Moratorium Agreement Act of 2020"

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

on
Thursday, September 24th, 2020
12:00 p.m. via Virtual Platform

Introduction

Good afternoon, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate. I am here today to testify regarding the five rent control reform measures before the Committee today (B23-237, the "Rent Concession Amendment Act of 2019"; B23-530, the "Rent Stabilization Affordability Qualification Amendment Act of 2020"; B23-877, the "Substantial Rehabilitation Petition Reform Amendment Act of 2020"; B23-879, the "Capital Improvement Petition Reform Amendment Act of 2020"; and B23-878, the "Voluntary Agreement Moratorium Agreement Act of 2020").

I wish to thank you for holding today's hearing on such a wide range of reform ideas, some of which I believe are as long overdue as they are critically important.

B23-237 – the Rent Concession Amendment Act of 2019

Context

First I will discuss Bill 23-237, the "Rent Concession Amendment Act of 2019." But before I do, I wish to remind everyone of some critical context. In 2018, the Council considered a pair of bills aimed at addressing the scourge of so-

called "rent concession" practices in rent controlled buildings. In establishing *de facto* rent ceilings – which as I testified at the time violated the Council's 2006 abolition of rent ceilings[1] – housing providers were able to attract tenants to rent controlled units by offering affordable rents, and the next year impose exorbitant rent increases that defied the very premise of "rent stabilization."

One of those two bills clarified that the term "rent charged" means the amount of monthly rent that the tenant actually pays the landlord, and it required all relevant Rent Administrator forms to include that definition.[2] The other bill acknowledged that "good rent concessions" can in fact exist, and can in fact serve the current tenant's interests[3] while doing no harm to the next tenant's initial

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[1] In January 2018, prior to the enactment of Law 22-248, the Rental Housing Commission (RHC) issued a seminal ruling (in support of the OTA's position) reversing the administrative law judge and holding that the term "rent charged" – pursuant to the legislative history – can only mean the actual amount of rent the tenant must actually pay, not a *de facto* rent ceiling created though a rent concession. Accordingly, the law requires the housing provider to report the actual rent charged amount on the relevant Rental Accommodations Division (RAD) forms, including Form 8 ("Notice to Tenant of Adjustment in Rent Charged") and Form 9 ("Notice to RAD of Adjustment in Rent Charged"). *Fineman v. Smith,* RH-TP-16-30842, January 18, 2018. That ruling was followed by another Commission decision holding that reporting a *de facto* rent ceiling as "rent charged" on the form could constitute an unlawful demand for rent, entitling the tenant to damages. *Tonica Washington v. A&A Marbury, LLC/UIP Property Management,* RH-T-11-30,151, September 28, 2018. However, the Commission has also indicated – particularly in the former Chairperson's concurring opinion in *Fineman* -- that gray areas in the law remain, thus clarifying legislation would be helpful.

[2] Law 22-248, the "Rent Charged Definition Clarification Act of 2018" (effective March 13, 2019; D.C. Official Code § 42–3501.03 *et seq.*)

[3] As we noted in our 2018 testimony, DHCD's then-Housing Provider Ombudsman supported the premise of such "good rent concessions." Over a period of years prior to the Rental Housing Commission's decision in *Fineman v. Smith,* RH-TP-16-30842 (RHC 1/18/18), she reported handling approximately two dozen inquiries annually from smaller housing providers who want to give, say, an elderly or disability tenant a break on a rent increase, but without losing the ability to impose that increase at the commencement of the next tenancy. In other words, she believed the purpose of the concession in those cases was truly to give the current tenant a break, not to create *de facto* rent ceilings.

rent amount or the unit's future affordability.[4] The Council enacted the first ("definitional") measure but not the second ("good rent concession") measure. Consequently, in largely resolving the bad, the Council arguably also did away with the good.

What the Bill Does

Bill 23-247, the measure we are considering today, is virtually identical to the measure that the Council considered but did not enact in 2018. Five key provisions are at the heart of the measure. At least in theory, I believe they succeed in balancing the interests of the current tenant – who would enjoy a lower rent than would otherwise apply to that unit – while doing no harm to future tenants. As we noted in 2018, New York State adopted a strikingly similar approach to deal with its analogous "rent preference" problem. The Village Voice reported that New York was very successful at maintaining lower rent levels, until Republicans in the New York State legislature did away with it in 2003 as a condition for renewing rent control at all.[5]

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[4] Bill 22-998, the "Rent Charged Clarification Act of 2018"

[5] Steven Wishnia, "'Preferential Rent': How Landlords Kill NYC's Affordable Apartments and Get Away With It" (July 16, 2017), *The Village Voice,* available at: https://www.villagevoice.com/2017/07/06/preferential-rent-how-landlords-kill-nycs-affordable-apartments-and-get-away-with-it/.

Here are those five provisions:

1. First, for as long as a tenant with a discounted rent remains in the unit, that discounted rent must be the sole basis for calculating increases in the rent charged.

2. Second, the discount must last for the duration of the current tenant's tenancy.

3. Third, the discount must be granted to the tenant unconditionally.

4. Fourth, the landlord may reclaim the amount of discount and include it in the next tenant's initial rent.

5. Fifth, the rent level for the unit is ***reset*** if the landlord chooses not to include the amount of the discount in the next tenant's initial rent. Thus, the landlord must "use or lose" the discount when the tenant who enjoyed the discount vacates the unit. That way the landlord can't preserve what the market won't bear. Indeed, that was exactly why rent ceilings had to be abolished.

Allow me to go through an example: a landlord charges $2000 for his one-bedroom apartments, but chooses to give a $500 monthly discount to an elderly tenant on a fixed income who resides in one of those units. Given the requirements I just listed, and those proposed by the legislation we are discussing today, this landlord would be able to give this discount to the tenant and then claw it back after she vacates without causing her or the next tenant any unfairness. The landlord would not be able to deprive the tenant of any rights under the lease or be at any other disadvantage in order to get the discount; the

tenant could count on the discount never being taken away from her; and rent increases would remain predictable and manageable. The landlord would also be able to charge the next tenant the prior rent level plus the amount of any discounts granted to the previous tenant, but he would have to do it immediately and would not be able to preserve that higher rent level for use as a *de facto* rent ceiling whenever market conditions make it convenient. Therefore, future affordability would not be harmed, and, from the next tenant's perspective, at worst it would be as if the discount had never been granted to the previous tenant.

The bill addresses numerous other problems associated with "rent concessions." Specifically it:

- Clarifies that the abolition of rent ceilings applies to all unimplemented rent increases that have expired because they were not implemented within 12 months;
- Clarifies that any rent increase will be forfeited if not implemented within 30 days after the date the housing provider is first eligible to do so;
- Regulates discounted rents and defines a discounted rent as rent charged that is at least 10 percent less than the rent charged a prior or current tenant;
- Requires that late fees for a tenant with a discounted rent be based on the actual rent charged; and
- Requires that rental advertisements include the proposed rent charged, any rent surcharge in effect, and any unexpired rent surcharges.

Recommendations

A trial run at good rent concessions

Notwithstanding the bill's merits, I will recommend today that the bill be refashioned as an emergency and temporary measure to last for as long as the public health emergency plus one year. I will do so for a couple of reasons.

First, as you will recall Chairperson Bonds, you introduced the two relevant measures in 2018 on the basis of a consensus forged by a tenant working group, which consisted of a diverse set of tenant attorneys and advocates including the OTA, legal service providers, private practitioners, and others. Since then, the "rent charged" definition has gone into effect and the Commission's *Fineman* decision has just started to bear precedential fruit in other cases. Moreover, in October 2019, the Commission published a proposed rule-making that will codify both the Council's rent charged definition measure and its own decision in *Fineman*. Given these developments, there is merit to a "wait and see" approach before enacting "good rent concessions" on a permanent basis.

By the same token, the existential affordable housing crisis wrought by COVID-19 provides ample reason for giving "good rent concessions" a trial run through emergency and temporary legislation. Since the public health emergency

was declared, the OTA again has seen an increase in unlawful rent concession practices. Some of these practices include reporting of a rent amount to the Rent Administrator that is in excess of the actual rent charged. Still others have involved landlord attempts to withdraw a rent concession as an end-run around the District's moratorium on rent increases. In recent weeks we have issued a series of cease and desist or demand letters in such cases.

On the other end of the spectrum, the tough COVID-19 rental housing market provides landlords with an incentive to keep good tenants. A landlord may well be willing to give a good tenant a truly "good rent concession" – one that lasts for the duration of the tenancy – provided that it can be recouped in the next tenant's initial rent, when hopefully the market has recovered. So long as the general principles and restrictions of Bill 23-237 apply, I believe the public interest merits of this approach will become evident.

Consequently, I believe refashioning the bill to better suit tenants' needs during the public health emergency – including making it an emergency and temporary measure – is a sound approach that (1) can best achieve consensus, at least on the tenant advocacy side; and (2) can serve as an experiment that will inform any future consideration the Council may give to making it permanent.

The amount of a reclaimable discount

I would further recommend that during the trial period, the Council consider permitting the housing provider to offer a discount of less than 10 percent and then claw back that discount for the next tenant. I understand the "too little bang for the buck" argument that smaller discounts may not warrant the administrative burdens. My own belief, however, is that we should allow discounts that are smaller but *still meaningful*, for example, to a fixed-income tenant. I would propose as a reasonable compromise that the Council require a minimum discount equal to what the standard annual increase would be for that tenant. Thus, for elderly tenants and tenants with a disability the minimum "reclaimable discount" would be the lower of the CPI, the Social Security Cost of Living Adjustment, or 5%; and for other tenants, that minimum would be the CPI plus 2 percent.

Lease-up incentives

In permitting and regulating "good rent concessions," the Committee should consider clarifying whether to permit short-term lease-up incentives, such as one or two months' free rent. Landlords often use such incentives for initial lease-up of new buildings in order to quickly achieve a low vacancy rate. This

scenario is not one we know to be detrimental to tenants, but taken literally current law could be interpreted to mean that a landlord under rent control who allows a tenant to go rent-free for a month or two has thereby established a rent charged of "zero." Thus charging the agreed upon rent after the free period is over would constitute an unlawful rent increase.

The bill could be amended to clarify that certain lease-up incentives are permissible. Regardless, such an incentive of any *more* than one or two months free rent should be considered suspect or an exercise in creative mischief. This could be dealt with by averaging such "free rent" months with the monthly rent charged over a twelve month period to calculate the actual "rent charged" that must be reported to the Rent Administrator.

Potentially unnecessary regulation of rental advertisements

Lastly, I suggest that the Committee consider whether the bill's rental advertisement requirements are warranted. Under the relevant provision, the ad must include the proposed rent charged, any surcharges in effect, and any unexpired rent surcharges authorized but not implemented. Landlords are already required to disclose this information to a prospective tenant at the time of the application, and to make this information continuously available to current

tenants.[6] Assuming that the same information is timely provided to the rental applicant for purposes of considering whether to rent the unit, the Committee should consider whether the advertising provision is potentially excessive. I'll add that we should all be concerned about landlords who unflinchingly express in their rental ads the intent to discriminate against categories of potential renters, specifically voucher holders.

To the extent tenants are not getting this information, the Committee should instead clarify the disclosure provisions of Section 222[7] to make sure there is no room for error. For example, Section 222 is less than explicit regarding whether the landlord must disclose not only surcharges in effect, but also *unimplemented and unexpired* surcharges; it also uses the term "rent" rather than "rent charged."

B23-530 – the Rent Stabilization Affordability Qualification Amendment Act of 2020

What This Bill Does

I will now discuss B23-530, the "Rent Stabilization Affordability Qualification Amendment Act of 2020." This measure would prohibit a landlord

[6] D.C. Official Code § 42–3502.22(b)(1)-(2).
[7] D.C. Official Code § 42–3502.22.

from renting a rent control unit to a tenant whose monthly income for the previous calendar year was five times the monthly rent or higher. The tenant would not be required to recertify each year, and would only be asked to provide documentation of their income for the previous calendar year prior to renting the unit. In the event that the tenant's income later increases to an amount that exceeds the threshold, that tenant would not be disqualified from continuing to rent the unit. Still I believe the bill's transformation of the District's rent control program into a means-testing regime is radical and unwarranted.

Means-Testing: A Solution in Search of a Problem

I recognize the theoretical problem that this bill attempts to address – that because rent control in the District is not means-tested, it supposedly must be the case that rent control "subsidizes" wealthier households at the expense of the program's intended beneficiaries, or at the expense of market efficiency.

However, I have not seen one bit of data to support this argument. In fact, 1988 and 1990 reports by the Urban Institute – commissioned as part of the Rental Housing Act of 1985[8] – concluded that the District's rent control program is largely achieving its legislative purposes, which include enhancing affordability for

[8] See Margery A. Turner, "*Rent Control and the Availability of Affordable Housing in the District of Columbia: A Delicate Balance*" Urban Institute (1988); and Margery A. Turner, "*Housing Market Impacts of Rent Control: The Washington, D.C. Experience*," Urban Institute Report 90-1 (1990).

the Act's target population: moderate- and lower-income tenants.[9] Until contrary data emerges, there is simply no reason to believe that wealthier individuals and families in significant numbers will choose to move into rent controlled apartments, rather than opt for "the American dream" of owning a home or at least renting a newer market rate unit.

Furthermore, the purposes of the Rental Housing Act of 1985 include protecting both low-income and moderate-income tenants from "the erosion of their income from increased housing costs."[10] The income maximum would likely lead to wildly perverse results in this regard. Consider the possibility of a larger two-income family struggling to make ends meet and then losing one of those two jobs – a possibility that the COVID-19 crisis makes all too likely. That family would likely be excluded from the rent control program prior to the job loss, and would be stuck facing this burden in market rate housing. Now, what about a law student or medical student who earns little income while in school, but who stands an excellent chance of later securing a salary that is well in excess of the bill's income maximum? That student would nonetheless qualify to rent and remain in a rent controlled unit indefinitely.

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[9] D.C. Official Code § 42–3501.02.

[10] D.C. Official Code § 42–3501.02(1).

I am also very concerned about the high potential for unintended consequences this measure would create. First, it foreseeably creates a slippery slope towards a means-tested rent control program more like the subsidy program opponents of rent control have long advocated for. Second, the fact that there is no yearly recertification and no oversight under this bill encourages landlords to flout the law, rendering it meaningless. On the other side of the coin, requiring the government to audit landlords' compliance with the law would be incredibly administratively burdensome, and require an inordinate amount of staff time and resources compared with the very small magnitude of the problem this bill purports to address in reality.

Recommendation

For these reasons, my recommendation is that the Committee reject this measure and reject means-testing altogether.

Housing Provider Petitions generally

Regarding housing provider petitions, I strongly recommend that the Committee consider the merits of a single omnibus bill addressing all four housing provider petition types: substantial rehabilitations; capital improvements; hardships; and services and facilities. The needed reforms that are relevant to all

four petition types include: (1) requiring the housing provider to establish a replacement reserve account, which I have long advocated for; (2) requiring housing code compliance as a prerequisite to the filing and approval of petitions, which as I will discuss should be somewhat different for substantial rehabilitations; (3) rather than a permanent rent increase, making the adjustment a temporary surcharge until the housing provider recoups their costs; (4) rather than apportioning the total housing provider cost among affected units on a *pro rata* basis, doing so based on square footage so that larger units pay more and smaller units pay less; (5) prohibiting the landlord from selectively implementing the rent adjustment only on certain units for any unfair or illicit purpose; and (6) clarifying penalties to further incentivize housing provider compliance with all statutory and regulatory requirements.

While I am a strong advocate for efforts to make older rent control buildings energy efficient, I do have questions about the inclusion of green building requirements in the legislation. My understanding is that these requirements are not currently in the law, but rather codify guidelines for owners of residential properties drawn from "Green Communities" and "Energy Star" standards for appliances, which have been in effect for affordable housing in the

District since 2006.[11] This may be a good idea for rent controlled properties too, but may warrant consultation with the Committee on Transportation and the Environment to capture any crossing-cutting considerations.

B23-877 – the Substantial Rehabilitation Petition Reform Amendment Act of 2020

What This Bill Does

Now, I will address Bill 23-877, the "Substantial Rehabilitation Petition Reform Amendment Act of 2020." This bill helps stabilize rents and rent increases in rent controlled units by making what is currently a rent adjustment a temporary surcharge. The bill also clarifies that the temporary surcharge is not to be included in the rent charged for any purpose including calculating rent increases.

This clarification is absolutely critical to enhance the fairness of the petition process and to help maintain the affected unit's affordability. By correlating the duration of the rent surcharge to the housing provider's recoupment of costs, the housing provider is made whole and the rent increase is limited to actual costs incurred. Where the housing providers costs are fixed it is simply not fair to charge the tenant a rent increase that lasts in perpetuity.

[11] D.C. Official Code § 6–1451.03 ("Privately-owned building and projects").

The clarification of the applicable penalties for housing providers who collect or attempt to collect a rent surcharge without prior approval, including treble damages and civil fines, brings a much needed check to this process. Landlords that willfully and illegally enrich themselves at the expense of their tenants should not avoid incurring penalties.

B23-879 – the Capital Improvement Petition Reform Amendment Act Of 2020

What This Bill Does

B23-879, the "Capital Improvement Petition Reform Amendment Act of 2020," modifies the petition process by replacing the 96 or 64-month cost recovery period with the cost recovery period that is defined by the IRS.[12]

We are pleased that this bill reduces the maximum capital improvement per unit rent surcharge from 20% to 15%, and that it specifies that this newly established surcharge cap applies to any combination of two or more unexpired capital improvement rent surcharges. As we have noted before in previous hearings, landlords have exploited loopholes in this petition process to file more than one petition with different scopes of work for the same project. Then they impose separate surcharges in consecutive rent adjustments, each amounting to

[12] D.C. Official Code § 42-3502.10 (c)(1) & (2).

20% of the rent charged for an aggregate rent adjustment of over 40%, thus evading the 20% cap. This has resulted in unfair and illegal rent surcharges far beyond those intended in the law. Moreover, I applaud the Committee for clarifying that a capital improvement rent surcharge shall not be included in or calculated as part of the rent charged.

Recommendations for both the Capital Improvement and Substantial Rehabilitation Reform Bills

Because significant portions of these two bills are substantially identical, I will summarize our recommendations for both bills. I will also reiterate what I said at the outset, that the Committee should consider reforming housing provider petitions in an omnibus measure.

Replacement reserve funds

Housing providers should be required to establish a replacement reserve account as a condition precedent to the filing or approval of any housing provider petition. Besides being an industry "best practice," a replacement reserve account would lower the costs associated with petitions and, in the long term, should lower the number of filings in general.

By mandating that housing providers maintain and sufficiently fund a replacement reserve account, building maintenance, rehabilitation, planned upgrades, and replacement costs could be reduced or, ideally, entirely covered by rental revenues. Another missing issue directly related to replacement reserve accounts is the need to include a reserve analysis in both petition procedures. A reserve analysis allows housing providers to gain a better understanding of their inventory and its estimated useful life, as well as projected future costs. The information obtained from the reserve analysis is then used to determine the amount of funds that must be deposited in the replacement reserve account to cover the per unit yearly necessities. Housing providers should have a clear understanding of their property's needs and should plan ahead accordingly. If a particular property requires significant work and the funds in the replacement reserve account are not sufficient to cover the costs, then the housing provider may petition for a surcharge to recoup a portion of those costs.

Additionally, there are other avenues in the statute to help housing providers ensure a reasonable rate of return on their investment and increase profits when warranted. Through the combination of requiring that housing providers maintain a replacement reserve account and conduct a reserve analysis prior to filing a petition, we would help preserve more affordable rental units and

help maintain rents at a level that is more within reach of moderate and lower incomes tenants.

Elderly / Disability Exemption from Surcharges

As I have long advocated for, elderly and disability tenants should enjoy an exemption from any surcharge or rent adjustment for all petition types, not just the capital improvement petition.

Rent Administrator review for housing code compliance

Both the capital improvement and substantial rehabilitation bills include provisions requiring housing code compliance as a prerequisite for the Rent Administrator's approval. This is entirely appropriate and necessary for most petition types, but the substantial rehabilitation petitions are unique because disrepairs and code violations are generally the very reason why the petition is required in the first place. Accordingly, I believe the Committee should further consider whether other prerequisites would better suit the substantial rehabilitation petition.

OTA is pleased to see the inclusion of language specifying that the Rent Administrator will not accept a capital improvement petition, and will in fact

dismiss the petition outright, if the property is not in substantial compliance with the housing code. Landlords who allow their properties to fall into disrepair should not be allowed to pass the associated improvement costs on to their tenants and profit from their own irresponsibility.

However, this logically necessitates the inclusion of a requirement that housing providers present proof that all substantial code violations have been abated. Simply put, without records evidencing the abatement of the violations, how would we know that the property is in compliance with the statutory requirements? It should be no surprise that the petition process has been used to increase rents beyond what is allowed with the ultimate goal of displacing tenants. By mandating that landlords prove they have abated any existing housing code violations as a condition precedent to filing a petition, we ensure that tenants will not be paying out of pocket for bringing the housing provider's property into compliance.

Rent Administrator enforcement mechanism

Likewise, the 120-day period for the Rent Administrator to approve or deny a petition would add uniformity and predictability to the process. Similarly, there should be an enforcement mechanism to further strengthen the Rent

Administrator's oversight when housing providers selectively implement the rent surcharges for both petitions. Housing providers should have to notify the Rent Administrator as to which units are under selective implementation, the amount of the surcharge applied, and the rent charged. Correspondingly, the Rent Administrator will have to modify relevant forms to include the previously mentioned categories.

Tenant exceptions and objections

We also believe that specifying a timeframe for tenants to object to both a capital improvement and substantial rehabilitation petition filing, or any other housing provider petition filing, further strengthens tenant protections and the petition procedure itself. However, I believe tenants should be provided with a 60-day rather than 30-day deadline. This is because often there is no tenant organizations and tenants require time to organize, consult counsel and prepare their objections.

Selective implementation

I reiterate that for any housing provider petition type, the housing provider should not be allowed to extend the cost recovery period if the need for the

extension is due to the housing provider's own choice to selectively implement the approved rent adjustments only on certain units and not on others.

No preservation of approved surcharges

When a housing provider files for a capital improvement surcharge it is assumed that the surcharge is necessary to enhance the health, safety, and security of the tenants or the habitability of the property. However, once approved, there is no statutory time frame dictating when a housing provider must impose the approved surcharge. As a result, some housing providers hold on to the surcharge, using it as a de facto rent ceiling and waiting for the most opportune moment to impose it on their tenants. This suggests that the surcharge was not necessary to begin with. Consistent with the Rental Housing Commission's interpretation of the statute, I believe the bill should be amended to clarify that the approved surcharges cannot be held on to indefinitely but rather if unimplemented expire 12 months after they are approved.

Relocation assistance

I wish to bring to the Committee's attention the requirement in section 703 of the Act, that the housing provider must provide relocation assistance to any tenant who has been dislocated by either a substantial rehabilitation or a

capital improvement project.[13] That amount was supposed to be adjusted in 2006 and at least every three years thereafter. Despite that statutory requirement, the amount has not changed in at least 35 years. The current amount - $300 per room in the rental unit, plus $150 for each smaller area exceeding 60 square feet, is wholly inadequate. My written testimony cites the factors that need to be considered in recalculating relocation expenses triennially. I recommend that the Committee consider making whatever adjustment is appropriate to cover the period between 2006 and 2020, either through this legislation or as I am recommending an omnibus bill. We are happy to consult with the Committee about the relevant factors and the calculation.

Energy efficiency standards

Lastly, I again note that consultation with the Committee on Transportation and the Environment may be warranted.

[13] Under Title VII of the Act (DC Official Code 42-3507.01-03) relocation assistance applies to the four specific bases for eviction set forth in Title V at sections 501(f)(g)(h) and (i). This assistance applies to both capital improvement and substantial rehabilitation petitions if tenants must be relocated due to the project. The application to substantial rehabilitations is explicit at DC Official Code sec. 42-3505.01(h)(3) ("Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter"). The application to capital improvements is implicit in both section 501(f) itself, and in the capital improvement regulations at 14 DCMR 4210.9 ("If a proposed capital improvement requires that the affected tenant vacate the rental unit(s) the housing provider shall serve notice to vacate for alterations or renovations, according to § 501(f) of the Act. No notice shall be served until after the Rent Administrator has approved the capital improvement petition.")

B23-878 – the Voluntary Agreement Moratorium Amendment Act of 2020

What This Bill Does

B23-878, the "Voluntary Agreement Moratorium Amendment Act of 2020," would place a two-year moratorium on the approval of any voluntary agreements between landlords and tenants under rent control to increase the rent beyond what rent control would normally allow.

Voluntary Agreements Have Decimated Affordability in Rent Control Housing and Have Unfairly Disadvantaged Tenants

I applaud you, Chairperson Bonds, for introducing this legislation to put in place at least a temporary stop-gap to the loss of affordability caused by voluntary agreements, so that the Council can consider a more permanent solution. Voluntary agreements have caused greater loss of affordability in rent control housing than any other type of petition available to landlords under rent control. One could refer to buildings whose rents have soared due to voluntary agreements as "RINOs" – Rent Control in Name Only.

Furthermore, voluntary agreements present unfair disadvantages to tenants under current law. First of all, a mere 70% of tenants who vote "yes" on a

voluntary agreement can obligate the other tenants[14] to onerous rent increases that they would not have expected to see while living in rent control housing. Voluntary agreements are also passively approved if the Rent Administrator does not approve or disapprove them within 45 days;[15] there is no telling how many voluntary agreements have been passively approved over the years. Furthermore, landlords are not required to adhere to a timetable for completing repairs and improvements promised as part of the voluntary agreement, and rent increases are often put in effect while landlords drag their feet on their end of the bargain. Another major problem with voluntary agreements, about which I testified before this Committee recently, is the fact that current tenants can obligate future tenants to the rent increases stipulated in a voluntary agreement while holding themselves harmless for the duration of their tenancies. Coercive tactics are often used to get tenants to sign voluntary agreements they would not have otherwise approved, and the law does not guarantee an adequate, fair opportunity for tenants with objections to a voluntary agreement to be heard before its implementation.

Finally, although this is not an exhaustive list of the perils and pitfalls of voluntary agreements, I will note the problematic nature of automatic approvals

[14] D.C. Official Code § 42–3502.15(a).
[15] 14 D.C.M.R. 4213.13.

of voluntary agreements (as opposed to passive approval): a voluntary agreement is automatically approved if the rent is adjusted by the same percentage for all tenants in the accommodation – notwithstanding other factors that might have been scrutinized had the agreement not been automatically approved. The original provision for immediate approval of voluntary agreements in the Rental Housing Act of 1977 tied automatic approval to the agreement's necessity for achieving compliance with the housing code,[16] but this context was unfortunately stripped from later versions.

Recommendations

I recommend that the Committee first approve this moratorium legislation, and then move as quickly as possible to abolish voluntary agreements. The Council should consider looking elsewhere besides voluntary agreements to solve the problems that they attempt to address. Landlords have access to other petition types if they need to increase the rent to cover expenses, and these regulate the associated rent increases more rationally while not presenting the opportunities for tenant coercion that voluntary agreements present. Furthermore, landlords should be required to fund replacement reserve accounts for their properties, enabling them to afford predictable and regular

[16] D.C. Law 2-54, § 208 (effective March 16, 1978).

replacements and repairs over time rather than being forced to resort to an "escape valve" from rent control such as a voluntary agreement or petition.

Over the past decade and a half, OTA has advocated for numerous reforms to the voluntary agreement process. These have included procedural reforms such as allowing tenants 21 days to submit written objections and authorizing the Rent Administrator to include those objections in referring the case to the Office of Administrative Hearings. We have also advocated for more substantive reforms such as counting any unit as a "no" vote if it is vacant as of the filing of the voluntary agreement, requiring rent increases to be justified by supporting documentation, allowing tenants to withdraw their signatures within a 14-day "cooling off" period, and authorizing the Rent Administrator to revoke the agreement if the landlord has not commenced or completed promised work within a reasonable time.

OTA would be happy to discuss all of these recommendations with members of the Committee in more detail in the context of more substantive revisions to the law surrounding voluntary agreements, but at this time my recommendation is that the useful life of the voluntary agreement has ended, and that it should simply be done away with in the interest of preserving affordability

and holding landlords accountable for the expenses of maintaining their buildings. While in the past OTA has long taken a "mend, don't end" approach to voluntary agreements, they have strayed from their original purpose to fast-track housing code compliance.

Conclusion

I wish to thank you, Chairperson Bonds, for holding this hearing today, and I urge the Committee to consider our recommendations as you determine how and whether to move forward on this legislation. I conclude my testimony at this time, and I welcome questions from you, Madam Chair, and other members of the Committee.