Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing on:
Bill 23-0149, the "Fair Tenant Screening Act of 2019"

Committee on Government Operations
The Honorable Brandon T. Todd, Chairperson
Council of the District of Columbia

on

Tuesday, October 27th, 2020
12:00 p.m.
Via Virtual Platform

As the District's Chief Tenant Advocate at the D.C. Office of the Tenant Advocate, I am pleased to submit for the record this testimony regarding Bill 23-0149, the "Fair Tenant Screening Act of 2019." I thank Councilmember Trayon White for introducing this measure, and I thank you, Chairperson Todd, for the Committee's consideration on October 27th.

Context

Too many landlords – together with the screening companies they may employ – use unfair and irrelevant screening criteria to avoid renting to our most vulnerable residents, including voucher holders and tenants with any eviction record regardless of context. Usually the applicant never knows the criteria used for screening purposes, or the specific reasons why the application was denied. This results not only in endless frustration, but also in the depletion of the applicant's scarce resources – in terms of both the time and the money it takes to keep trying and submitting applications.

What the bill does

Bill 23-149 would establish a comprehensive screening framework that District landlords must adhere to when determining whether to rent to a particular applicant. This framework would bring long needed clarity, fairness, and transparency to a process that has for too long been shrouded in mystery.

I support this measure, and I urge the Council to couple it with the related protections included in the pending record-sealing legislation – which I testified in favor of at the Committee's joint hearing with the Committee on Housing and Neighborhood Revitalization on October 30th.[1]

The provisions of Bill 23-149 that I believe are especially important include:

1. *Disclosure requirements* -- the amount of the monthly rent and all associated fees; an explanation of the screening process; and the eligibility criteria to be applied;

2. *Prohibited criteria for screening any tenant* -- previous eviction actions that were unsuccessful or that were filed two or more years prior to the application; eviction actions involving lease violations alleged to have happened two or more years prior to the application, or that relate to the disability of a prospective tenant or household member, or that stem from incidents of domestic violence or from a crime committed against the tenant; and legal action initiated by the prospective tenant against a previous landlord.

3. *Prohibitions regarding voucher tenants* -- charging them higher application fees than other applicants are charged; screening for any history of nonpayment or late payment of rent or credit issues that occurred prior to participation in a subsidy program; and inquiring into or considering a voucher tenant's income level or credit score at all – which is irrelevant due to the landlord's contractual subsidy and program's determination as to the amount of the tenant's portion of the rent.

4. *A written notice of denial* which the landlord must provide to the applicant: (1) a copy of any third-party information used in the screening process; and (2) a statement informing the prospective tenant of their right to dispute the accuracy of the information.

[1] Bill 23-338, the "Eviction Record Sealing Amendment Act of 2019"

5. *Tenants' right to refute the grounds for the denial* within 48 hours due to inaccuracy or error, or unlawful criteria, or mitigating circumstances.

6. *Return of the application fee* if the applicant was not screened for any reason.

7. *The "D.C. registered agent" requirement for screening companies* for the purpose of service of process.

8. *Penalties* for non-compliant landlords tiered by portfolio size – landlords who own 3 to 10 rental units could be fined up to $ 1,000; 11 to 19 rental units could be fined up to $2,500; 20 or more rental units could be fined up to $5,000. These fines would be in addition to the existing base penalties for violations of the Human Rights Act of up to $10,000 for the first violation and up to $50,000 for multiple violations.[2]

Recommendations

Notice to applicants of housing provider's standard screening procedure

Transparency and fairness dictate that (1) the landlord should apprise each applicant as fully as possible of the procedure the landlord intends to use; (2) the landlord should ensure that the same procedure is applied to each applicant as even-handedly as possible; and (3) all parties should be put on the same page regarding the applicable legal requirements and legal rights.

The provisions of the bill relating to a new section 225(a)(2) of the Human Rights Act of 1977 ("written screening and admission criteria") are a good start. However, we recommend that the Committee consider expanding them to more

[2] D.C. Official Code, Title 2, Chapter 14. Human Rights, § 2–1403.13. (E -1).

specifically require the landlord to (1) use a standard screening procedures document that conforms to all legislative requirements; and (2) provide each rental applicant with a summary of the document as a part of the application form.

To advance the goals of clarity, consistency, and efficiency for the sake of applicants and landlords alike, we further recommend that the appropriate agency be required to create a uniform screening procedures document. We envision such a uniform document would be created pursuant to rulemaking authority, and would be informed by existing administrative or regulatory documents that are already widely used, including the U.S. Department of Housing and Urban Development ("HUD") "Occupancy Requirements of Subsidized Multifamily Housing Programs"[3] and the regulations pursuant to the Real Estate Settlement Procedures Act (RESPA).[4]

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[3] See HUD Housing Handbook 4350.3, "Occupancy Requirements of Subsidized Multifamily Housing Programs," Chapter 4 "Waiting List and Tenant Selection" (in particular sections 4-7 through 4-9, and sections 4-27-28 relating to "screening for suitability"), available at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3.

[4] 12 Code of Federal Regulations, § 1024.41(c)(1)(ii), available at https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1024/41/.

Strengthen the applicant's ability to challenge a denial

The Committee should also strengthen a prospective tenant's ability to challenge the denial of an application and have that determination reversed. Notwithstanding the required written notice of a denial, the landlord is not required to act upon or respond to the applicant's refutation of the grounds therein. This could render the right to a denial notice meaningless. I suggest that the Committee consider requiring the landlord to at least provide a written good faith rationale for continuing to deny the application within 72 hours after receiving the applicant's evidence. This would reinforce a core purpose of the legislation – avoiding arbitrary denials.

Denials based on credit score

Denying a rental applicant solely based on credit score should be prohibited, as it is under Bill 23-940, the "Fairness in Renting Emergency Amendment Act of 2020" (approved on October 6, 2020)[5]. As we know, a person's credit score by itself does not necessarily reflect accurately the ability to pay rent now and in the future.

[5] "(c) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider." B23-0940 - *Fairness in Renting Emergency Amendment Act of 2020,* section 510(c).

Application and other upfront fees

As I have testified about in other contexts, I strongly encourage the Committee to consider prohibiting excessive or inappropriate fees during the rental application process, particularly ones that are demonstrably profit-motivated. Application fees should serve the specific purpose of covering actual screening costs the landlord may incur. For example, the application fee itself should be capped at no more than $40, which we have determined is the high end of the industry average. Additionally, the Committee should specify that (1) the purpose of any hold fee should be defined and should not exceed $250; (2) if the application is denied the fee must be returned to the applicant; (3) if the applicant is approved the fee must be applied towards the applicant's security deposit; and.

First-in-time

Last year, Seattle enacted legislation that requires the landlord to offer the unit to the first qualified applicant who submits a completed application. I urge the Committee to consider incorporating such a provision in Bill 23-149 to further curtail discriminatory screening practices.[6]

[6] Seattle, Washington - Municipal Code, Title 14 – Human Rights, Chapter 14.08 – Unfair Housing Practices, §14.08.050 - First-in-time.

Administrative evaluation of the law's impact

The Seattle ordinance is administered and enforced by the Seattle Office for Civil Rights (SOCR) that is charged with providing technical assistance to landlords. The ordinance requires that SOCR (jointly with another Seattle agency) issue an 18-month report on (1) the law's impact on discriminatory screening practices and (2) the ability of low-income and limited English proficiency individuals to obtain housing. I recommend that the Committee consider amending the bill to include such a provision, particularly if it also decides to include the "first-in-time" rule. The primary purpose of the report would be to prompt Council reconsideration of this requirement in the event that it fails to meet its policy objectives.

Background screening companies

While the legislation requires background screening companies to maintain an agent for service of process, it does not provide clear requirements or standards under which a screening company could be held accountable in court. I recommend that the Committee consider prohibiting such companies from including in screening reports issued in the District any information that the landlord is prohibited from considering.

Cross-comparisons and conformities

For the sake of consistency and best practices research, I recommend the Committee consider whether and how this legislation compares with any other relevant screening guidelines, particularly those that already apply to some District renters. For example, the U.S. Department of Housing and Urban Development's "HUD Occupancy Requirements for Subsidized Multifamily Housing Programs" includes tenant selection restrictions, including for instance how to screen for credit history**,** minimum income requirements, and rental history; in addition, the requirements for notices of denial include the applicant's right to respond, including guidance regarding the landlord's consideration of mitigating circumstances. Again, my point here is to encourage us, as policy-makers, to build on analogous experiences in order to take into account any lessons learned, and fashion consistencies that may better serve landlords and tenants alike.

Similarly, I urge the Committee and the Council to conform the overlapping provisions in the relevant legislation enacted and considered to date, including the Fairness in Renting Emergency Amendment Act as well as Bill 23-149 and Bill 23-338. For example, there is inconsistency between the two-year prohibition on

eviction history “look-back” in Bill 23-338, versus the three-year prohibition in the Fairness in Renting Emergency Amendment Act.

Conclusion

In conclusion, Chairperson Todd, I again thank you for holding a hearing on this important legislation. I look forward to working with you and with the Council as it moves forward.