Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Joint Public Hearing on:
Bill 23-0338, the "Eviction Record Sealing Authority Amendment Act of 2020"

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson
and
Committee on Government Operations
The Honorable Brandon T. Todd, Chairperson
Council of the District of Columbia

on

Friday, October 30th, 2020
12:00 p.m.
Via Virtual Platform

Good afternoon, Chairperson Bonds and Chairperson Todd, members of both Committees, and staff. I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate. Today I offer my strong support for Bill 23-338, the "Eviction Record Sealing Authority Amendment Act of 2019." I wish to thank Councilmember Cheh for introducing this important legislation, and I wish to thank both of you, Chairperson Bonds and Chairperson Todd, for holding this joint hearing. The legislation will make it easier for many District renters to obtain rental housing in the future, and -- as we near the end of the public health emergency -- will do so at a critical time both for District renters and for life in the District of Columbia.

Context

The importance of sealing eviction records

An eviction record is too often an unfair and sometimes even an arbitrary barrier to affordable rental housing. An eviction record can be an albatross around the neck of a prospective tenant who is fully able to pay rent and would demonstrably be a good tenant. In a typical year, roughly 32,000 eviction actions

are filed against 18,000 renter households, or roughly one in ten renter households in the District of Columbia.[1]

The facts are that many of these filings do not result in an eviction -- 69 percent end in dismissal[2]; many rental applicants have resolved the financial problems that led to a previous eviction action against them, but are serially denied rental housing on that basis; and screening companies produce harmful reports based on a single eviction action that either lack critical context, or contain basic errors, including even the identity of the subject of the action.

More fundamentally, too many landlords falsely assume that the mere fact of an eviction record, regardless of circumstances, means that the applicant is unfit to be a tenant. The bottom line is that a tenant who has had no eviction action taken against them for some period time should not be repeatedly denied rental housing opportunities. Nor should the stigma of an eviction forever bedevil a rental applicant's search for rental housing. Nor should a *de minimis* one-time arrearage or explainable circumstance, or indeed error, deal a mortal blow to any future lease application.

[1] Georgetown University McCourt School of Public Policy, "Eviction in Washington DC: Racial and Geographic Disparities in Housing Instability" (Fall 2020), page 5, available at https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap.
[2] Id.

The impact of COVID-19 on eviction records

Some have asked why this legislation -- and why the Council's other recent eviction-related legislation -- is necessary in the midst of a moratorium on eviction filings, much less one that will last for at least several more months. Given the ongoing health emergency which prompted the moratorium -- and given the rental housing crisis that we know will ensue as soon as the moratorium is lifted -- that is a question that I believe virtually answers itself. Thousands of District renters will soon face eviction solely due to financial hardships caused by the COVID-19 pandemic. According to some estimates, there will be between 20,000 and 40,000 eviction filings within just a few months after the moratorium ends, compared to the annual average of 32,000.

Many tenants will continue to experience unprecedented financial turmoil caused by a pandemic that they had no way of expecting or planning for. Many will continue to be unable to pay their rent, and many more will be unable to predict future income well enough to enter into a meaningful rent payment plan. In short, an unprecedented number of tenants are at risk of being the target of an eviction action, and without this legislation will be at risk of having that red flag on their rental histories for any future prospective landlord to see.

It is true that we cannot expect landlords, especially small landlords, to carry the financial burden of rent arrearages indefinitely, and therefore we cannot extend the eviction moratorium indefinitely. We should, however, do all we can to ensure that tenants who have been so cruelly and unfairly impacted by COVID-19 will not have to pay an unnecessary and avoidable price for this misfortune indefinitely.

So now is exactly the right time for the Council to take decisive action, and to enact appropriate record-sealing and other eviction-related protections. Indeed, despite the Council's emergency prohibition on eviction filings, the D.C. Superior Court has decided to accept such filings subject to show-cause orders. These orders require landlords to demonstrate why such filings should not be dismissed. That is a cautious but appropriate response to the unlawful filings. But the fact remains that new COVID-related eviction records are now being created against potentially hundreds if not thousands of tenants, most of whom never dreamed they would ever be in this situation, and wouldn't be but for the the economic havoc caused by the pandemic.

What the bill does

Eviction record sealing

Bill 23-338 would require D.C. Superior Court to seal all court records related to an eviction proceeding within 30 days of the final resolution of any unsuccessful eviction action. In all other eviction cases, the Court would have to seal the records three years after final resolution.[3]

The bill would also give the Court the discretion to seal an eviction record upon a tenant's motion to seal due to special circumstances. The bill's enumerated circumstances include the amount of rent nonpayment was $500 or less; the unit was subject to a project-based or tenant-based subsidy; the tenant was retaliated against either under the Rental Housing Act[4] or for filing a discrimination claim under the Human Rights Act of 1977[5]; the landlord violated District housing[6] or property maintenance[7] regulations in relation to the tenant's unit; the eviction was related to an instance or instances of domestic violence, sexual assault, or stalking, where the tenant was the victim[8]; or the parties

[3] This provision is substantially similar to a provision included in Bill 23-940, the "Fairness in Renting Emergency Amendment Act of 2020" (approved October 6, 2020), now pending Mayoral action.
[4] D.C. Official Code § 42-3505.02.
[5] D.C. Official Code § 2–1402.21.
[6] 14 D.C.M.R. § 100 *et seq.*
[7] 12G D.C.M.R. § 100 *et seq.*
[8] D.C. Official Code § 3505.01(c-1).

entered a settlement agreement that did not result in the landlord recovering possession of the unit.

If the Council adopts this legislation, it would be following in the footsteps of other jurisdictions that have enacted eviction record sealing laws. California[9], Colorado[10], and Virginia[11] and other jurisdictions have enacted eviction record sealing laws that at minimum cover cases where the tenant prevails. The California law goes further by requiring record-sealing by default unless the landlord prevails within 60 days of filing.

Discrimination prohibition

To complement these record sealing provisions, Bill 23-338 also amends the Human Rights Act of 1977[12] to prohibit discrimination in housing based on the knowledge or belief that a person has a sealed eviction record. The bill accomplishes this by adding "sealed eviction record" to section 221's list of traits[13] on the basis of which discrimination is already prohibited in a number of contexts, including but not limited to terminating or refusing to enter into a transactional relationship; requiring additional terms or conditions for a transaction; and refusing or restricting services, facilities, or repairs. The bill

[9] California Code of Civil Procedure § 1161.2.
[10] Colorado Revised Statutes § 13-40-110.5.
[11] Va. Code Ann. § 8.01-130.01.
[12] D.C. Official Code § 2–1401.01 *et seq.*
[13] D.C. Official Code § 2–1402.21(a).

further amends section 221 to prohibit the landlord from requiring a rental applicant to disclose the existence of a sealed eviction record.

Required notices

Lastly, the bill requires the landlord to provide the tenant with two separate notices. First, the landlord must provide the tenant with a 30-day notice to vacate for nonpayment of rent before filing an eviction action in D.C. Superior Court, or the Court must dismiss the action.[14] Currently, the Rental Housing Act requires that a Notice to Vacate must be provided to the tenant for an eviction action on any grounds other than nonpayment of rent, which is the sole basis for eviction for which the tenant may waive the right to that notice. The bill essentially repeals this exception, thus making the Notice to Vacate a prerequisite for any eviction action, including one for nonpayment of rent. I support this requirement for many reasons, including that it would provide the tenant with greater opportunity to set the record straight if the nonpayment claim has been made in error. The OTA has seen clients who have experienced arrearage claims made in error, and we know it can have devastating consequences.

Second -- separate and apart from the 30-day notice to vacate -- the legislation requires the housing provider to provide the tenant with a notice of

[14] This provision is substantially identical to a provision included in emergency legislation now pending Mayoral action. See Bill 23-940, the "Fairness in Renting Emergency Amendment Act of 2020" (approved October 6, 2020).

their specific intention to file a claim against the tenant in the event that the tenant does not vacate the unit within the 30-day notice to vacate period. Our understanding is that the two 30-day notices may run simultaneously. This requirement also makes good sense. Some landlords can and do issue Notices to Vacate without ever filing an eviction action in court following the notice period, for example where the nonpayment of rent is for a *de minimis* amount. Simply put, a Notice to Vacate is not the same thing as the filing of an eviction action. Thus, it is imperative that a tenant be *specifically* notified as to the housing provider's intentions, and as to the tenant's own legal jeopardy.

Recommendations

I would offer the following recommendations:

Sealing of pandemic-related eviction records

First, I recommend that the Council consider adding to the list of special circumstances that warrant a judicial determination that an eviction record should be sealed. I believe a tenant's ability to show that the eviction action for nonpayment of rent was solely due a pandemic-related financial hardship belongs on that list.

Leases and the nonpayment of rent notice to vacate requirement

I recommend that the bill be amended to better effectuate the newly required non-waivable 30-day Notice to Vacate for nonpayment of rent. Specifically, I recommend that the now standard lease clause where upon the tenant waives that notice be added to the list of prohibited lease clauses at Section 304 of Title 14 of the District of Columbia Municipal Regulations. This would add regulatory penalties to any statutory penalties that apply to violations of this requirement. It would also promote one-stop-shopping for responsible landlords and their agents whose goal is to comply with the relevant regulatory requirement. For the benefit of current tenants, the Committees should consider including requiring a lease addendum or at least landlord notification that any such waiver clause is null and void.

Conclusion

In conclusion, Chairperson Bonds and Chairperson Todd, I thank you both for holding this hearing on this important piece of legislation. This concludes my testimony and I am happy to answer any questions you may have at this time. I would also welcome the opportunity to work with you towards any refinement of the bill you may determine is necessary.