
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Public Oversight Hearing on:

**An Equitable End to Safety Net Protections Put in Place During the COVID-19
Pandemic**

Special Committee on COVID-19 Pandemic Recovery
The Honorable Charles Allen, Chairperson
The Honorable Vincent C. Gray, Chairperson

on

Friday, May 21st, 2021
9:00 a.m.
Via Virtual Platform

1. Introduction

Good morning, Chairperson Allen, Chairperson Gray, members of the Committee, and staff. I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate. I thank the Committee for this opportunity to discuss the District's COVID-related tenant protections, and how we can most equitably transition them to a post-COVID environment. Our elected officials will determine the date upon which the Public Health Emergency (PHE) will end. But, as we all know, there is no such on-off switch for the pandemic's devastating and lingering impact on the lives of most District residents. Today I will speak to the importance of bold but thoughtful strategies that take into account the ongoing challenges, and the ongoing distress, that many District renters will confront in the months following the end of the PHE.

2. Context

a. The Importance of COVID-19 Safety Net Protections

Even before the COVID-19 pandemic, as we all know, the District had an affordable housing crisis. Almost half of DC's 163,000 renter households were rent-burdened¹ and 26,000 of extremely low-income households paid half or more of

¹ McCabe, Brian J. and Eva Rosen, "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability (Fall 2020), Available at: <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

their monthly income towards rent -- a threshold HUD classifies as “severely housing cost burdened.”² From 2014 to 2018, approximately 32,000 residential evictions were filed with the Court on a yearly basis, 93 percent of which were filed for nonpayment of rent.³

With widespread job losses, COVID-19 has further compounded an already precarious situation for many tenants struggling to make ends meet. Moreover, the health as well as housing impacts of the pandemic have put a spotlight on pre-existing socioeconomic and racial inequalities. Although less than half of the District’s residents are Black, as of May 17, 2021, Black residents have accounted for 76 percent of COVID-19 deaths.⁴ According to a March 2021 report by the Consumer Financial Protection Bureau, “Black and Hispanic households were more than twice as likely to report being behind on their payments than White households,” and suffered from higher unemployment rates than their White counterparts.⁵

I commend the Council and the Mayor for responding to the plight of renters

² D.C. Fiscal Policy Inst., A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents 3 (December 8, 2016), Available at <https://www.dcfpi.org/all/a-brokenfoundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

³ McCabe, Brian J. and Eva Rosen, “Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability (Fall 2020), Available at: <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

⁴ District of Columbia COVID-19 Surveillance Data, Accessed here: <https://coronavirus.dc.gov/data>.

⁵ Consumer Financial Protection Bureau, “Housing insecurity and the COVID-19 pandemic,” (March 2021), Available here: https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

by enacting a number of emergency and temporary safety net protections which have truly helped to preserve their health and their housing. The eviction moratoria in particular has helped District renters stay home and healthy; and have helped to mitigate the spread of the disease in our city.⁶

b. Next Phase: The New Normal

While we are hearing good news regarding increasing vaccination rates⁷ and declining COVID-19 cases⁸, the economic picture is more mixed. Signs of recovery are mixed with statistics regarding unemployment compensation claims -- 200,825 were filed between March 2020 and May 2021⁹ -- and the unemployment rate, which remains 2.6 percent higher today than it was in March 2020.¹⁰ Moreover, 66,400 jobs lost during the pandemic still have not been recovered -- which represents an 8.3 percent job loss.¹¹

Simply put, many renters in the District in order to avoid eviction will continue to need the government's support during the post-pandemic period.

⁶ Jowers, Kay, et al., National Bureau of Economic Research, "Housing Precarity and the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties," (January 2021), Available here: https://www.nber.org/system/files/working_papers/w28394/w28394.pdf?utm_campaign=PANTHEON_STRIPPED&%3Butm_medium=PANTHEON_STRIPPED&%3Butm_source=PANTHEON_STRIPPED.

⁷ District of Columbia COVID-19 Vaccination Data, Accessed here: <https://coronavirus.dc.gov/data/vaccination>

⁸ District of Columbia COVID-19 Reopening Metrics, Accessed here: <https://coronavirus.dc.gov/page/reopening-metrics>

⁹ District of Columbia's Department of Employment Services, "Unemployment Compensation Claims Data" (May 19, 2021), Accessed here: <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

¹⁰ The unemployment rate went from 5.2% to 7.8%. See: U.S. Bureau of Labor Statistics, "State Employment and Unemployment Summary," (April 16, 2021), Available here: <https://www.bls.gov/news.release/laus.nr0.htm>.

¹¹ The District's employment went from 798,300 to 731,900. See: U.S. Bureau of Labor Statistics, "State Employment and Unemployment Summary," (April 16, 2021), Available here: <https://www.bls.gov/news.release/laus.nr0.htm>.

Compared to the average of 32,000 evictions filed annually as I noted earlier,¹² Census data suggests that the District could see as many as 67,900 eviction filings upon the lifting of the eviction moratoria.¹³ It is estimated that the average renter household in the country could owe anywhere from \$1,740 to \$6,039 in rent arrears,¹⁴ and that 18,782 to 67,973 of renter households in the District could be at risk of eviction.¹⁵ Extrapolating from this data, District renters could conceivably owe an aggregate rent amount in the range of between \$32,680,000 and \$410,488,000.¹⁶

Fortunately, the federal government has stepped up with funding to help the states manage this rent arrearage crisis. As part of the American Rescue Plan and the Consolidated Appropriations Act of 2021, Congress allocated a total of \$352

¹² McCabe, Brian J. and Eva Rosen, "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability (Fall 2020), Available at: <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

¹³ As of April 26, 2021, an estimated 18,782 to 67,973 of renter households in the District could be at risk of eviction based on data provided by the U.S. Census Bureau and NLIHC.

As of April 26, 2021, of those surveyed, the U.S. Census Bureau found that ~41.51% of District renters are either very likely or somewhat likely to have to leave their home in the next two months due to eviction and at least 11.47% of District households that rent are not caught up on rent payments. See: The United States Census Bureau, "Week 28 Household Pulse Survey: April 14-April 26, (May 5, 2021), Available here: <https://www.census.gov/data/tables/2021/demo/hhp/hhp28.html>, https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing3b_week28.xlsx, https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing1b_week28.xlsx. NLIHC estimates that there are 163,751 renter households in the District. See: National Low Income Housing Coalition, "Out of Reach 2020: District of Columbia," Available here: <https://reports.nlihc.org/oor/district-columbia>.

¹⁴ There are several estimates, this article gives a breakdown on some research that has been done in this area: Goodman, Laurie, Kathryn Reynolds, and Jung Hyun Choi, Urban Institute, "Many People are Behind on Rent: How Much Do They Owe?" (February 24, 2021), Available here: <https://www.urban.org/urban-wire/many-people-are-behind-rent-how-much-do-they-owe> (Internal citations omitted).

¹⁵ Cf. supra note 14.

¹⁶ This estimate was calculated based on the fact that an estimated 18,782 to 67,973 of renter households in the District could be at risk of eviction and the estimated range for how much households owe based on a few national studies is \$1,740 to \$6,039 on average/household. Cf. supra notes Cf. supra notes 14 and 15.

million in emergency rental assistance to the District to help families with rental and utility arrears. In turn, Mayor Bowser has launched the Stronger Together by Assisting You (STAY) DC Program to deploy this funding and help District renters avoid eviction and utility shutoffs.¹⁷

3. The STAY DC Program and evictions for non-payment of rent

This past Tuesday -- in conjunction with Bill 24-248, the “Coronavirus Public Health Extension Emergency Amendment Act of 2021” -- the Council considered the legislative idea of tying together (1) a partial lifting of the eviction moratorium for nonpayment of rent cases and (2) the District’s interest in maximum utilization of STAY funding during the limited time that it may be available. I appreciate the fact that the Council voted unanimously to defer consideration of this measure until June. It did so with the hope and expectation that logistical hurdles to getting STAY DC funding into landlords’ bank accounts -- and relieving tenants of the burden of rent arrearages accumulated during the pandemic – will be largely resolved.

Certainly I support the notion that eviction actions for non-payment of rent should not be permitted in the aftermath of the public health emergency without landlords first making recourse to the available rental assistance. We know that the

¹⁷ District of Columbia, Stay DC, “About Us,” Available here: <https://stay.dc.gov/node/1535851>.

eviction moratoria cannot last forever; and this coupling of the tenant and landlord's mutual interests, as well as the District's interest in the timely use of federal funds, makes good sense. However, before lifting the eviction moratoria, we should be certain that there are no impediments to the timely processing of applications and the delivery of assistance checks. As we learned on Tuesday, due to design flaws and logistical problems, only 500 payments or so have been issued by the STAY DC program¹⁸. I concur that solutions to these accessibility problems need to be implemented prior to the lifting of the eviction moratoria.

4. Concerns with the STAY DC Program

Accessibility: Design Improvements

Eliminate Duplicative Requests

The current STAY DC application design allows both landlords and tenants to apply to receive STAY DC assistance. However, in instances where a landlord applies first, currently the system requests duplicative information from landlords and tenants. We believe that any request for duplicative information should be removed and the process streamlined to make it as simple for tenants as possible. Where a landlord initiates the STAY DC application process, we believe tenants should only have to (1) review the application; (2) provide any needed information

¹⁸ May 18, 2021 Legislative Meeting.

that cannot be provided by the landlord; (3) be given the opportunity to correct any inaccuracies in the application; and, (4) sign in the designated spaces of the same application as necessary.

Allow for Tenants to Self-Attest with Respect to Proof of Income and the Amount of Rent Owed

The main goal of STAY DC cannot be met if the program retains overly burdensome documentation requirements. It is not uncommon for tenants to have issues with collecting and/or keeping documentation. Additionally, some tenants may receive income payments and/or make rental payments without a paper trail to corroborate these transactions. Allowing tenants to self-attest to prove their income and the amounts of past due rent owed -- as contemplated in the final draft of Bill 24-248 prior to its consideration on Tuesday -- would further the greater goal of making sure that as many eligible tenants as possible are able to easily access the emergency rental assistance funds.

Raising Awareness About the STAY DC Program

Since the start of the pandemic, the OTA's Education and Outreach Branch has stepped up and has worked hard to inform the community about the COVID-19 protections that are available to tenants. For example, they have distributed over 3,000 flyers to individuals/households experiencing food insecurity through

DC Central Kitchen; provided 16 Renters' Rights courses from January 2021 to May 20, 2021; and, attended ANC meetings, whose collective audience was more than 1,014 people, targeting wards with renters at risk of eviction to inform them of the PHE tenant protections.

Since the announcement of the STAY DC program, the Education and Outreach Branch has included in its outreach efforts initiatives on how to reach out to tenants about the new program. The Education and Outreach Branch:

- Has worked on obtaining paid advertisements in the Washington Post, WAMU (radio), and DCist in order to disseminate both OTA legal assistance and STAY DC information to the greater DC community; and,
- Will begin distributing a new flyer with information about STAY DC to individuals/households experiencing food insecurity.

The OTA completely agrees with what we believe was the Council's consensus on Tuesday as to the imperative of using all outreach tools to make tenants and landlords alike aware of the STAY rental assistance. We look forward to expanding our outreach efforts in collaboration with the agency's governmental and community partners.

Landlord Certification Regarding the Amount of Rent Arrearages

As a part of the application process, the OTA believes that landlords should be required to certify that they have not imposed rent increases in violation of the COVID-19 law's freeze on rent increases. For rent control units, landlords should have to certify that the calculation of rent arrearages are based on the actual rent charged -- not on a higher pre-concession amount that may still be unlawfully on file with the Rent Administrator. At minimum, the landlord should have to certify in the application for STAY DC funding that the amount of assistance requested does not include any unlawful rent increase.

5. Legislative Recommendations

Landlord Participation in Rental Assistance Programs

The OTA supports the concept of prohibiting landlords from filing eviction actions for non-payment of rent unless they have applied for rental assistance on behalf of the tenant's behalf. We further recommend that any such legislation also explicitly prohibit any eviction for non-payment of rent where the landlord has refused STAY DC rental assistance. Such a requirement promotes everyone's interest since the objective is to help ensure that the debt to the landlord is paid; the chances are slim that the landlord will be made whole *after* the tenant has been evicted.

Rental Payment Plans

The OTA recommends requiring the landlord to certify in the application for STAY DC funding that a rental payment plan will be made available to the tenant regarding any rental arrearages that accrued during the PHE but not paid for by the program.

Evictions Based on Rental Assistance Processing Times Not Within the Tenant's Control

The OTA believes no tenant should be put at risk of eviction where the tenant has timely completed their application for rental assistance, but the timeframe for payment to the landlord is not met due to circumstances outside the tenant's control. We request that the Council heed this principle in any reconsideration of the eviction measure that was removed from Bill 24-248 this past Tuesday.

6. Other Tenant Protections in the PHE Law

Rules for Masks and Cleaning Common Areas

The OTA has heard from many tenants who are anxious about changes to the rules regarding the use of masks and the cleaning of common spaces. The concerns mainly come from larger buildings with greater numbers of elderly tenants and tenants with disabilities, who are understandably anxious about regularly coming into contact with others, not knowing whether they have or have not been

vaccinated. Clear and cautious guidelines seem especially warranted in these circumstances. The OTA recommends that the Mayor, the Council, and our health officials pay special attention to these common concerns as the District transitions to a post-COVID environment.

Supports for Displaced Tenants During Renovations

Throughout the PHE, the OTA has dealt with rampant code violations in larger buildings that has led to both building closures and tenant displacement when renovations finally happen. These situations expose a couple of related concerns. First, tenant's needs for financial assistance often go well beyond what the OTA's Emergency Housing Assistance Program (EHAP) can provide -- not just to pay for relocation and other housing needs, but also to pay for food and other daily expenses. Second, housing providers should be required to maintain replacement reserve accounts, funded through regular deposits from a portion of rental revenue, to pay for regular maintenance and repair needs. Third, the agency's EHAP experience highlights the need to reassess how the Nuisance Abatement Fund is used and how much funding it receives. We look forward to discussing this further with the Council and the Mayor.

Amenity Fee Refunds for Rent Controlled Units

The current COVID-19 law requires landlords to provide refunds of amenity

fees for rent-controlled units where (1) the fee is paid in addition to the rent; and (2) where the amenity is made unavailable. The OTA recommends that the Council consider either extending or making this provision permanent. There is no reason why tenants should have to start paying fees again for amenities that remain unavailable.

Phasing of TOPA Tolling and Deadlines and Resources

It is the OTA's understanding that under the COVID-19 law the deadline for tenants to exercise their rights under the TOPA law have been tolled for over 100 buildings. Thus 30 days after the PHE ends – when the clock on such deadlines starts ticking again – we can anticipate a surge of requests for technical support that community-based organizations (CBOs) provide to tenants and tenant associations in TOPA cases. We are informed by CBOs that based on their average pre-PHE caseload, the demand will greatly outpace the supply of such assistance. Consideration should be given to staggering or phasing in the end of the tolling period so that the CBOs can manage the caseload, and so that more tenants and tenant associations can get the assistance needed to meaningfully exercise their TOPA rights. Such a monthly or quarterly phase-in could be based on the chronology of TOPA filings and / or on building-size.

7. Eviction Diversion

My testimony today focuses on the current COVID-19 law's tenant protections and the more immediate steps we believe the Council should take as the District transitions to a post-pandemic environment. However, it is also imperative that all branches of District government work collaboratively with the legal and social services community to devise a robust eviction diversion program. As jurisdictions across the country create programs to grapple with the looming post-pandemic eviction crisis, there is a growing body of policy reports and academic studies assessing how best to keep as many tenants as possible stably housed and away from eviction courts -- whether through rental assistance, legal assistance, mediation, social services, or some combination thereof.

To mention just a couple, Massachusetts has created housing consumer education centers that assist tenants in accessing resources. As part of the housing court process in Massachusetts, the parties are told at any hearing that they can mediate the matter with a court mediator in an effort to resolve the matter before proceeding with the scheduled hearing.

Fourteen programs across the country provide upstream eviction prevention protections prior to the filing of an eviction action. These programs involve the targeting of resources to tenants who may be at risk for eviction in order avoid the

eviction process altogether.¹⁹

One measure that the OTA believes should be considered would make the rental payment plan concept in the COVID-19 law a regular feature of nonpayment of rent cases. Similarly, Virginia is scheduled to launch a three-year pilot program that will direct the parties in certain nonpayment cases to reach repayment agreements rather than moving forward with the action.²⁰ The idea is to give tenants who have already been sued by the landlord the opportunity to avoid the eviction, pay back outstanding debts, and make the landlord whole.

8. Conclusion

In conclusion, Chairperson Allen, Chairperson Gray, and members of the Committee, I thank you again for holding this roundtable and for your close attention to the interest and concerns of District renters. Now, more than ever, we must work together to help keep those DC tenants at risk of eviction safe and in their homes. This concludes my testimony and I am happy to answer any questions you may have at this time.

¹⁹ Treskon, Mark, Solomon Greene, Olivia Fiol, and Anne Junod, Urban Institute, "Eviction Prevention and Diversion Programs: Early Lessons from the Pandemic," (April 2021, updated May 2021), Available here: https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic_0_0.pdf.

²⁰ Virginia's Legislative Information System, "2019 Session," Available here: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=Sb1450>.