Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing on:

Bill 24-0119, the
"Eviction Protections and Tenant Screening Amendment Act of 2021"

Committee on Housing and Executive Administration
The Honorable Anita Bonds, Chairperson

on

Tuesday, May 25th, 2021
10:00 a.m.
Via Virtual Platform

Introduction

Good afternoon Chairperson Bonds, members of the Committee, and staff. I am Joel Cohn, Legislative Director at the Office of the Tenant Advocate (OTA). I am testifying today on behalf of Chief Tenant Advocate Johanna Shreve and the OTA regarding Bill 24-119, the "Eviction Protections and Tenant Screening Amendment Act of 2021." We thank Chairman Mendelson for introducing this legislation and we thank you, Chairperson Bonds, for holding both this hearing and the hearing last Thursday on two related measures -- Bill 24-96, the "Eviction Record Sealing Authority Amendment Act of 2021," and Bill 24-106, the "Fair Tenant Screening Act of 2021."

Today I will address in turn each of Bill 24-119's two major components – *tenant eviction protections* and *tenant screening standards*. I note that -- with just a few seemingly slight yet significant differences -- it would make permanent the corresponding provisions in Law 23-255, the "Fairness in Renting Temporary Amendment Act of 2020."[1] That legislation remains in effect until October 27, 2021.

[1] Law 23-255, the "Fairness in Renting Temporary Amendment Act of 2020" (effective from Mar. 16, 2021 to Oct. 27, 2021).

Tenant Eviction Protections

Evictions prohibited for lack of a BBL and for a de minimis amount

Regarding tenant eviction protections, Bill 24-119 would prohibit the filing of an eviction action under two circumstances: first, where the landlord does not have a basic business license; and second, where the eviction action is one for nonpayment of rent in an amount of less than $600. In requiring proof of a business license before *filing* the action, this bill improves upon the current temporary legislation, which only requires a valid license prior to the execution of the eviction.

The OTA strongly supports these provisions. Landlords should comply with the licensing requirement before renting the accommodation. Because licensing requires a DCRA inspection and other "clean hands" checks, this will help ensure that the landlord is compliant with the housing code and all tax obligations. Similarly establishing a threshold amount for an eviction action for nonpayment of rent is good policy, especially given the data showing that a high percentage of filings do not result in an actual eviction or are never even prosecuted. A *de minimis* arrearage should not cause such profound consequences for the tenant as the threat of homelessness due to an eviction record that makes find new housing difficult if not impossible.

Notice to Vacate for Nonpayment of Rent and Notice of Intent to File an Eviction Action

I also note that the "Fairness in Renting" legislation includes two additional tenant eviction protections that are not under consideration today, but rather are incorporated in one of the measures, Bill 24-96, which the Committee considered last Thursday. Both protections are prerequisites to the filing of an eviction action in court: first, the tenant must be provided with a 30-day Notice to Vacate prior to being sued for nonpayment of rent; second, in addition to the Notice to Vacate, the tenant must be provided with a 30-day notice of landlord's intent to file an eviction action. These notice periods may run contemporaneously. Requiring the Notice to Vacate in nonpayment of rent cases gives the tenant the opportunity to take remedial action, including correcting an erroneous rent ledger, prior to being sued. And the notice of intent should help reduce the high number of eviction cases that are filed spuriously.

Photographic Evidence of Service by Posting

I also want to note the missing piece of the puzzle in the various tenant eviction protection measures now pending before the Council. The Fairness in Renting emergency and temporary legislation requires the landlord to provide the court with photographic evidence of service of a Court summons by posting,

which is permissible only after good faith efforts to serve the tenant in person have failed. We commend the Council's swift action in including this provision in the legislation last fall following a compelling media report regarding "sewer service" by process servers who falsely attest to having served the tenant by posting -- after falsely claiming to have attempted personal service. Tenants hit with default judgments against them due to lack of notice of the court action had no way of proving that any of the claims were false. This "photographic evidence" filing requirement should not be allowed to expire.

The OTA supports each of these provisions and urges the Committee to consider the relevant bills in tandem for the sake of completeness as the legislative process moves forward.

Tenant Screening

Before I discuss the tenant screening component of Bill 24-119, let me say a word about rental application matters in the context of the OTA's client cases. The OTA's statutory mandate is to advise *current tenants* regarding disputes with landlords, thus our experience with client issues regarding rental applications *per se* is somewhat limited. Primarily we hear about such issues in one of two scenarios. First, we hear from new tenants who discover after moving into their unit that they never received disclosures that they were entitled to as rental

applicants under section 213 or section 222 of the Rental Housing Act. Second, we hear from tenants who wish to move to a different unit within the building or within the landlord's portfolio but feel they are denied that opportunity potentially for retaliatory or other suspect reasons.

Relatedly, we also hear from tenants about eviction actions against them that are unfair or even completely based on landlord error. The action creates an eviction record that can have a devastating impact on the tenant's life. It can impede their ability to rent a new apartment or to secure that next job that happens to require a security clearance. While record sealing is not a part of the legislation being considered today -- as the Chief Tenant Advocate and others testified to last Thursday -- tenant screening and record sealing are indeed *interdependent* tenant protections. Consequently, we also ask in the tenant screening context that the Committee consider all relevant measures – including Bill 24-96, Bill 24-106, and Bill 24-119 -- in tandem as the legislative process moves forward.

The OTA supports the tenant screening proposals in Bill 24-119 so far as they go. However, we also recommend that the Committee strongly consider the stronger approach of Bill 24-106, as Chief Tenant Advocate Shreve testified in support of last week. That approach includes the right of a wrongfully denied

tenant to rent the next available unit; penalties on non-compliant background screening companies that wantonly harm District residents by providing inaccurate or misleading information to landlords; and what we believe are certain advantages of placement within the Human Rights Act of 1977[2] rather than the Rental Housing Act of 1985.[3]

Unfairness in the tenant screening process

The Committee has heard ample evidence both last Thursday and today of the need for legal standards regarding tenant screening. Rather than repeating that evidence, I will it say that the Chief Tenant Advocate and OTA believes the evidence is overwhelming that the District's lack of such standards serves as a barrier to rental housing for our more vulnerable residents. It has become clear that unfair and discriminatory behaviors due to this gap in the law have been tolerated for far too long. Again we commend the Council for including relevant provisions in the emergency and temporary Fairness in Renting legislation last fall. We ask that the Committee and Council promptly move permanent legislation -- both to address the systemic problems that impact our more vulnerable residents, and to help the many more residents who have been economically

[2] D.C. Official Code § 2-1401.01 *et seq.*
[3] D.C. Official Code § 42-3501.01 *et seq.*

impacted by the pandemic, and who may need these protections into the foreseeable future.

Recommendations on Tenant Screening

In comparing the respective tenant screening provisions in Bill 24-119 and Bill 24-106, I will now highlight some of the advantages that we believe the more comprehensive approach in Bill 24-106 has.

Placing tenant screening in the Human Rights Act of 1977

Unlike Bill 24-119 and the currently effective Fairness in Renting temporary legislation, Bill 24-106 places the tenant screening provisions within the Human Rights Act of 1977 rather than the Rental Housing Act of 1985.[4] We believe the Human Rights Act is the better fit for these tenant screening protections largely due to the nature and scope of tenant screening enforcement processes and procedures, and based on the precedent of Law 21-259, the "Fair Criminal Record Screening for Housing Act of 2016" ("Criminal Record Screening").[5] The Office of Human Rights has been the enforcement agency for Criminal Record Screening since the law took effect in 2017. That law similarly governs a relationship defined not by tenancy *per se* but rather by *prospective* tenancy and the fairness

[4] D.C. Official Code § 2-1401.01 *et seq.*
[5] Law 21-259, the "Fair Criminal Record Screening for Housing Act of 2016," effective 4/17/2017.

or arbitrariness of a landlord's decision in approving one application out of many. Tenant screening as contemplated in all the relevant bills mirrors many of the features of Criminal Record Screening– including the applicant's right to notice of the screening criteria; the applicant's right to a written explanation of a denial; the applicant's right to correct or explain adverse information; and a "reasonableness" standard based on potentially wide-ranging criteria and information for determining whether a violation has occurred. Simply put, we believe tenant screening, as others have argued, is a civil rights matter more akin to a Criminal Record Screening case than a rent increase challenge or a claim for an unreturned security deposit. In contrast to the Rental Housing Act, the Human Rights Act also provides for higher penalties and a private right of action.

Penalizing unscrupulous screening companies

Unlike Bill 24-119, B24-106 provides penalties for tenant screening companies that include or consider certain prohibited criteria in their reports. This is critically important because, as we have learned, some landlords rely heavily if not entirely on screening company reports in making tenant selection determinations; indeed the report may provide an up or down recommendation on an application based on information that the landlord may be unable to readily verify, including old eviction records.

That is why screening companies should be held accountable for any unlawful information, and any conclusions drawn from that unlawful information, provided to landlords. The OTA also concurs with the recommendation made at last Thursday's hearing that screening companies should be required to certify to the District that their reports are accurate.

We believe in comparison to Bill 24-119 that Bill 24-106 has several other advantages.

Regulating application fees

Unlike Bill 24-119, Bill 24-106 prohibits mandatory fees other than application fees and security deposits during the application process. It prohibits the collection of application fees where no units are reasonably expected to be available; limits application fees to the cost of screening or $35, whichever is less; requires the return of any unused portion of the application fee, and a waiver of application fees where tenant provides their own screening report.

Right to next available unit

Unlike Bill 24-119, Bill 24-106 provides a meaningful remedy for the tenant whose application has been unreasonably denied and shows sufficient mitigating circumstances – namely, the right to rent the next available unit. Bill 24-119 entitles that tenant only a written response within 30 days no matter the case.

Conclusion

As Chief Tenant Advocate Shreve stated last Thursday, enacting a permanent tenant screening law would be a significant step forward for the District in terms of removing the influence of unfair biases in the rental housing application process, and in enshrining "affirmatively furthering fair housing" principles in DC law.

Thank you again Chairperson Bonds for this opportunity to testify. This concludes my testimony and I am happy to answer any questions you may have.