

Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Chief Tenant Advocate

Public Hearing on:

**PR24-0581, the “Rental Housing Commission Adam Hunter
Confirmation Resolution of 2022”**

Committee on Housing and Executive Administration
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

on

Wednesday, March 23rd, 2022
2:00 p.m.
Via Virtual Platform

Introduction

Thank you, Chairperson Bonds and members of the Committee on Housing and Executive Administration, for this opportunity to submit written testimony regarding Proposed Resolution 24-581, the "Rental Housing Commission Adam Hunter Confirmation Resolution of 2022."

As the Director of an independent agency within the executive branch, it is my policy neither to endorse nor oppose a Mayoral nominee, unless warranted by extreme circumstances. Given the immeasurable impact that the Rental Housing Commission (RHC) has on the District's rental housing community, however, I do believe it is important that the OTA help inform the Council's and the community's deliberations regarding any such nominee. Accordingly, for any such confirmation hearing, the OTA provides written testimony (1) underscoring the critical role of the RHC; (2) setting forth the statutory and other criteria for evaluating a nominee; (3) if applicable, providing a rough assessment of an incumbent's even-handedness to date in terms of tenant and housing provider wins and losses (keeping in mind that raw statistics alone do not tell the whole story); and (4) posing questions to the Committee that the OTA believes should be explored with any individual who is nominated to serve on the RHC.

The Commission's Role

Under section 202 of the Rental Housing Act of 1985, the specific duties of the RHC are to:

1. Issue, amend, and rescind rules and procedures for the administration of the Act;
2. Decide appeals brought to it from the decisions of the Rent

- Administrator and the D.C. Office of Administrative Hearings; and
3. Certify and publish:
 - a. The annual adjustment of general applicability, based on the Consumer Price Index, which is the maximum standard annual rent increase for a rent-controlled apartment;
 - b. The most recent annual social security cost-of-living adjustment (SS COLA);
 - c. The maximum annual rent adjustment that may be imposed on a unit occupied by an elderly tenant or tenant with a disability.
 - d. The qualifying income for an elderly tenant or tenant with a disability to be exempt from an adjustment in the rent charged pursuant to a housing provider petition.¹

To merely reiterate the RHC's statutory functions, however, is to vastly understate its vital importance to the rental housing community's well-being, and indeed to the District's affordable rental housing stock. Unlike the D.C. Office of Administrative Hearings, from which rental housing decisions are appealed to the RHC – and unlike the D.C. Court of Appeals, to which RHC decisions may be appealed – the RHC has jurisdiction over no cases other than rental housing cases.

Thus, the RHC has developed singular institutional knowledge and expertise, which is necessary to ensure that case decisions are consistent with each other and with the remedial purposes of the Act. The significance of such a body cannot be overstated, particularly given the many complexities and nuances of the Rental Housing Act of 1985. Indeed, it is our understanding that between 1985 and 2020 the D.C. Court of Appeals affirmed at least 92 to 95 percent of

¹ D.C. Official Code § 42-3502.02.

cases on appeal from the RHC, and has not reversed an RHC decision in any case filed since 2013. This level of judicial deference is a testament to the RHC's importance in terms of setting precedent that will have a lasting impact, both on the community and on the utility and vitality of the Act itself.

I note that in 2017 the Council enacted Committee legislation that the OTA had long advocated for – the "Rental Housing Commission Independence Clarification Amendment Act of 2017".² This legislation clarified that the RHC is an independent adjudicative agency within the executive branch of the District government, and accordingly is not subject to the administrative control of any Mayor.

Statutory qualifications

Section 202 of the Act also sets forth the minimal qualifications that any prospective Rental Housing Commissioner must have. The nominee must be a resident of the District, must be admitted to practice law before the District of Columbia Court of Appeals, and may be neither a housing provider nor a tenant.³

In 2010, the OTA worked with the relevant Council committee on legislation – the "Rental Housing Commission Reform Amendment Act of 2010"⁴ – to stagger the terms of the three Commissioners. The purpose of staggering terms was to help avoid a reoccurrence of what happened in 2010 – multiple simultaneous vacancies resulting in a lack of quorum to do the RHC's business. Among other things, it provides for the composition and duties of the RHC and specifies that the RHC is comprised of 3 members appointed by the Mayor for a 3-year term, subject to removal for good cause only.

² Law 22-200; D.C. Code § 42-3502.01, effective February 22, 2019.

³ D.C. Official Code § 42-3502.02

⁴ Law 18-863; D.C. Code § 42-3502.01, effective March 11, 2011.

The same legislation also enhanced the criteria that a candidate must meet in order to serve on the RHC. Accordingly, a member of the RHC “shall possess skills and experience relevant to the following”:

1. Litigation, preferably including both appellate practice demonstrated by written work product and exposure to the concerns of pro se litigants;
2. Administrative law, preferably in an area of complex regulation; or
3. Housing law, preferably in the area of rental housing and rent control or "rent stabilization."

Other considerations

To facilitate the Committee's consideration of the additional criteria and the candidate's overall fitness for the position, the OTA submits the following questions to the Committee for purposes of this (and future) confirmation hearing:

1. What areas of legal experience and expertise would the candidate bring to the RHC? Does the candidate have a background in public interest law or government affairs?
2. Does the candidate's legal experience and expertise include housing or rental housing law? Does the candidate have experience with or knowledge of the Rental Housing Act in particular?
3. Does the candidate have working knowledge of the District's rent control system? Is the candidate aware of the 2006 reform of the Act which abolished the rent ceiling system for calculating rent

- increases? Is the candidate aware that rent ceilings remain applicable only to those cases arising from events occurring prior to August 4, 2006, and initially filed prior to August 4, 2009?
4. Is the candidate aware of Law 22-248, the “Rent Charged Definition Clarification Amendment Act of 2018”?⁵ Does the candidate understand the impact of this legislation on the law?
 5. How familiar is the candidate with the key changes made in the RHC’s overhaul of the relevant D.C.M.R. Title 14 regulations, effective December 31, 2021?
 6. Absent rental housing and rent control expertise, does the candidate have experience and expertise in another area of law involving complex regulations or a complex regulatory regime?
 7. To what extent does the candidate have appellate litigation experience either with judicial or administrative bodies?
 8. Does the candidate have a solid understanding of administrative law? For example, can the candidate cite key differences between the rules of evidence in a judicial setting versus those that pertain under the Administrative Procedure Act?
 9. Does the candidate have an appreciation for the statutory findings and purposes of the Rental Housing Act, and the fact that the Act is remedial legislation intended to alleviate the chronic problem of affordability within the District’s rental housing market? How would the candidate assess the significance of the Act's remedial nature?

⁵ Effective March 13, 2019; D.C. Code § 42-3501.03(29A), § 42-3502.08(f), § 42-3502.22a.

10. Is the candidate aware of the D.C. Court of Appeals' pronouncement that the tenant who has filed a tenant petition in effect acts as a "private attorney general" with respect to enforcement of the Rental Housing Act?⁶ How would the candidate assess the significance of this pronouncement in terms of the RHC's review of cases?
11. Is the candidate familiar with the standard set forth in the "Goodman" case⁷ regarding procedural or technical errors committed by a *pro se* litigant (i.e., the need in relevant circumstances to relax the procedural or technical rules so long as this does not result in unfairness to the other party)?
12. Is the candidate aware of the "plain error" standard for review of issues not specifically raised in a notice of appeal?
13. Is the candidate aware that under 14 D.C.M.R. § 3808 the RHC may initiate *sua sponte* a review of an OAH or Rent Administrator final order within thirty (30) days after the deadline for party-initiated appeals has expired? Would the candidate take a proactive approach to the RHC's *sua sponte* review authority?

Conclusion

Thank you, Chairperson Bonds and the Committee, for your continued leadership on matters of concern to District of Columbia renters. Please do not hesitate to contact me if I can be of any further assistance.

⁶ See *Ungar v. DC RHC*, 535 A.2d 887, 892; *Hampton Courts Tenants' Ass'n*, 573 A.2d at 12, 13; *Tenants of 500 23rd Street, N.W. v. DC RHC*, 617 A.2d 486, 488.

⁷ *Goodman v. RHC*, 573 A.2d 1293 (1990).