Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

OFFICE OF THE TENANT ADVOCATE (OTA)

BILL 18-64, THE "LEAD HAZARD ELIMINATION AND PREVENTION AMENDMENT ACT OF 2009"

Committee on Government Operations and the Environment
The Honorable Mary Cheh, Chairperson
Council of the District of Columbia

Thursday, November 12, 2009
11:00 a.m.

Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Cheh and members of the Committee on Government Operations and the Environment, for allowing me to submit written comments regarding Bill 18-64, the "Lead Hazard Prevention and Elimination Amendment Act of 2009." The Office of the Tenant Advocate participated in the "lead hazard" legislative working group sessions convened by Councilmember Graham during the last Council session. These working group sessions led to enactment of Law 17-381, the "Lead-Hazard Prevention and Elimination Act of 2008." Bill 18-64 would add important tenant protections to what the Council accomplished with that enactment. As the Chief Tenant Advocate for the District of Columbia, I strongly endorse Bill 18-64, and would offer the following comments regarding specific provisions of the bill.

Private Right of Action

Section 2(e) would create an explicit "private right of action" against "the owners of dwelling units or child-occupied facilities covered by this act who are alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or order which has become effective pursuant to this act." ***I strongly endorse this provision. I also recommend inserting the phrase "of any provision of this act, or" after the word***

"violation." This would remove any doubt, and any possible gamesmanship, that may arise as to the scope of the tenant's private right of action.

In light of the discussion at the November 12th hearing, I should also note OTA's understanding regarding the legislative intent behind the omission from Law 17-381 of an explicit private right of action provision. Our understanding is that the intent was ***not*** to reject the idea of a private right of action *per se*. Rather, in order to avoid further divisiveness at a late stage of difficult stakeholder negotiations, the intent was to leave it to the courts to decide the matter. In this regard, please note section 18 of Law 18-381, "*No private right of action against the District*," and the fact that the law does not explicitly reject a private right of action against the housing provider.

Triggers for disclosure form and clearance report

Section 2(a) and 2(b)(1) would clarify Law 17-381 in terms of the effect of an owner's failure to provide prospective tenants (as well as purchasers) with required information, including lead disclosure forms and clearance reports. Specifically, a lessee would not incur any lease obligation or obligation of tenancy unless the owner has provided the information.

Regarding disclosure and clearance information requirements, Section 2(b)(2) would add a non-turnover trigger to include a household already occupying the rental unit that includes a person at risk, or whose circumstances change to include a person at risk. ***I strongly endorse each of these provisions.***

As discussed at the hearing, the bill as introduced does not address how to identify households that include a person at risk. ***I strongly endorse, Chairperson Cheh, your common-sense suggestions at the hearing that the housing provider should provide notice of these rights to all tenant households, and then tenants whose households include persons at risk should declare themselves to the housing provider for purposes of vindicating any rights they may have under the act. Furthermore, anticipating that many tenants may not appreciate the significance of these rights, or over time may forget that they have these rights, I agree with your comment that notice to all tenants should be conspicuous and periodic.***

Specifically, I recommend that housing providers be required to notify all tenants of rights they have under the act upon:

1. ***The execution the initial lease;***
2. ***The execution of a renewal lease;***

3. ***The addition of any persons to the lease;***
4. ***The relocation of a tenant from the unit, and back to the unit, due to alterations, renovations, or repairs, whether under section 501(f) or section 501(h) of the Rental Housing Act (D.C. Official Code §§ 42-3505.01(f) & (h)) or otherwise;***
5. ***Notice of any rent increase; and,***
6. ***The filing of any housing provider rent increase petition (whether for a capital improvement, an increase or decrease in services and facilities, a hardship petition, a substantial rehabilitation, or a voluntary agreement under D.C. Official Code §§ 42-3502.10, .11, .12, .14, & .15)).***

Exemption criteria regarding housing code violations

Under section 2(b) of the bill as introduced, the owner does not qualify for the disclosure /clearance exemption where the ***owner*** has been the subject of any housing code violation that occurred during the past 5 years or that remains outstanding. This may suggest disqualification from using the exemption whenever ***any property*** in the owner's portfolio has been cited for housing code violations within the past 5 years, or that remain

outstanding. We believe amending the relevant language (page 3, lines 10 – 11) to read as follows would better reflect the apparent legislative intent:

> … provided, that within the past 5 years the ***property*** has not been cited for any housing code violation not the result of tenant neglect or misconduct, or for any violation of any applicable environmental law or regulation, and no such violation remains outstanding.

This language would serve the additional purpose of ensuring that any violation cited by the D.C. Department of the Environment or another agency (e.g., regarding lead, asbestos, or workplace hazards) -- not just housing code violations cited by DCRA -- would disqualify the owner from using the exemption.

We also recommend that any information required in order for the housing provider to qualify for the exemption be provided to the tenant as well as to the Mayor.

Promulgation of relevant forms

OTA's experience is that lengthy delays in the promulgation of relevant forms can seriously impair important tenant rights, particularly regarding the right to information. ***Thus, wherever appropriate, I recommend that the legislation require the relevant agency to promulgate forms by a date certain in advance of the applicability date.***

Thank you again for this opportunity to submit comments on Bill 18-64, and for your continued leadership on matters of importance to the tenant community. I would be happy to provide you and the Committee with any further assistance requested.