
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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**Public Oversight Roundtable:
Rent Control in the District of Columbia**

Committee on Housing and Workforce Development
The Honorable Michael A. Brown, Chairperson
Council of the District of Columbia

Wednesday, July 7, 2010
11:00 a.m.

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Brown, for this opportunity to testify about rent control in the District of Columbia. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate. As we understand it, the purpose of this roundtable is two-fold: first, to remind ourselves that since before the beginning of Home Rule rent control has been a critical part of the District's affordable housing strategy and must be reauthorized in this renewal year; and second, to discuss areas where reform is needed to better fulfill the statute's core purposes.

I would like to begin by putting this discussion in some context, both historically and with reference to the rent control law's statutory purposes and findings.

Brief History of Rent Control in the District

Even before the beginning of Home Rule, rent control existed in the District pursuant to federal legislation that D.C. Delegate Walter Fauntroy introduced in the U.S. Congress in 1973. In 1975, the year that Home Rule began, rent control legislation was introduced in the D.C. Council. Even though the measure had passed unanimously, the Council responded to a Mayoral veto by incorporating, among other provisions, an exemption for new construction and a new hardship provision to ensure that housing providers receive a reasonable rate of return. Notably, a reasonable rate of return was deemed at that time to be eight (8) percent; it was increased to ten (10) percent in 1980; and then increased again in 1985 to twelve (12) percent.

There have been significant changes over the years other than the guaranteed rate of return. For much of the history of rent control in the District, there was a complicated rent ceiling system that required the Rent Administrator to track two different numbers for each rental unit under rent control – maximum allowable rent as well as actual rent charged. Under this system, any single rent ceiling adjustment could be applied to any single standard rent charged increase for the unit. Over time, this system began to undermine the very notion of rent control, as landlords “banked” more and more rent ceiling adjustments for later implementation, creating highly variable and unpredictable rent increases for the tenant. Furthermore, the landlord was permitted a “standard” rent increase every six (6) months, and there was no protection for tenant populations that tended to have fixed incomes rendering them particularly vulnerable to displacement due to unexpected rent hikes – elderly tenants and tenants with disabilities.

In August 2006, the “Rent Control Reform Amendment Act” – legislation initiated by Councilmember Graham and negotiated with the participation of a wide spectrum of tenant advocates and housing providers – became law. Rent ceilings were abolished and replaced with a direct cap on standard increases in rent charged -- CPI plus 2 percent for most tenants; the standard rent increase for an elderly tenant or a tenant with a disability was capped just at the annual CPI; and the landlord was permitted to impose a standard rent increase only once a year.

The Reform Act also eliminated the “vacancy high comparable” rent increase and replaced it with a maximum 30 percent vacancy increase if there is a comparable unit with that amount of rent, or 10 percent if there is no such comparable unit. Other elements of rent control have undergone less transformation. Housing providers have long had the ability to petition the Rent Administrator to raise the rent by an amount larger than the standard increase for one of five special purposes: to pay for a capital improvement, an increase in services and facilities, or a substantial rehabilitation; to allow investors to receive a return on equity equal to the specified “hardship” percentage; or by voluntary agreement with 70 percent of the tenants.

Thus despite many changes over the years, the 1973 federal law and the 1975 District law established the basic parameters of the District’s rent control program (more accurately “rent stabilization”) which has continued to this day through successive laws -- Title II of the Rental Housing Acts of 1977, 1980, and 1985 -- and then through successive extensions of the 1985 Act, most recently in 2005. As we all know, the Rental Housing Act of 1985 is due to expire again on December 31, 2010.

The Rental Housing Act’s Purposes

Rent control reauthorization and reform should be discussed in the context of the Act’s statutory purposes and findings which are as relevant as ever. The purposes of the Act as set forth at section 102 (D.C. Official Code § 42-3501.02) are:

- (1) *To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;*

- (2) *To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;*
- (3) *To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;*
- (4) *To protect the existing supply of rental housing from conversion to other uses; and*
- (5) *To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.*

Any one of these goals would be a big challenge in its own right. Finding the right execution and the right balance for all of these sometimes competing goals at the same time is more than a big challenge. Success requires the constant vigilance and good faith efforts of all involved, including the Council's willingness to make both procedural and substantive reforms from time to time as the need arises. So we are grateful for the Committee's and the Council's strong support for making the rent control law as robust, even-handed, and effective as it can be – as evidenced by this roundtable and by legislative efforts both before and after the OTA's creation in 2005. Before I discuss reforms that I believe are needed, I would like to reinforce the need for reauthorization first by reference to the statutory findings, and then to more recent data on rental housing in the District.

The Rental Housing Act's Findings

From 1977 onward, each of the relevant laws have included statutory findings regarding the rental housing market that support the need for rent control in the District, and these findings have been largely consistent over the years.

There is overwhelming evidence that the statutory findings in the 1985 Act (D.C. Official Code § 42-3501.01), by and large, continue to aptly describe the District's rental housing picture today:

- (1) *There is a severe shortage of rental housing available to citizens of the District of Columbia ("District").*
- (2) *The shortage of housing is growing due to the withdrawal of housing units from the housing market, deterioration of existing housing units, and the lack of development of new or rehabilitation of vacant housing units.*
- (3) *The shortage of housing is felt most acutely among low- and moderate-income renters, who are finding a shrinking pool of available dwellings.*
- (4) *The cost of basic accommodation is so high as to cause undue hardship for many citizens of the District of Columbia.*
- (5) *Many low- and moderate-income tenants need assistance to cover basic shelter costs, but the assistance should maximize individual choice.*
- (6) *The Rent Stabilization Program ("Program") has a more substantial impact upon small housing providers than on large housing providers, and small housing providers find it more difficult to use the administrative machinery of the Program.*
- (7) *Many small housing providers are experiencing financial difficulties and are in need of some special mechanisms to assist them and their tenants.*
- (9) *The housing crisis in the District has not substantially improved since the passage of the Rental Housing Act of 1980.*
- (11) *This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare.*

Ten-year or permanent reauthorization

Now, you may have noticed that I skipped finding #8 and finding #10.

They read as follows:

- (8) *The present Rent Stabilization Program should not be continued indefinitely and new approaches must be investigated to prevent the*

withdrawal of rental housing units from the market and the deterioration of existing rental housing units, and to increase the rental housing supply.

(10) *The Rent Stabilization Program should be extended for 6 years.*

Clearly, after nearly four decades it should no longer be necessary to re-argue the need for rent control every five (5) years, or six (6) as the 1985 Act originally contemplated. As recent data amply demonstrates, the District's need for rent control as an affordable housing policy for the vast majority of our residents – ***those with moderate incomes as well as those with lower incomes*** – is ongoing and acute.

Thus, I commend you, Mr. Chairperson, for introducing Bill 18-864, the "Rental Housing Act Extension Amendment Act of 2010," which would extend rent control for ten (10) years. And I commend Councilmember Graham for introducing Bill 18-892, the "Permanent Rental Housing Act Protection Amendment Act of 2010," which would repeal the sunset provision altogether and make rent control permanent. This matter has been discussed extensively among our stakeholders, and in fact the OTA devoted its March 2010 stakeholder meeting exclusively to a panel discussion and stakeholder survey on this issue. I can say that both measures have merit and deserve the Committee's consideration. I can also say that the consensus among stakeholders is that *either* would be a vast improvement over the current five-year renewal cycle.

Recent studies

For anyone who harbors any doubt about the continuing need for rent control in the District of Columbia, I commend in particular two recent D.C. housing reports: the D.C. Fiscal Policy Institute's *Nowhere To Go: As D.C. Housing Costs Rise, Residents Are Left With Fewer Affordable Housing Options*, and Urban Institute/Fannie Mae's *Housing in the Nation's Capital- 2009*. By any measure, these and other reports should amply demonstrate the continued validity and urgency of the rent control law's statutory purposes and findings: the District's affordable rental housing stock is dwindling, as are the options for moderate as well as lower income residents; rental housing costs in the District are outpacing incomes in the District as well as rental housing costs in other jurisdictions. Among the key findings in these studies:

1. **Rental housing prices** (adjusted for inflation) have risen 23% in the District since 2000;
2. Adjusted for inflation, **median household income** only rose 10 percent during this period (from \$49,300 to \$54,300);
3. **The District's rent-escalation is the 5th largest** among the nation's 50 biggest cities, outpacing nearly every other large city in the nation – including Boston, Chicago, Los Angeles, New York City, and Atlanta;
4. The **number of low-cost rental units** with rent and utility costs of \$750 or less shrunk by more than one-third since 2000 (from 69,000 in 2000 to 45,000 in 2007);
5. The **number of high-cost rental units** more than doubled in number since 2000. Some 27,400 DC apartments had rent and utility costs of \$1,500 or more in 2007, up from 12,200 in 2000 (DC Fiscal, 5);

6. Almost **two in five DC households had housing cost burdens in 2007** (defined by HUD standards as costs that consume more than 30 percent of a household's income);
7. Almost **one in five DC households had severe housing cost burdens** in 2007, an increase of one-third since 2000 (defined by HUD standards as costs that consume more than 50 percent of a household's income) (DC Fiscal, 6);
8. Among households with **severe housing cost burdens, two-thirds were renter households**;
9. According to the most recent data from the American Community Survey, **37 percent of all renters paid more than 30 percent of their income toward rent** (UI/FM, 21).
10. Overall, **one of four DC renters spent half or more of their income on housing** in 2007, compared with one of eight homeowners (DC Fiscal, 6).
11. **Rents are unaffordable for many low-wage households including building and maintenance workers, office and administrative staff, and teachers and librarians.** For example, the fair-market rent in the District of Columbia is \$1,288. To afford this rent, a household must earn an income of \$51,520 annually, or \$24.77 an hour assuming a 40-hour workweek and 52 workweeks in a year. (UI/FM, 21).

These findings are by no means anomalous. Just yesterday the Examiner reported that the cost of renting an apartment in the Washington area outpaced the rate of inflation (3.6 percent vs. 2.2 percent); the area's average rent has climbed to about \$1,600; and real estate experts expect the upward pressure on rents to continue indefinitely (David Sherfinski, "Apartment rents tick up throughout the area," Examiner, July 6, 2010, ATTACHED).

Arguments against rent control

Certainly I am well aware of arguments against rent control. Some allege that rent control creates a disincentive for housing development, or creates market inefficiencies, or benefits the wrong people, etc. I will just say now that by and large these arguments utterly fail to take into account specific provisions included in the District's rent control law but not included in those of other jurisdictions, like the "hardship" allowance and the "new construction" exemption just to name two.

Moreover, I believe it is beyond dispute that without rent control, many more households with moderate and lower incomes would have been pushed out of the District by now, including many who provide the District with essential services – teachers, firefighters, police officers, librarians, administrative personnel, etc. It is also relevant to note that other jurisdictions like Montgomery County, Maryland, and Stamford, Connecticut, are contending with a so-called "housing donut hole." This happens when the middle class is squeezed out of an urban area due to rising housing costs, leaving largely the poor who are protected by housing subsidy programs and the wealthy who can afford housing at any price. Despite intensifying housing pressures, the District has not yet specifically encountered a "housing donut hole" – I fear this could well happen but fervently hope the District's leadership will have the wisdom to prevent it from happening.

Some argue that because there is no means-testing, it must be the case that rent control "subsidizes" wealthier households at the expense of the program's intended beneficiaries or at the expense of market efficiency. I am

aware of the argument, but I am not aware that a shred of data exists to support it. To the contrary, an Urban Institute study (1990) showed that 95% of households in rent control units in D.C. have moderate incomes or lower incomes – exactly the population that rent control is expressly intended to benefit. Until contrary data emerges, there is simply no reason to believe that wealthier individuals and families – not all but most – will choose what for many remains “the American dream” and will buy their homes.

Need for reform as well as reauthorization

One of the OTA’s statutory duties is to “represent the interests of tenants and tenant organizations in legislative, executive, and judicial issues, including advocating changes in laws and rules” (D.C. Official Code § 42-3531.07(2)). This is one of OTA’s core missions and it involves constant vigilance and effort and dialogue with stakeholders, sister agencies, the courts, the Mayor’s office, the Council, and interested others. Since the OTA’s creation, we have tracked issues and developed legislative, regulatory, and policy reform proposals far too numerous to mention. Rent control is just one of many areas of concern, but of course it is a very prominent one.

Before I mention some rent control reform priorities, let me say that we are extremely pleased with recent reforms undertaken by the Council. One of them is Bill 18-598, the “Tenant Organization Petition Standing Amendment Act of 2009,” involving tenant associational standing in rent control cases and other landlord- tenant matters that come before OAH. Specifically, Bill 18-598 will give a tenant organization standing in the matter not just when it represents a majority

of the tenants in the building, but when any member or members provide the organization with written authorization for the representation. We believe this will be a major step forward for enforcement of rent control and the Act's other tenant protections. We are also pleased that the Committee has taken up the important matter of "conditional hardship increases," which, under the current law, the landlord may impose virtually without restriction if the Rent Administrator fails to issue a final order within 90 days of the filing of a hardship petition.

Last November, based on a growing list of needed reforms in the area of rent control and other areas of the Act, and in anticipation of this renewal year, the OTA organized working groups in five different areas: standard rent increases; housing provider petition rent increases; enforcement; evictions; and landlord entry and tenant privacy. Each working group was asked to identify major problems with the current law or gaps in the law in the group's issue area, and to develop reform recommendations. The purpose was not necessarily to develop one single "silver bullet" comprehensive reform package, but to get a range of experiences and ideas on the table. I am very pleased with how much effort and progress several of the working groups have made -- as we have witnessed today -- and I wish to commend their diligence and commitment.

Of course the OTA's dialogue with the working groups as well as the Committee is ongoing, but I do wish to take advantage of this opportunity to highlight a few key matters today:

1. *Affordability concerns for all tenants including elderly/disabled who qualify for the lower cap:*

This is a major concern on several fronts, particularly in a rent control year like last year when the CPI was equal to 4.8 percent but there was no cost of living adjustment in social security checks; when the “standard” rent increase for non-elderly (and non-disabled tenants) was 6.8 percent despite flat-lined pay-checks for those lucky enough to be employed; we saw numerous problems regarding exploitative rent increases associated with virtually all types of housing provider petitions – the Voluntary Agreement, Capital Improvement, Hardship, and Services and Facilities; and we remain concerned that landlords may be seeking rent increases to pay for items that should be covered by replacement reserve accounts.

2. Qualification of elderly tenants and tenants with disabilities for the CPI standard rent increase cap:

The elderly and disabled should not have to go down to the Rent Administrator’s office to certify that they qualify for the lower cap; in the case of elderly tenants, for example, presentment of a drivers license or other proof of age to the resident manager should suffice.

3. What is the tenant entitled to in terms of inspection reports?:

This is a rent control issue because inspection reports are crucial to establishing a rent abatement claim at OAH. Despite OTA’s ongoing dialogue with DCRA, it remains something of a mystery to us when a tenant will be provided with a copy of the inspection report or when a FOIA request might be required. The relevant regulation seems clear enough:

14 D.C.M.R. 106.1: After an inspection of a habitation, the Director shall provide the tenant of the habitation a copy of any notification with respect to that habitation issued to the owner pursuant to this subtitle.

Certainly it would seem that “any notification” covers both Notices of Violation and Notices of Inspection. Regardless, we remain unclear as to what exactly DCRA’s policy actually is except that they take issue with our interpretation. What is clear is that tenants continue to have problems receiving inspection reports and we believe this comes at the expense of housing code enforcement. I believe a statutory clarification might be the best resolution for this problem, and I hope that could come from a discussion between DCRA, the OTA, and the relevant Committees – including both Housing and Workforce Development and Public Services and Consumer Affairs.

4. Active rather than passive approval of standard rent increase applications:

Section 208(a) of the Act explicitly prohibits rent increases where the rental unit or common areas of the building are not in substantial compliance with the housing code, where the accommodation is not properly registered, or where the housing provider or manager is not properly licensed. We believe that the Rent Administrator's office should pro-actively reject rent increase applications in instances of non-compliance. We also believe that the rent control database must be much more automated and user-friendly. OTA and DHCD's Housing Regulation Administration had good discussions on these matters in the past and we look forward to taking them up again with the new Acting Rent Administrator and the still relatively new Housing Regulation Administrator as well as Director Edmonds.

5. Lien authority for OTA's emergency housing costs:

While not a rent control matter per se, we believe it is vitally important as a general enforcement matter to make recalcitrant landlords reimburse the government for costs incurred due to their own dereliction. A case in point is emergency housing assistance payments that the OTA makes on behalf of tenants who are displaced by the government closure of a building that DCRA deems to be uninhabitable. The OTA should have lien authority in these instances, like DCRA has under the Nuisance Abatement law, so that recouped expenses can be used in a revolving manner in future emergencies.

Finally, the OTA plays an explicit role in one of the Act's eviction provisions – section 501(f) regarding the temporary relocation of tenants for alterations and renovations. We believe a more explicit role for OTA in other areas – particularly housing provider petitions – would help foster more compliance and more comportment with statutory purposes. We look forward to discussing all these matters with the Committee, DHCD, and all stakeholders.

Thank you again, Chairperson Brown, for holding this roundtable and for your leadership on these matters of utmost importance to tenants in the District of Columbia. This concludes my testimony and I am happy to take any questions you may have at this time.

Apartment rents tick up throughout D.C. area, new report says

Average monthly cost reaches about \$1,600

By David Sherfinski
Examiner Staff Writer

The cost of renting an apartment in the Washington area climbed 3.6 percent in the past year — greater than the rate of inflation — according to a report from a real estate consulting firm.

Homes lingering on the market and renters with well-paying jobs contributed to people moving into high-end apartments at one of the strongest rates in the nation, the report said. And as demand rose, so, too, do prices. The area's average rent was about \$1,600.

From a development perspective, the 3.6 percent increase is "definitely a good thing," said Grant Montgomery, vice president of Delta Associates, which released the report.

Older, less pricey apartments are also filling up, an early indicator that job growth has resumed but that renters are adjusting to a "new normal" in the down economy, the

report said.

With the local economy still in a nascent recovery, people are more value-conscious, Montgomery said.

"We think the Class B [older] market is benefiting from that," he said. "Class B absorption has been doing very well recently."

The rent increase outpaced the inflation rate of 2.2 percent in the 12-month period ending in April. And renting in the area is certainly no bargain; rent in the District averaged more than \$2,137.

But Montgomery said he didn't think renters would get priced out of the market anytime soon. Top-tier rentals, for example, actually slipped 1.8 percent during the previous year.

Typical annual growth in rents is about 3.9 percent, he added, so "we're just sort of getting back to normal after a time of depressed rents."

Over the next 18 to 24 months, Montgomery predicted that vacancy rates will decline and rents will increase as the economy picks up.

"We're also going to have a limited supply coming online," which, with strong demand, should continue to push up rents, he said.

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Rents in the District averaged more than \$2,137 during the past year.