
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Chief Tenant Advocate

**OFFICE OF THE TENANT ADVOCATE (OTA)
OVERSIGHT HEARING**

Committee on Public Services and Consumer Affairs
Honorable Muriel Bowser, Chair
Council of the District of Columbia

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INTRODUCTION

Good morning, Chairperson Bowser and members of the Committee on Public Services and Consumer Affairs. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia. I am here this morning to present testimony regarding the performance of the Office of the Tenant Advocate (OTA) during fiscal year 2009. The OTA was established in 2005 as an office within the Department of Consumer and Regulatory Affairs. I began my service as *Acting* Chief Tenant Advocate in April 2006. In October 2007, the OTA became an independent agency, and in June 2008 I began my full tenure as the first Chief Tenant Advocate for the District of Columbia.

CHALLENGING TIMES FOR DISTRICT TENANTS

Last year, like the rest of the country, the District suffered the worst economic downturn since the Great Depression. I would like to begin my testimony with reference to the special challenges the District's tenant community faces in these tough economic times. About 60 percent of the District's population resides in rental accommodations. Of course *all* District residents, whether renters or homeowners, have felt the impact of tightened credit; investment and pension fund losses; and increased

joblessness and job insecurity. Renters and homeowners alike also felt the impact of escalating utility costs, either directly through utility bill “sticker shock,” or indirectly through upward pressure on rents.

For much of the year, the so-called “rent control CPI” stood at 4.8 percent. This means that for any unit under rent control, the standard annual rent increase could be as high as 4.8 percent for elderly tenants and tenants with disabilities, and 6.8 percent (or CPI + 2 %) for all other tenants. One of the most common inquiries the OTA has received over the past year is “how could the rent control CPI be so high” when “the economy has tanked,” and “I am getting little or no cost-of-living increase in my paycheck,” or “no COLA at all in my social security check.” Again, we are speaking now only about the *standard* rent increase, which requires no approval by the Rent Administrator. For many tenants -- particularly elderly tenants -- even *this* rent increase was onerous, and for some it was unaffordable. Alternatively, many housing providers took advantage -- sometimes justifiably and sometimes not -- of the opportunity under the rent control law to petition the Rent Administrator for *even larger* rent increases, for example for a capital improvement or hardship or change in services and facilities.

The impact of foreclosures on District tenants was particularly disturbing. District law protects tenants against eviction when a rental accommodation is foreclosed upon. But too often efforts were to force, intimate or coerce tenants in many instances by third-part representatives of the lenders carrying the note on these foreclosed properties.

Our bad economic times have only heightened the challenges the tenant community confronts year in and year out.

OTA'S PROGRESS

Last year at this time I reported that the OTA had grown out of its infancy stage. This year I am pleased to report that the OTA continues to grow into its own, and is stepping up in major ways -- not only to fulfill the mission as set forth in the agency's establishment act, but also to meet the challenges presented by the economic times in which we live. I will now discuss the progress the agency made during fiscal year 2009, specifically: the agency's move; the steady and significant increase in the number of cases we handled through "case intake"; the steps taken to address unlawful "foreclosure evictions"; the expansion and improvements made in our Legal Services Division; our case tracking and data management enhancements; our progress in terms of education and outreach and

tenant resources; and our legislative and policy initiatives. During FY 2009,

OTA:

- Served 1,838 tenants through the complaint intake process -- a 31% increase over FY 2008 and a 67% increase over FY 2007.
- Provided emergency housing assistance within 24 hours to 100% of eligible households, a total of 86 cases composed of 194 displaced individuals.
- Initiated in-house legal representation for tenants in litigation with their landlords. Thus far In FY 2010, our new Attorney Advisor has represented more than twenty District tenants in both administrative and judicial cases involving major housing code violations, unlawful rent increases, wrongful evictions, and TOPA violations.
- Developed and informed policy initiatives -- in consultation with the Council, the Mayor, sister agencies, OTA stakeholders, the non-governmental tenant advocacy community, and interested others -- on a wide variety of issues, including housing code enforcement, rent control, TOPA, energy efficient and lead-free buildings, and foreclosures.
- Mailed letters to occupants at 896 properties, distributed throughout all of the District's 8 Wards, which were listed for foreclosure sales, apprising them of tenant rights and where to seek help.
- Expanded community participation at the OTA's Annual Tenant Summit to 439 registrants, a 96% increase in participation from the previous year -- including three packed-house break-out sessions on housing code violations, tenant association creation and governance, and the Rental Housing Act.

- Held a well-attended Legal Summit to discuss a range of legal challenges confronting the tenant community with the District’s “tenant bar”.
- Developed a web-based database of decisions and orders in rental housing cases.
- Vastly enhanced our electronic case and data management resources to better manage and track emergency housing cases, intake cases, tenant petitions, housing provider rent increase petitions, and agency outreach.

As I approach the fourth anniversary of my becoming the first Chief Tenant Advocate for the District of Columbia, I am ever more keenly aware of the scope of our mission and its importance to the 60 percent of District residents who are renters. I am also very proud of the progress we are making together -- the OTA in collaboration with our colleagues in the government and in the community -- to fulfill that mission.

NEW SPACE

FY 2009, along with the subsequent months, was a time of great change in the physical structure of the agency.

Space utilization

At the beginning of FY 2009, OTA’s physical presence was consolidated from various portions of the ninth floor at 941 North Capitol

Street, N.E., to dedicated space on the seventh floor 941 North Capitol Street, N.E. In November 2009, the OTA was moved from the non-government-owned space at 941 North Capitol Street, N.E., to other non-government-owned space at 1250 U Street, N.W. We anticipate moving to *government-owned* space at the Reeves Center in October 2010.

Communications costs

Our MOU with OCTO provides us with computer maintenance and software support, telephone upgrades, and at no extra cost to the agency at no extra cost to the agency installation of electronic equipment. Our MOU with DCRA provides us with access to computer-stored information necessary to advise tenants of their rights and advise other agencies of enforcement opportunities. In FY 2009, OTA paid DCRA \$17,550. The FY 2010 charge, not including access to BBL data, will only be \$2,550.

Energy use

Energy savings is a key consideration for the agency's new space designs. We installed motion lights at our previous location at 941 North Capitol Street, N.E. While it did not make sense to install motion lights in our current temporary space, we will have motion lights at our new space

in the Reeves Center upon moving to that location at the beginning of FY 2011. Motion lights conserve energy by turning on and off automatically upon detecting activity or the lack of activity. We also installed high bay lighting in our previous space and our current space, and will do the same at our new space. High bay lighting reduces our energy costs by 30-50% by distributing more light with less energy by comparison with other light sources.

KEY AREAS OF AGENCY'S GROWTH

Legal Services Division

The Rental Housing Act directs OTA to "Represent tenants, at its discretion and as it determines to be in the public interest, in Federal or District judicial or administrative proceedings." This representation is a focal point of OTA's services to tenants and the community. Today's testimony will highlight three areas of growth in the activities of the Legal Services Division.

Direct Legal Representation

OTA was pleased to add Andrew Gibbs, Esq. to its staff in September 2009. He is responsible for the drafting of any court document that OTA

provides to tenants, and he provides direct legal representation to select tenants who have legal issues of significance to the District's tenant population as a whole. As of the time of this testimony, Mr. Gibbs has represented tenants in approximately 20 cases in the Office of Administrative Hearings, the Civil Division of Superior Court, and the Landlord/Tenant Branch of Superior Court, and has given both formal and informal legal assistance to hundreds of other tenants throughout the District.

In addition to Mr. Gibbs joining the staff at the end of FY2009, OTA has now secured permission to post a position announcement for the second in-house litigating attorney. OTA has prepared a Job Description, with unique ranking factors and an original legal writing component, to be used in the search. The position will soon be posted and will remain posted until it is filled. Once it closes, OTA will rank and rate the candidates and begin interviewing individuals of interest. Once a selection has been made it generally takes 45 days from date of offer letter to bring the employee on board. We anticipate that the second in-house litigator will begin service in approximately three (3) months.

501(f)

In addition to providing representational and educational services to the District's tenants, OTA now has a statutory to provide evaluative assistance to the Rent Administrator in the consideration of petitions requesting authorization to evict tenants "for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied." Such petitions are commonly known as 501(f) petitions, named after the section of the Rental Housing Act authorizing such petitions.

The first 501(f) petition to be filed under this iteration of the statute was filed in FY 2009, and it proposed substantial renovations to the Kennedy-Warren building. OTA has devoted hundreds of man-hours to the evaluation of the petition. In so doing, OTA has been a key player in ensuring the fair treatment of residents of this 300+ unit building. Additionally, OTA will be using the experience gained from the evaluation of this petition to formulate a legislative request designed to make the process more efficient and fair to both tenants and housing providers.

Outside Legal Representation

From its inception as an agency, OTA has used the services of outside legal providers to assist tenants for whom OTA could not provide direct representation. In FY 2009 we had nine Blanket Purchase Agreement's, four with legal service providers who represent tenants who fall under certain income thresholds, and five with solo attorneys who represent tenants and tenant associations who are not necessarily low-income, but who otherwise would have difficulty finding an affordable attorney.

To improve OTA's service in this area in FY 2010, OTA required outside legal providers wishing to undertake such representation to respond to a Request for Qualifications. Not only does the RFQ process assist OTA in ensuring the quality of representation available, it will assist OTA in better matching the needs of the tenant recipients with the professional skills and interests of the providers.

Technology and Data Management

As OTA continues to grow and develop, and so do its need for state-of-the-art technology and data management systems. Today's testimony highlights five (5) technology and data management areas.

During FY 2009, OTA became aware that several client-tenants needed a more permanent record of their sessions with OTA Case Management Specialists. In response to this need, OTA developed a Summary Advice form. Among the items on the form are: a description of the issue or issues for which the tenant was seeking guidance, the contents of guidance provided, and a “to-do” lists for future actions to be taken both by the tenant and the Case Management Specialist. Each form is signed and dated by both the tenant and the Case Management Specialist, and a copy is retained by each. These forms have proved invaluable in serving as case plans for addressing the tenants’ needs.

In FY 2008 OTA began use -- Complaint Intake I -- which enables the OTA to electronically record the progress in each individual intake case. As Fiscal Year 2009 came to a close, an updated version was being developed. Effective April 2010, OTA will begin utilizing “Intake-II.” The new upgraded case management technology system, which record key information for each tenant contact; generate Summary Advice forms at the click of a mouse; generate notices to housing providers, i.e. DCRA, and/or DHCD regarding rental properties that are non-compliant with licensing,

registration, and occupancy requirements; and generate “rapid-response” reports at the request of the Mayor and the Council.

In FY 2009 the OTA built upon the progress made in FY 2008 to improve its data collection and management system. The OTA now stores tenant and housing provider petitions in a newly developed electronic “Petition Library,” a shared site that enables the agency to store, search, and view all tenant and housing provider petitions in the database, and sort them by Ward, Address, Date of Filing, Date Received, Tenant Name, Housing Provider Name, etc. This technology allows OTA to better track tenant and housing provider petition cases, better meet the needs of our clients, and generate reports upon request.

Another major component of OTA’s services to the tenant community is the provision of Emergency Housing Assistance. To better manage and document that service, OTA has also developed and implemented an Emergency Housing Assistance electronic tracking system to memorialize and track each request for emergency housing and tenant relocation assistance. The tracking system stores key information, including: identifiers for the tenant, property, and housing provider; the

circumstances of the request; OTA action items and agency expenditures; the housing status of each client through temporary and permanent relocations; and other key information. This data can now be more easily searched and housing assistance reports more easily produced.

The initially-stated function of OTA is to provide education and outreach services to tenants and the community. To better document and store OTA Outreach services, an electronic outreach tracker has been developed and implemented. This electronically tracks event information such as the amount of attendees, languages spoken, date, hours of event, and location of event, as well as storing relating documents to the respective outreach events.

Education and Outreach

As I stated a moment ago, the initially-stated function of OTA is to provide education and outreach services to tenants and the community. Today's testimony will highlight five areas of growth.

The Tenant Education Institute (TEI)

The TEI our newly conceived division on paper will become identified as a government educational and training facility with a variety of

educational programs to serve the needs of the tenant community. The TEI currently in its infancy will assemble all of the current power-point educational programs to be converted into downloadable application for access by the public. The second step will be to translate these materials first into Spanish, and as other translation needs are identified into those languages also. Initial staffing for this new initiative will be comprised of one case management specialist.

Elderly and Disabled Registration Campaign

As I mentioned earlier in my testimony, the District laws gives protection in the case of rent increases to two (2) vulnerable populations classes - the elderly and the disabled; by restricting annual rent increases imposed on these populations to the CPI-W percentage rather than the CPI-W + 2% allowed for the general population living in a property subject to rent control. However, that restriction is only available to those who have registered with the Rent Administrator.

OTA has discerned that a large number of qualified, vulnerable tenants are not aware of this exception thus - they are not registered. To address this situation, the OTA is making plans to visit apartment buildings and assists tenants in completing the application on-site to create a

convenient process. OTA will then takes copies of the applications and supporting documents, to the Rental Accommodations Division for approval, and distribute the approved applications to both the affected tenants and the respective housing providers.

The launching of this campaign will commence **on April 1st** as the OTA, in conjunction with IONA Senior Services, holds a major Ward 3 event precisely for this purpose (at IONA is located in the 4100 block Albemarle Street, N.W.). Future events will be scheduled in each of the other wards, and I encourage each of you on this committee to contact my office to schedule an event in your ward.

OTA Partnership Events

OTA also sponsors community events aimed at education and outreach. Another goal is--penetrating culturally diverse, but underserved tenant populations. On May 15th the OTA will hold a “Latino Tenant Summit” in conjunction with the Carlos Rosario International Charter School for Adult Education, the Latino Federation, Office of Latino Affairs, Office of Human Rights and a host of other Latino based-community organizations.

Brochures and Tools

The creation of educational brochures and other tangible tools is a high priority. For example, OTA has developed a tenant association toolkit that includes the necessary filing forms and sample documents. The kit complements the proposed TEI course on tenant association leadership development. Also, the rental housing case database finally gives tenants the ability to easily access key landlord/tenant rulings from the Rental Housing Commission, the Office of Administrative Hearings, and the D.C. Court of Appeals.

To ensure that all staff is engaged in community outreach and education efforts, the Chief Tenant Advocate assumes direct primary responsibility for the program, but she has delegated a substantial portion of the coordinating responsibility to Case Management Specialist Delores Anderson. For example, Ms. Anderson coordinates stakeholder meetings and makes numerous presentations on tenant rights in the community.

Stakeholder Coordination

While monthly meetings for tenant community stakeholders have been a feature of OTA services since OTA's inception, they have taken on a new element in FY 2010. The Rental Housing Act is up for reauthorization

in 2010. In preparation for the Council's consideration of the fundamental role the Rental Housing Act plays in the lives of the majority of District residents, OTA is seeking direct input from the stakeholders themselves. The stakeholder community identified six issues in need of further examination and refinement: repeal of the sunset provision of the Act, rent increases, housing provider petitions, enforcement, eviction, and habitability/privacy. OTA has facilitated the creation of working groups to examine each of these issues and make recommendations as to how to enhance this critical legislation. OTA is providing meeting space, administrative support, and staff liaisons to assist this grass-roots effort.

TENANT CASE INTAKE, CASE REFERRALS, AND TOP RENTER ISSUES FOR FY 2009

Tenant Complaints Received

The Office of the Tenant Advocate (OTA) received a total of **1,838** tenant complaints in Fiscal Year 2009. 1691 (92%) of these cases have been resolved leaving only 147 (8%) pending cases for the Fiscal Year. Ward 5 reported the greatest number of complaints with 296 (16%) while Ward 3 accounted for the fewest number of complaints with 76 (4%).

Top issues

The top 5 issues drawn from our intake cases fell into the following categories:

1. "Landlord/Tenant" - which includes illegal lease agreements; rental payment and payment receipt issues; non-return of security deposits and interest on security deposits;
2. "Clean-Safe-Sanitary" housing code violations - which includes water leakage, mold and mildew, holes in walls, inadequate security, rodents (indoor/out) and insect infestation.
3. "Evictions-retaliations" - which includes for-cause notices to cure or vacate; not-for-cause notices to vacate; retaliatory action after tenant has exercised a legal right or otherwise.
4. "Rent increases" - which includes rent increase miscalculations; housing provider petitions for rent increases larger than the standard annual increase; petitions for rent abatement due to housing code violations;
5. "Facilities-Utilities-Fixtures" - which includes windows and doors in disrepair; interior wall, floor and ceiling in disrepair; peeling wall

covering or paint; illegally transference of utility bills to tenant responsibility; and illegal sub metering.

Landlord/Tenant problems were the top issue reported in all wards.

In contrast, the most common issues in FY 2008 were (1) "Clean-Safe-Sanitary" housing code violations, (2) "Landlord Tenant," (3) "Construction, Maintenance, repair" housing code violations, (4) "Rent increases," and (5) "Evictions-retaliations."

An issue on the rise stems from buildings in which the leases require the tenants to provide floor covering over 85% of the floor space. This leave provision is common for older buildings which are susceptible to the transfer of noise to the apartment below. Regrettably, OTA is receiving an increasing number of complaints from tenants whose right to the quiet enjoyment of their apartment is being trampled (often literally) by excessive and untimely noise from above. Landlords appear to often be afraid to enforce the lease provisions against the offending tenants, leaving the downstairs tenants to suffer. One of the stakeholder working groups is examining the issue and expects to make recommendations to the Council as part of the reauthorization process.

LEGISLATIVE ACCOMPLISHMENTS AND PRIORITIES

In fiscal year 2009, the OTA testified and offered recommendations regarding over a dozen tenant rights and rental housing bills before the D.C. Council regarding matters. Key areas of concern included improving housing code enforcement; tenant associational standing; preserving the tenant right of purchase; housing provider rent increase petitions; and preserving tenant rights during foreclosure.

Housing code enforcement

Enforcement of the basic tenant right to safe and sanitary housing is simply not as reliable and effective as it should be. Several bills (Bill 18-42, the "Tenant Protection Act of 2008," Bill 18-92, the "Omnibus Rental Housing Amendment Act of 2009," and Bill 18-104, the "Tenant Access to Justice Reform Act of 2009") were introduced at the Council to improve the government's and tenants' ability to enforce the housing code. Among the proposals, DCRA would be required to regularly inspect all rental properties in the District; notify tenants of any DCRA housing code enforcement action against their housing provider, and allow tenants to provide relevant evidence; and prioritize the use of the Nuisance Abatement Fund to

prevent the displacement of tenants from affordable rental housing. D.C. Superior Court would be required to create a summary process at the Landlord & Tenant Branch for tenants to seek expeditious redress against housing providers who fail to maintain the accommodation in compliance with the housing code.

The OTA testified in strong support of these goals with a number of specific recommendations -- developed in consultation with stakeholders and government colleagues -- to build on the regular pro-active inspection program already initiated by DCRA; to give Superior Court's own initiative to create a summary tenant housing code action in the Civil Division a change to succeed, and thus avoid a possible "separation of powers" conflict with the Council; and generally to help ensure that legislative success can translate into effective and deliverable improvements in the area of housing code enforcement. I am pleased to share with the Committee Superior Court's recent report to us that the new summary "Housing Court" is almost ready to begin. The Court expects that tenants will be able to file housing code claims in mid-April and that hearings will be scheduled for as early as mid-May.

Tenant associational standing

Another way to improve housing code enforcement, and the enforcement of other important tenant rights, is to allow tenant associations to pursue enforcement actions collectively on behalf of members who wish to participate. In fact, associational standing is a right that exists generally for associations under the District's non-profit corporations and unincorporated associations laws. Due to questionable interpretations of the relevant rental housing regulation, however, tenant associations have been denied that right at administrative hearings, unless they demonstrate that they represent a majority of the tenants in the building, itself a cumbersome and shifting standard.

The OTA testified in strong support of Bill 18-68, the "Office of Administrative Hearings Amendment Act of 2009" (which would finally give tenants at D.C. Housing Finance Agency projects an administrative remedy against illegal evictions and retaliatory actions by the housing provider). The OTA also regarded this bill as an opportunity to finally resolve the matter of tenant associational standing and urged that the bill be amended accordingly. Bill 18-68 is pending and we have not received word about

our amendatory recommendations, but newly introduced legislation does incorporate our recommendation. Bill 18-598, the “Tenant Organization Petition Standing Amendment Act,” would give tenant associations standing in administrative actions regardless of the number of members participating in the action, a basic statutory right enjoyed by all other types of associations.

Preserving the tenant right of purchase

Under the tenant right of purchase (TOPA) law, the landlord must give the tenants an opportunity to purchase the building once it is put up for sale. Since the law was enacted in 1980, tenants have had a full 30 days to consult with attorneys and others and organize before being required to submit the “Letter of Interest.” In March 2009, the Court of Appeals ruled that the tenant must ensure *actual delivery* to the owner within 30 days -- even where the tenant had mailed the letter with weeks to spare, and the U.S. Postal Service was responsible for failing to deliver the letter until after the expiration of the statutory timeframe. This ruling upset not only decades of practice, but also, we believe, the Council’s clear intention regarding the 1980 TOPA law.

The OTA helped draft emergency, temporary and permanent legislation (Bills 18-170, 18-171, and 18-179, the “Tenant Opportunity to Purchase Preservation Clarification Amendment Act”) to clarify the law and restore to tenants the full 30-day time period that is often essential to the meaningful exercise the tenant right of purchase. In granting the tenant’s petition for en banc review, the Court of Appeals cited OTA’s letter in support of the request.

Misuse of the rent control law’s “Voluntary Agreement” rent increase provision

As the legislative history shows, the original purpose of the rent control law’s “70 percent Voluntary Agreement” provision was to allow the housing provider and tenants to address housing conditions, or other matters of mutual interest, in a non-adversarial manner. However, the “VA” has come to be used as a way -- particularly in buildings with many vacant units -- to “buy” the agreement of remaining tenants to virtually unlimited rent increases for all units including their own, which would only take effect when a new tenant moves in. This practice threatens to perform an end-run around both the administration of rent control and the very purpose of rent control.

The OTA drafted bills introduced in the last Council session and the current Council session to address this problem. Bill 18-174, the “Rent Control Protection Amendment Act of 2009,” would amend the “VA” provision to better ensure that tenant approval of a proposed VA is free of coercive influences, that any rent increase is cost-justified and implemented equitably, and that the VA does not conflict with the purposes of the rent control law.

Tenant rights during foreclosure

In the District of Columbia, no tenant may be evicted simply because the landlord is being foreclosed upon. The tenant may be evicted for any valid statutory purpose -- such as the sale of the property for owner-occupancy or to remove the unit from the rental housing market. Otherwise the new owner – including a bank or the purchaser at a foreclosure sale -- assumes obligations under the tenant’s lease and all other landlord obligations. The problem is that too many tenants and other parties are unaware of the tenants’ rights until it is too late or those rights are simply ignored.

The OTA helped to draft legislation introduced at the Council last year to provide notice of tenant rights during foreclosure to all parties. Bill

18-242, the “Tenant Opportunity to Purchase Exemption Clarification Amendment Act of 2009,” would do so by amending the TOPA law -- not to effect any change in TOPA’s foreclosure exemption, but to take advantage of TOPA’s existing mechanisms for notifying all parties -- transferors, transferees, tenants, and government – of the transfer of ownership of a rental property. Since the introduction and hearing on this bill, the OTA has engaged stakeholders and others regarding alternative ways to get this important notice to tenants and all affected parties.

CONCLUSION

Thank you, Chairperson Bowser and members of the Committee, for this opportunity to report on the accomplishments of the OTA in the past fiscal year. This concludes my testimony and I am happy to answer any questions you may have.

