GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Housing and Community Development

B24-96 – "Eviction Record Sealing Authority Amendment Act of 2021"

B24-0106 – "Fair Tenant Screening Act of 2021"

Testimony of

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Committee on Housing and Executive Administration

Council of the District of Columbia

The Honorable Anita Bonds, Chairperson

Virtual Hearing via Zoom

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Good afternoon, Chairperson Bonds and members of the Committee on Housing and Executive Administration. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD). I am pleased to appear before you to testify on behalf of Mayor Bowser on B24-96, the "Eviction Record Sealing Authority Amendment Act of 2021" and B24-0106, the "Fair Tenant Screening Act of 2021."

It is DHCD's mission to produce and preserve affordable housing for low- and moderate-income residents and revitalize underserved neighborhoods in the District of Columbia. As part of this mission, the Rental Administrator is part of the Housing Regulation Administration (HRA) within DHCD and is responsible for administering the Rental Housing Act of 1985 (DC Law 6-10) as amended, which is codified at DC Official Code § 42-3501.01 and what follows. It is for this reason I am testifying before you today.

The "Eviction Record Sealing Authority Amendment Act of 2021" expressly amends the Rental Housing Act. For its part, the "Fair Tenant Screening Act" only references the Rental Housing Act in its definitions but my testimony will argue the purposes and intent of the bill before you makes the Rental Housing Act a better home for its provisions than the "Human Rights Act of 1977" as is currently proposed. The Office of Human Rights agrees.

I will begin with **B24-96,** the "Eviction Record Sealing Authority Amendment Act of 2021" as this bill is relatively unchanged from when I testified on this measure last session (October 30, 2020) and I will largely reiterate my testimony from that hearing.

The first change proposed relates to the notice requirements of the eviction process. DHCD is directly involved in the eviction process through the recordation

of “notices-to-vacate” which are generally required to be served on the Rent Administrator as well as tenants. Notices to vacate for nonpayment of rent, however, are explicitly exempted in the Rental Housing Act from this filing requirement. In addition, many tenants unwittingly waive their right to a notice-to-vacate for nonpayment of rent when executing their lease agreements. This legislation would amend the Rental Housing Act to prohibit a housing provider from filing a Superior Court complaint to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant *and* the Rent Administrator with a written notice-to-vacate 30 days prior to filing any eviction case with the court. A favorable feature of the bill is the added requirement that a housing provider must prove that the housing accommodation is properly registered before an eviction complaint may be filed with Superior Court.

The core of the bill, as the name suggests deals with record sealing. One of the biggest impacts of an eviction claim, whether or not it results in a formal court-ordered eviction, is that it can put the tenant at a disadvantage in renting another home and affect other opportunities such as borrowing and employment long after the claim was filed. This bill therefore requires the Court to seal eviction records after three years as a matter of course. If the claim is unsuccessful, however, the record must be sealed after 30 days. The legislation would also authorize the Court to seal the records of certain other eviction claims before three years after a successful motion by a defendant. Finally, the bill would add discrimination in housing based on a person having a sealed eviction record to the Human Rights Act of 1977.

Today I am testifying in support of this legislation but there are important considerations we strongly encourage you to address.

First, as a technical point, we ask that the legislation specify that the period after which eviction records are to be sealed as three *calendar* years, to comply with the statute of limitations for real property.

Second, in addition to contributing to the public record on evictions, DHCD believes that the data the agency receives as a result of all notices to vacate being filed with the Rent Administrator will be invaluable to our efforts to understand and shape the impact of antieviction and other policies. It appears, however, that the notices recorded with the Rental Administrator and their information value are something of an afterthought in this bill. Most importantly, the bill does not reference them in any of the record sealing or fair housing provisions of the bill. If it is the Council's intention to not allow these records to be used for tenant screening and discriminatory purposes, we recommend that the bill explicitly state that after three calendar years, the District too can no longer release or publish notices to vacate and data from the notices can no longer be released publicly except to the defendant or for research and policy purposes and then only with any personally identifiable information removed. In general, the Council may want to consider how the important policy and research value of these data can be accommodated.

The third consideration is that this bill will greatly increase the volume of notices-to-vacate processed by the Rent Administrator and will also greatly increase the requests for file retrieval on her office. In the year prior to the declaration of a public health emergency due to COVID-19, from March 1, 2019 to March 1, 2020, the HRA processed 2,117 notices to vacate. These did not include any for nonpayment of rent, which, as noted above, are currently not required to be filed with the Rent Administrator. Nonpayment of rent, however, is the major cause of eviction cases. A recent report from the Georgetown University McCourt

School of Public Policy[1] cites an average of 32,000 eviction cases filed in court on average in recent years in the District. Thus, we might anticipate up to a fifteen-fold increase in the volume of notices-to-vacate registered with RAD. Currently the staff must manually review and log submissions, even while primarily working off-site. Moreover, while the Office of the Tenant Advocate (OTA) expects to deliver an on-line form submission system to DHCD this year, as part of the process, and as a result of legislation passed as part of the Fiscal Year 2020 Budget Support Act of 2019, every housing provider in the city will be required to reregister with the Rent Administrator within 90 days.

Therefore, the Department will not be able to absorb these costs and there will be a significant fiscal impact from this increased workload for some years to come. Adding to the strain, despite our best efforts to provide rent and other assistance there may be an uptick in eviction actions over historical norms this fall and winter with the end of the declared public health emergency and local and federal emergency eviction moratoria. I simply want to flag these converging demands on the Rent Administrator even as I assure you DHCD will do its best to meet these competing demands.

The fourth concern I will highlight today is that while the Court is directed in the new Section (a-1) (3) to dismiss a case where the housing provider "[d]id not provide *the tenant* with notice as required by this legislation," the legislation requires notice be served to *both* the tenant and the Rent Administrator. As discussed above, serving the Rent Administrator provides a check on the process and an opportunity for public information about evictions and the targeting of eviction prevention services to tenants that receive a notice. To assure that housing

[1] McCabe, BJ and E. Rosen (2020). Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability. Retrieved 10/23/20202 from https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap

providers fulfill all the purposes of the legislation, we suggest the language in this paragraph be modified to read "[d]id not provide notice as required by this legislation." In this way it will be clear that both notices are required.

In addition to the considerations I have raised thus far, the District of Columbia Office of Human Rights (OHR) notes that with respect to amendment of Section 221 under the Human Rights Act, Council may wish to insert "sealed eviction record" to the list of protected traits in subsection (a)(5) as well as subsection (b). Additionally, OHR cautions that specifying non-disclosure of a sealed eviction record under subsection (g)(2) could be read to exclude a prohibition on disclosures of other protected traits. In other words, as written, it may be argued that the statute only prohibits disclosure of a sealed eviction record, and that an applicant could be required to disclose their race, religion, or gender. If there are any questions regarding these suggestions, OHR stands ready to work with the Council.

With these concerns addressed, we believe of the provisions the Eviction Record Sealing Authority Amendment Act of 2019 will contribute to housing stability and a well-functioning rental market in the District of Columbia.

B24-0106, the "Fair Tenant Screening Act of 2021"

I will now turn to the Fair Tenant Screening Act. This bill contains a number of important provisions, however, as my colleagues at the Office of Human Rights noted in their testimony when a previous version of this legislation was considered on October 27, 2020, we believe the legislative provisions belong in the Rental Housing Act rather than in the Human Rights Act.

The Fair Tenant Screening Act expands the rights and obligations of tenants and housing providers and seeks to regulate the landlord-tenant relationship and

transactions. One such expansion is the tenant's right to receive written screening and admission criteria in advance of a housing provider collecting an application fee, and when a housing provider denies an application, the housing provider must send a notice of denial with an explanation for the denial along with any supporting information. In addition to regulating fees and other provisions, the bill also restricts what information a housing provider may require from prospective tenants. One such restriction is that a housing provider may only inquire about certain past housing actions. Another is a restriction against inquiring about rental history as well as income levels and credit scores for tenants seeking to rent with an income-based assisted subsidy. Finally, the bill seeks to regulate background screening companies with respect to registered agents.

The District is proud to have the nation's most expansive fair housing law. As an anti-discrimination statute, the Human Rights Act prohibits housing providers from treating individuals differently based on any of 18 identified protected traits.[2] Under the Act's protection, a housing provider may not refuse accommodation or provide services in part or in whole due to an individual's protected trait.

The District also has a comprehensive set of tenant protections contained in the Rental Housing Act administered by the Rent Administrator, which works in conjunction with the Human Rights Act. The Rental Housing Act regulates everyday housing transactions between tenants and housing providers without specific reference to the protected traits in the Human Rights Act.

The provisions of the proposed Fair Tenant Screening Act expand the rights and obligations of tenants and housing providers in general by requiring housing providers to issue certain notices and regulating what information they may request

[2] There are 21 protected traits total in the Human Rights Act, but 18 are applicable to housing.

from applicants and tenants. But the bill does not prohibit any conduct as discriminatory based on the protected traits under the Human Rights Act. Rather, this legislation appears to be a regulatory scheme designed to manage the mechanics of any landlord-tenant relationship, which makes it a departure from the anti-discrimination provisions of the Human Rights Act. The Rental Housing Act, however, does handle such provisions and regulates other tenant disclosures, including as discussed above, eviction. Thus, the Rental Housing Act is the appropriate home for these protections.

This is more than a legal nicety. There are benefits from an operations perspective from placing the proposed protections in the Rental Housing Act. The Office of Human Rights which adjudicates contested discrimination complaints, is not well-suited to be a compliance agency regulating routine business transactions such as the daily operations of housing providers and their transactions with tenants and prospective tenants. That function is already handled by the Rent Administrator. Having all the business transaction requirements regulating the customary occurrences of the landlord-tenant relationship in one statute administered by a single office and agency assists housing providers and tenants in compliance and provides consistency in policy and implementation.

It is important to note, that while the provisions of the Fair Screening Act can be transferred to the Rental Housing Act fairly smoothly, and I strongly encourage you to undertake this change, substantive revisions will be required to establish enforcement authorities between the Rent Administrator, Office of Administrative Hearings (OAH), and D.C. Superior Court, including each adjudicatory body's ability to assess remedies. The Rent Administrator and her staff can assist in identifying these necessary revisions.

Another important consideration is that the Corporations Division at the Department of Consumer and Regulatory Affairs (DCRA) is responsible for regulating businesses and their registered agents. The current Fair Tenant Screening Act provisions assign parallel responsibilities for this to DHCD when it comes to registering screening companies. Regulating registered agents is outside the Rent Administrator's regulatory purview and would require the creation of another facet of regulation and compliance. It also raises questions such as what occurs if the registered agent listed with DHCD does not correspond with the registered agent for the same screening company listed with DCRA. Here again, to facilitate compliance and accountability and avoid duplicative administration, it makes sense to assign these responsibilities to DCRA's Corporations Division, the part of the District Government that currently handles these issues.

Summing up, there are important protections and clarifications contained in the Fair Screening Act that have real merit, but as written it will make operations and compliance duplicative, overly complicated, and potentially limited. To achieve the bill's aspirations, it would benefit greatly from a review and a recasting, placing its provisions within more appropriate places within the existing statutes and government structures of the District that handle these matters. We are committed to working with the Committee to achieve this potential. In closing, I will note that DHCD staff have identified a number of technical concerns relating to vague terms, further specifying time frames and other issues. For example, the prohibition on considering an action to recover possession should be extended to three calendar years to match the statute of limitations in real estate the provisions of the Record Sealing Act if those also become law. I ask that you work with the Rent Administrator to address our other technical concerns as well.

Conclusion

I would like to close by noting that DHCD also supports Community Based Organizations from our federal Community Development Block Grant (CDBG) funds to provide tenants with housing counseling and addressing eviction and its aftermath are central to this work. We also support affordable housing programs to protect tenants from eviction and displacement. Recently, DHCD used CDBG and other federal resources to establish two COVID-19 related emergency rental assistance programs, which complement the long-standing Emergency Rental Assistance Program (ERAP) to provide tenants housing stability and stop the threat of evictions.

Along with our formal role in the eviction process, which would be expanded by this bill, DHCD has significant mission and program interests in reducing evictions so tenants, property owners, District of Columbia citizens reap the benefits of increased housing stability and a well-functioning rental housing market.

Thank you, Chairperson Bonds and the members of the committee for the opportunity to testify today. This concludes my testimony and I would now be happy to answer any questions you may have.