

**Testimony of Shavannie Braham
Staff Attorney, Housing Unit**

And

**Beth Mellen Harrison
Supervising Attorney, Housing Unit**

Legal Aid Society of the District of Columbia

**Before the Committee of the Whole
Council of the District of Columbia**

**Public Hearing Regarding:
Bill 22-0669
“Department of Buildings Establishment Act of 2018”**

April 19, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony regarding Bill 22-0669, the “Department of Buildings Establishment Act of 2018.” Legal Aid supports the proposal to move rental housing inspections out of the Department of Consumer and Regulatory Affairs (DCRA). We urge the Council to go even further than the current proposal, either to create an independent agency focusing exclusively on rental housing, or to amend the bill to ensure that the Department of Buildings’ rental housing unit engages in robust inspections and enforcement efforts and does not simply replicate the current problems at DCRA.

In past testimony, we have highlighted problems that we continue to observe in DCRA’s rental housing inspections program. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code. We believe that an independent rental housing inspections agency is needed to fully address these problems.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 85 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

A BROKEN AGENCY

Last month marks the 10-year anniversary of the *Washington Post*'s investigative series on the systemic failures in DCRA's rental housing inspection program.² During its investigation, the *Post*'s team reviewed thousands of court records and agency documents, providing a clear record of the agency's failure to timely investigate emergency complaints, perform follow-up inspections, and enforce and collect fines. DCRA Director Linda Argo responded at the time by assuring the public that the agency would provide more training to employees and develop a system to better track inspections and re-inspections.³

Based on our experience with DCRA, related in several representative client stories below and recounted in oversight hearings in past years, this has not happened as it should—and much the same story could be written today. In our opinion, this shows that the issues with DCRA are not mere problems of leadership. Instead, they reflect an overbroad mandate and a lack of mission that interferes with the agency's ability to give rental housing issues the consumer protection and public health focus they require.⁴

Problems Scheduling Inspections

When a tenant calls DCRA to request an inspection, that is already a victory for the agency—many District tenants are unaware that the agency conducts inspections to ensure compliance with the housing code.⁵ It is therefore extremely important that the agency presents as being open and willing to help from the outset; otherwise tenants may give up on inspection requests altogether.

Unfortunately, far too often, frontline employees answering the phones at DCRA put up artificial barriers to tenants getting inspections scheduled. For example, Legal Aid and other advocates continue to hear from tenants who live in subsidized housing that DCRA does not inspect those units, despite the agency's repeated assurance that this is not the case, and despite this issue being raised with DCRA leadership for years. On January 29, 2018, Ms. M,⁶ who lives in public housing, was initially denied an inspection for this reason. A Legal Aid attorney immediately intervened and successfully advocated for the scheduling of an inspection. Had Ms. M been unrepresented, however, she probably would have accepted that DCRA had no ability to inspect subsidized housing, a claim by agency employees which is simply inaccurate. It is

² Debbie Cenziper & Sarah Cohen, *A Failure in Enforcement*, *Washington Post*, Mar. 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/10/AR2008031003193.html>.

³ *Id.*

⁴ Legal Aid has raised these same concerns about DCRA's performance at annual oversight hearings in 2015, 2016, 2017, and 2018, as well as roundtable hearings convened by this Committee in July and October 2017. We also continue to raise our concerns at regular stakeholder meetings with the agency. Unfortunately, we have seen far too little progress over the years.

⁵ A January 2016 survey performed by Legal Aid interns found that 37% of surveyed tenants (29 of 78), including many who had lived with housing code violations, did not know that the D.C. government has housing inspectors who can be called when landlords are not fixing problems. Legal Aid is not aware of any marketing efforts by DCRA in the subsequent period that would be likely to increase awareness of its services.

⁶ Client names have been redacted for confidentiality purposes.

unclear to Legal Aid why DCRA's frontline employees continue to give this false answer to subsidized tenants.

An additional problem is that tenants must clear their entire day to be available for a housing inspection due to DCRA's scheduling system. Of course, this is especially burdensome for low-income workers, who cannot afford to miss a day's pay. Legal Aid understands that DCRA is working on updating its technology to address this problem. Either DCRA or the new agency should expedite the development of technology that makes scheduling more precise.

Deficiencies in Inspections and Reports

Once an inspection is scheduled, tenants also experience problems with the inspection process, especially with the issuance of reports. As a result, landlords do not make repairs, and tenants continue to live with unsafe conditions. The following four stories are a representative sample and highlight problems with DCRA's practices and systems:

- Emergency inspections are not always scheduled in a timely manner. In early November 2017, Mr. G, a Spanish speaker, called DCRA from court. He had withheld rent due to the housing code violations in his home. With the assistance of Legal Aid attorneys, he informed the DCRA representative he had no heat and was told an inspector would come out within two days. Previously, Legal Aid had been told by DCRA that the agency schedules emergency, "no heat" inspections within twenty-four hours of such a call. Four days later, no inspector had contacted Mr. G or appeared, and he still had no heat. DCRA eventually inspected Mr. G's unit five days after his initial call. After three subsequent court hearings, the landlord eventually restored the heat in mid-December 2017.
- Far too often, tenants do not receive a copy of an inspection report. After Ms. O called DCRA to request an inspection, the inspector cited the landlord for multiple violations, including failure to provide or maintain a sink, failure to provide or maintain a water heating facility, a defective ceiling light fixture, and defective cooking facilities. An inspector did not re-inspect Ms. O's unit until months later. After not receiving the re-inspection report, she went down to DCRA to obtain a copy. There, an employee told her that the re-inspection was marked as incomplete and had not been uploaded into the system and therefore could not be provided. The DCRA employee offered no explanation, and there was no avenue to hold an individual accountable, as the inspector could not be traced. This document would have been helpful to Ms. O's ongoing court case, and the absence of it reduced her negotiating power during settlement discussions.
- There is a wide range in the quality of inspections performed by different inspectors. Mr. B had two DCRA inspections, which resulted in inconsistent reports. While the first inspector made note of outstanding repairs, the subsequent inspector failed to cite the landlord for many previously identified violations that remained unresolved, including water damage, inadequate heating, and un-level flooring. These conditions continue to exist today.
- In Ms. S's case, a DCRA inspector took approximately twenty pictures of her unit, documenting numerous violations. The same inspector then returned unannounced the

following day and said that he had lost the photos. The inspector re-inspected the unit and took far fewer pictures and noted far fewer violations than the day before. While the landlord was still cited for over \$4,000 in fines for failure to make repairs and exterminate, DCRA never actually enforced these fines. Rather, the landlord repeatedly requested deadline extensions to make repairs, which were granted without DCRA seeking any input from Ms. S. This sort of ad hoc granting of extensions to landlords is far too common. Ultimately, Ms. S, with Legal Aid’s assistance, filed a Housing Conditions case in D.C. Superior Court and took on responsibility for enforcement herself. Only then did the landlord make repairs.

Failure to Enforce and Collect Fines

In Legal Aid’s experience, even when the inspection process does proceed as hoped—with an inspection and subsequent re-inspection citing the landlord for the same issues—there is a breakdown when DCRA transmits the case to its enforcement division for the collection of fines or the hiring of contractors and levying of liens. As a result, the cases languish in a nether region, while conditions continue to deteriorate and the landlord faces no consequences. This gives landlords little incentive to comply with the housing code.

DCRA inspected Ms. H’s unit twice and issued reports citing the landlord for twenty-two separate housing code violations. After inspecting a third time, the DCRA inspector informed Ms. H that due to worsened conditions and the landlord’s inaction, the case would be referred to DCRA’s enforcement division. Three months later, DCRA performed another inspection to determine the scope of work for third-party contractor estimates. Ms. H was told that once a proposal was approved, DCRA would send notice to the landlord, engage a contractor to begin repairs between two and six weeks, and place a lien on the property. Relying on this information, Ms. H withdrew her motion to compel repairs in a related Landlord and Tenant Branch case. Weeks later, and despite multiple attempts to follow up, Ms. H had received no update on the promised DCRA repair process. Fifteen months after Ms. H’s first call requesting an inspection, DCRA told her it would conduct no more inspections of her unit and that if she needed anything repaired, she should “go to court.” Despite Ms. H’s active engagement with the agency and its repeated documentation of violations, the landlord has faced no penalties from DCRA for its violation of the law.

A Broken Agency Culture

The stories above illustrate that not enough has changed since the *Washington Post* shined a spotlight on DCRA’s systemic failures 10 years ago. At the end of the day, Legal Aid believes that many of DCRA’s challenges with respect to rental housing inspections stem from a broken agency culture. DCRA does not have a clear sense of mission to enforce the housing code, and it brings neither a public health nor strategic perspective to its work. The focus of DCRA’s overall mission is business development and regulation, and far too often it appears that landlord interests are trumping tenant interests in the realm of rental housing inspections. There are numerous steps DCRA could take to improve its inspections process and enforcement process. But without a transformation in agency mission and culture, we fear that real change never will be realized, and tenants throughout the District will continue to live in unsafe conditions.

LEGAL AID'S RECOMMENDATIONS

Legal Aid has come to a similar conclusion as the many members of the Council who signed onto the Department of Buildings Establishment Act: the wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. However, Legal Aid suggests that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement. Should the Council choose to proceed with the current framework for a Department of Buildings, it should ensure that the Department's structure and procedures will lead to an effective inspections and enforcement regime.

A Rental Housing-Focused Agency

In some ways, the creation of a "Department of [all] Buildings" makes logical sense and will maintain efficiencies. All buildings in the District of Columbia are subject to an intersecting set of requirements established by the Construction Codes, the Fire Code, and other regulations. And an agency responsible for just building construction and maintenance should be able to avoid some of the problems of overbreadth currently faced by DCRA, which also is responsible for regulating areas as varied as business and professional licensing and weights and measures.

There is, however, an important difference between rental housing and commercial building codes that, in our opinion, militates strongly in favor of having a separate agency dedicated to rental housing inspections and enforcement. Commercial inspections focus on the integrity and properties of a structure before it can be used for a commercial purpose. By contrast, the housing and property maintenance codes that govern rental housing are more relational in nature: the severity of a housing code violation is judged by how it renders a unit unsafe and/or unsanitary for people currently living in the unit. Housing code violations are not abstract problems. They have a direct impact on the health and well-being of District residents each day that they persist. And they are a violation of the terms of the most critical consumer relationship for the majority of District residents. Government responses that fail to be motivated and guided by these insights are unlikely to result in effective enforcement.

It is therefore critical that the District place responsibility for rental housing inspections and enforcement within an agency or unit that has a public health and consumer protection focus. While government employees of course must be objective and adhere to the law, the new agency must strongly indicate that the District views substandard rental housing as one of the central threats to public health and consumer rights, and that such violations will not be tolerated. The new agency must aggressively cite housing code violations and other conditions issues such as lead, mold and asbestos; fine landlords who fail to make repairs within prescribed time periods; and engage contractors itself to remedy issues. This focus will be hard to maintain in an agency which, although narrower, will still have businesses as its primary constituency.

The Agency's Structure and Procedures

Legal Aid's strong recommendation is that the Council use this opportunity to create a tenant protection agency focused on rental housing inspections and enforcement. Short of a separate agency, the current bill should be modified to create a separate tenant protection

division focused on rental housing inspections and enforcement. A separate agency or division will most effectively address the problems related above, among others. We are attaching a chart illustrating our recommendation for how a separate agency (or a tenant protection division within the Department of Buildings) should be structured.

- The head of the tenant protection agency, as well as the general counsel and the ombudsman, should have removal protections to ensure their independence (protections already provided for the strategic enforcement administrator).
- Below the head of the tenant protection agency should be separate divisions:
 - Housing rehabilitation, focusing on the District, where necessary, performing its own repairs and placing liens on the property to pay for the costs.
 - Rental housing inspections, focusing on complaint and proactive inspections.
 - Subsidized housing, focusing on public housing and properties with site-based subsidies, which can present unique challenges.
 - Public health, focusing on mold, lead, asbestos, and infestation, conditions which present a particular threat to health and safety.
 - Enforcement, focusing on ensuring repairs are completed and administrative enforcement of fines, short of litigation.

Legal Aid also recommends that the Council consider other necessary changes to the current legal and regulatory structure and funding for rental housing inspections and enforcement, to ensure the creation of an effective tenant protection agency:

- The number of inspectors should be increased dramatically. For example, Baltimore currently has 95 housing inspectors. The District has a larger population and should have at least that many inspectors.
- The legal, inspections, and enforcement teams should collaborate in such a way that a case is moving toward and prepared for enforcement from the time that an inspector is dispatched. Lawyers should review the legal sufficiency of inspections reports and notices of infraction (issued when a re-inspection finds that problems were not corrected by the deadline) before they are issued.
- There should be a prescribed timeframe for when a re-inspection must occur, such as between 30 and 45 days after an initial inspection.
- Extensions to repair deadlines should only be granted as part of a transparent process: extensions should only be granted by a designated person after considering specified factors, and tenants should be given the opportunity to

object. Tenants should be notified of any extension, its length, and the reason(s) why the agency granted the extension.

- If no extension is granted, a case should be referred to enforcement after a specified, and short, period, and then proceed according to a specified timeline for service of a notice of infraction and placement of a lien on the property if the landlord does not pay a fine that either is upheld or goes unchallenged.
- Inspectors should be trained and licensed to cite for mold, lead, and asbestos, so that tenants do not need to contact multiple agencies to obtain redress for safety issues in their units.
- The agency should expand the use of the nuisance abatement fund to summarily correct substantial violations that landlords fail to fix and place liens on properties to recoup the cost.
- The agency should strategically target bad actor landlords in coordination with the Office of the Attorney General.
- The agency should assign inspectors to the Landlord and Tenant Branch, similar to what currently occurs in the Housing Conditions Calendar, to make inspections readily accessible to those who need them and provide court oversight of needed repairs.
- The proactive inspections process should be formalized and strengthened:
 - Agency inspectors, not contractors, should continue to perform proactive inspections.
 - All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.
 - The agency should prioritize buildings with “risk factors,” such as a certain number of violations found during complaint inspections during a certain period, for targeted proactive inspections.
 - The agency should ensure that proactive inspectors visit a substantial percentage of units in every building, varying based on building size (i.e., at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 50 units, etc.).
 - A “pass” on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.
 - The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period.

- The agency should have detailed annual reporting requirements to ensure that its operations remain transparent.
- The agency should use technology to make inspection reports available online and more information about a property's inspection history available to the public.

CONCLUSION

Thank you for this opportunity to share our thoughts on the Department of Buildings Establishment Act. We are eager to continue working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.