

**Testimony of Beth Mellen Harrison  
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**Before the Committee on Housing & Neighborhood Revitalization  
Council of the District of Columbia**

**Public Hearing Regarding:**

**Bill 22-0998**

**“Rent Charged Clarification Amendment Act of 2018,”**

**and**

**Bill 22-0999**

**“Rent Charged Definition Clarification Amendment Act of 2018”**

**October 29, 2018**

The Legal Aid Society of the District of Columbia<sup>1</sup> supports Bill 22-0998, the Rent Charged Clarification Amendment Act of 2018, and Bill 22-0999, the Rent Charged Definition Clarification Amendment Act of 2018, which would clarify existing law to ensure that changes the Council previously made to abolish rent ceilings are not undermined by housing providers abusing potential loopholes. The bills make clear that housing providers may not preserve rent increases for future implementation and also place tight restrictions on the practice of housing providers granting “rent concessions,” which have fueled the return of de facto rent ceilings.

While Legal Aid supports both bills, we believe the comprehensive approach in B22-0998 will better protect tenants’ rights and prevent housing providers from finding new loopholes to undermine the law’s protections.

**The Council Previously Abolished Rent Ceilings – and With Good Reason**

The two bills before the Committee today will clarify existing law to prevent housing providers from returning to a two-track rent system under rent control, in which the actual rent charged to a tenant and the maximum lawful rent are distinct, and tenants have to understand both in order to protect their rights. Such a system in many ways replicates the prior rent ceiling system. The Council abolished that system with enactment of the Rent Control Reform Amendment Act of 2006 – and with good reason.

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<sup>1</sup> 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 84 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.

Under the old system, the *rent ceiling* was a maximum rent level to which the actual rent could be raised. The rent ceiling could be increased by the landlord without taking the same increase in the actual rent charged to the tenant. The landlord had discretion to wait months or years to increase the actual *rent charged* to the tenants by the same dollar amount. The Rental Housing Act in fact enshrined the housing provider's right to save up future rent increases in this manner, guaranteeing that an unimplemented rent ceiling increase would "not expire . . . be deemed forfeited or otherwise diminished."<sup>2</sup>

The "extreme complexity" of the rent control system in effect prior to 2006 "led to confusion among tenants."<sup>3</sup> More specifically, "while most tenants underst[ood] the concept of rent charged . . . very few tenants underst[ood] the concept of rent ceilings."<sup>4</sup> The resulting lack of transparency had real-world consequences for tenants and prevented them from making informed decisions about where to live.<sup>5</sup> A new tenant might move into a unit, enticed by an affordable current rent and unaware of a high rent ceiling on the unit, only to be hit a year later with a dramatic rent increase, rendering the unit unaffordable.<sup>6</sup> It was not unusual for tenants to face large rent increases – on the order of \$500 or even \$1,000 or more – based on prior rent ceiling increases that the housing provider had been saving up for a future date. These rent increases were neither transparent nor predictable and often were too large for tenants to pay.<sup>7</sup>

The D.C. Council enacted the Rent Control Reform Amendment Act of 2006 to address these problems (and others). Rent ceilings were abolished, and the statute's prior guarantee that increases would never expire was eliminated. To help preserve affordability in rent-controlled units, the 2006 Act "replace[d] rent ceilings with a tight cap on rent charged increases."<sup>8</sup> In addition to helping to rein in rents, the elimination of rent ceilings also was intended to "make rent control more understandable and easier to administer."<sup>9</sup> This simplification in the law was combined with requirements for "full disclosure of pertinent information on rental properties" by housing providers to ensure that both rental applicants and existing tenants could forecast their future housing costs and make intelligent choices about where to rent, whether to continue an existing tenancy, and so on.<sup>10</sup>

### **The Council Should Clarify Existing Law to Prevent Housing Providers from Using Potential Loopholes to Create De Facto Rent Ceilings**

Despite the 2006 Act, housing providers continue to claim the right to retain approved rent increases for future implementation. Some housing providers will hold on to approved rent increases and not record them in the rent amount on file, only to implement those same increases

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<sup>2</sup> D.C. Code § 42-3502.08(h)(2) (2001 ed.).

<sup>3</sup> D.C. Council, Comm. on Consumer & Regulatory Affairs, *Committee Report – Bill 16-109, "Tenants' Right to Information Act of 2005"* 1 (2006) ("Comm. Rep.").

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 2-4.

<sup>6</sup> See Comm. Rep. at 1-4; *Committee Report – Bill 16-109, "Rent Control Reform Amendment Act of 2006"* 2-3, 7-10 (2006) ("Comm. Rep. Add.").

<sup>7</sup> See Comm. Rep. Add. at 2-3, 7-10.

<sup>8</sup> Comm. Rep. Add. at 12; see also *id.* at 2-3.

<sup>9</sup> *Id.* at 14.

<sup>10</sup> Comm. Rep. at 1, 2-4.

years later. Other housing providers will implement large, often above-market increases on paper, but will charge tenants lower rents, offering “rent concessions” for the difference. This practice results de facto rent ceilings, in which what a tenant actually pays for rent and what the housing provider claims could be charged are two different numbers, often hundreds or even thousands of dollars apart.

The 2006 Act never contemplated that housing providers, despite the abolition of rent ceilings, would maintain a two-track system. As a result, the de facto system created by housing providers is *significantly worse* than the broken system that the 2006 Act sought to address, because it is largely unregulated:

- Current law no longer requires housing providers to file both sets of numbers with the Rent Administrator for public inspection or to disclose this information to current or prospective tenants.
- Current law does not address which of the two rent numbers must be used as the basis to calculate future rent increases, allowing housing providers to implement far higher rent increases than otherwise would be allowed.
- Current law does not address when a rent concession can be withdrawn, allowing housing providers to use the threat of higher rents to prevent tenants from exercising their rights.

Because there are no governing rules, the current two-track system is ripe for abuse. The risk of confusion to tenants – particularly new tenants – is substantial. For example, a 2016 article in the *City Paper* documents how one landlord has used rent concessions to entice new tenants to enter leases, only to threaten and pressure them each subsequent year into agreeing to rent increases higher than what the Rental Housing Act normally would allow.<sup>11</sup>

Legal Aid’s position is that the housing providers’ current practices already are illegal under the 2006 Act, a conclusion reached by the Rental Housing Commission in two recent cases.<sup>12</sup> But, as the Commission has noted in those decisions, legislative action still is needed to clarify the 2006 Act, close any potential loopholes, and stop housing provider abuses. Bill 22-0998, the Rent Charged Clarification Amendment Act of 2018, clarifies existing law to prevent a return to rent ceilings with three important reforms: 1) eliminating current, de facto rent ceilings; 2) preventing housing providers from creating new rent ceilings; and 3) tightly regulating rent concessions to ensure they are not abused.

### **B22-0998 Eliminates Current, De Facto Rent Ceilings**

The 2006 Act was intended to create a new rent stabilization system in the District in which there would be one rent number – the rent charged. The reality on the ground has been markedly

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<sup>11</sup> “Landlords Exploit D.C. Rent Control Laws, Jacking Up Prices After ‘Concessions’ Expire,” Sept. 1, 2016.

<sup>12</sup> *Tonica Washington v. A&A Marbury, LLC/UIP Property Management*, Case No. RH-TP-11-30,151 (RHC Sept. 28, 2018); *Fineman v. Smith Property Holdings Van Ness LP*, Case No. RH-TP-16-30,842 (RHC Jan. 18, 2018).

different, with housing providers manipulating the law to create de facto rent ceilings, with the potential for abuse and confusion.

B22-0998 eliminates current, de facto rent ceilings with two important changes. First, the bill defines “rent charged” – the key term under current law – to make clear that it means what it says, the rent actually charged to the tenant. In other words, there is only one number, the amount the tenant actually is charged, and that number is the basis for all future rent increases. Second, the bill resets all current rents to the rent charged. Housing providers who have attempted to preserve significantly higher, fictive rents on paper will have to acknowledge the current rent charged as the only relevant number under rent control. These two steps will eliminate current, de facto rent ceilings, increasing transparency, protecting tenants from large, arbitrary rent increases, and ensuring that rent ceilings finally are abolished.

### **B22-0998 Prevents Housing Providers from Creating New Rent Ceilings**

In addition to clarifying the definition of rent charged, B22-0998 includes an additional provision to prevent the return of rent ceilings. The bill clarifies that any approved rent increase must be taken by a housing provider within 30 days or will be forfeited, preventing housing providers from holding onto rent increases for years before implementing them.

During 2015 and 2016, Legal Aid represented several tenants living in a building in Southeast D.C. (Ward 8) that experienced exactly this problem. In 2009, the housing provider filed a hardship petition and ultimately won approval for a 46 percent rent increase. (At the time, the tenants were unable to find an attorney to represent them to fight the hardship petition.) Years went by without the housing provider implementing the increases. In fact, the housing provider’s actions suggested it had just given up on those increases. Tenants continued to pay the lower rent amounts without incident. The housing provider took other rent increases, entered new leases, and even issued disclosure forms, always citing the lower rent amounts.

By 2014, the housing provider had allowed the building to become mostly vacant, with only five of thirteen units occupied. Perhaps hoping to encourage the remaining tenants to leave, the housing provider then issued a notice in September 2014 seeking to implement the hardship petition rent increases – rent increases that had been approved *nearly five years earlier*. The housing provider argued strenuously that despite the abolition of rent ceilings under the 2006 Act, it could retain approved rent increases for as long as it wanted.

Two of the tenants came to Legal Aid for representation. After filing tenant petitions to challenge the rent increases, we were able to work out settlement agreements to roll back those increases entirely for our clients. But the housing provider kept the high rent increases in place for every other unit in the building. The building subsequently was sold and the new housing provider again claimed it could implement the same rent increases, which at that point were *nine years old*. Eventually all of the remaining tenants vacated, in no small part because of the ongoing threat from the housing provider to implement the old rent increases.

## **B22-0998 Tightly Regulates Rent Concessions to Ensure They Are Not Abused**

For all of the reasons that the abolition of rent ceilings must be maintained and enforced, any allowance for rent concessions must be narrowly circumscribed. The concept of a rent concession appears to be a benevolent one – a housing provider is willing to accept less than the maximum lawful rent from a tenant. Where such concessions stem from genuine concern about an individual tenant’s circumstances and ability to pay, there may be good reason to allow such a practice.

The danger is that rent concessions can be used in more sinister ways, including to further the two-track rent system described above. Housing providers can implement rent increases well above current market rates, and then use rent concessions to hold on to the difference and implement it over time. Rent control remains in effect but becomes meaningless for all practical purposes. Such a system also allows housing providers to implement rent increases (by removing the concessions) at their whim and outside the requirements of the rent stabilization law. Besides being unregulated and unpredictable, this opens up the possibility that housing providers can use the threat of such increases to threaten tenants’ rights and chill dissent.

Several years ago, Legal Aid worked with a building in Northeast D.C. (Ward 5) in which the housing provider was using rent concessions in this manner. Tenants were told that they could only keep their concessions if they were “good” tenants. A tenant who allegedly paid rent late or violated some other lease provision – a “bad” tenant – would be threatened with removal of the rent concession, resulting in a rent increase of hundreds of dollars per month.<sup>13</sup> These types of threats undermine the Rental Housing Act’s numerous protections for tenants alleged to have violated their leases. Later, when a tenant association represented by Legal Aid fought rent increases at the property, the housing provider made it known that only tenants who were *not* members of the tenant association would continue to receive their rent concessions, an illegal threat undermining the tenants’ right to organize. These were not idle threats – they were communicated to the tenants in writing and were implemented. And they were only made possible through the use of rent concessions.

The surest way to prevent this type of misconduct is to bar rent concessions in all but the most narrow of circumstances, in which a housing provider wishes to charge a lower rent based on individual circumstances, and then to implement specific protections for how rent concessions will operate once in place. B22-0998 accomplishes these goals:

- To ensure that rent concessions are limited to situations where housing providers in good faith want to address individual circumstances, the bill requires a concession to be a discount of at least 10 percent, a marker that should prevent the use of concessions across the board as a loophole around other protections in the law.

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<sup>13</sup> The housing provider’s written policies priced violations of general house rules at a \$50 rent increase per violation after the first violation. When it came to annual rent increases, tenants were classified as “great customers,” “fair customers,” and “non-compliant customers”; great customers were promised minimal rent increases, fair customers would receive the standard CPI annual rent increases, and non-compliant customers would receive a rent increase up to the maximum possible amount. All of this differentiation was allowed because of the rent concessions, which created a gap between the current rent actually being charged and the maximum allowable rent.

- To prevent housing providers from using the possible removal of rent concessions to threaten tenants and discourage them from exercising their rights, the bill requires a concession to be offered unconditionally for the lifetime of a tenancy.
- To protect tenants from unexpectedly high rent increases, the bill clarifies that once a rent concession is in place, all future rent increases for that tenant must be based on the lower rent amount.
- Finally, the bill contains new notice requirements that will ensure full disclosure and transparency, both for current and prospective tenants.

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Also pending before the Committee is B22-0999. While this second bill includes a critical clarification of the definition of rent charged, it does not include the comprehensive provisions in B22-0998. Legal Aid supports passage of both bills, but we also are concerned that passage of B22-0999 alone would leave many questions unanswered. For that reason, we believe it is critical that the further details provided in B22-0998 also be adopted by the Council to ensure that housing providers cannot continue to abuse potential loopholes in the law.

Bill 22-0998 will remove any remaining doubt that the abolition of rent ceilings under the 2006 Act abolished any type of two-track rent system. This is a much-needed clarification of existing law that will protect tenants' rights while ensuring fairness to housing providers.

Thank you for this opportunity to testify.