

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
Karl A. Racine

Public Advocacy Division

Statement of Jennifer L. Berger
Chief, Social Justice Section - Public Advocacy Division
Office of Attorney General for the District of Columbia

Before the

Committee on Housing and Neighborhood Revitalization
Councilmember Anita Bonds, Chairwoman
Public Roundtable

On

Tenant Protection and Eviction Prevention
September 14, 2020

Introduction

Good afternoon, Chairwoman Bonds and members of the Council. I am Jennifer L. Berger, Chief of the Social Justice Section of the Public Advocacy Division of the Office of the Attorney General (“OAG”), and I am testifying on behalf of Attorney General Karl Racine. Under Attorney General Racine's leadership, OAG has focused on ensuring that low- and moderate-income District residents have safe and habitable rental housing through enforcement of: (1) the Tenant Receivership Act (“TRA”), which allows OAG to seek Court oversight over an apartment building that evidences a pattern of neglect; (2) the Drug-, Firearm-, and Prostitution-Related Nuisance Abatement Act (“Nuisance Act”), which enables OAG to require landlords to enact Court-ordered plans to address properties that have drug-, firearm-, or prostitution-related issues; and, most recently, (3) the COVID-19 emergency legislation.¹ Protecting tenants is one part of OAG’s affirmative enforcement work to protect at-risk District residents.

In 2016, Attorney General Racine created the Public Advocacy Division (“PAD”) to bolster this work by advancing consumer protection, public integrity, and social justice. PAD’s social justice section protects not only tenants but also District workers by enforcing their rights to a fair wage, sick leave, and COVID-19 safety precautions, and the District’s air and water through environmental litigation. Thanks to the Council, PAD currently has five Assistant Attorneys General (“AAGs”) who focus full-time on housing enforcement work, three AAG

¹ In addition, OAG protects tenants through enforcement of the Consumer Protection Procedures Act and the Human Rights Act, which prohibits housing discrimination.

positions for workers' rights issues, and three AAGs who focus on environmental enforcement. In FY 2020, the Social Justice Section alone recovered over \$8.7 million for tenants, workers, and the government of the District of Columbia.

Summary of OAG's COVID-related Enforcement Work

During the pandemic, OAG has brought several TRA and Nuisance Act cases to resolution, including a recent \$1.9 million recovery for the tenants of Ward 8's Forest Ridge/Vistas. In addition to continuing this critical enforcement work, which brings both safe housing and financial restitution to District tenants, OAG has vigorously enforced the Council's COVID-19 emergency legislation, including its tenant protections. In collaboration with the tenant advocacy community, the Office of the Tenant Advocate, and the Mayor's Office, we have worked to prevent eviction, rent increases and utility shut-offs, and ensure safe and clean common areas, during the pandemic. Since late April 2020, OAG received more than 240 calls for assistance from tenants and tenant advocate and sent more than 70 cease and desist demands to housing providers. Many of those cases involved threats of eviction, often against immigrant tenants.² In one case, a foreclosure rescue company that was purchasing a property explicitly stated that they would "call ICE" to evict a tenant. Unfortunately, these types of threats too often cause tenants to move.

In addition to enforcement work, we have been active in educating tenants and District residents about their rights under the Council's emergency protections. We have held several town halls, engaged in outreach and trainings, and created FAQs to educate tenants about their rights.³ Recently, for example, OAG and OTA jointly organized a WebEx panel to bring together a legal services attorney, a landlord's attorney, and the Chief of the Landlord and Tenant Branch of the Civil Division of the District of Columbia Superior Court to strategize around what happens after the COVID eviction moratorium ends.

OAG has not only been on the forefront of enforcing the Council's laws, but we have also defended the constitutionality of the Council's actions. For example, OAG's Public Interest Division is drafting a brief regarding the constitutionality of the eviction moratorium in response to the Landlord and Tenant Court Orders to Show Cause regarding 1000 eviction actions that were filed during the public health emergency.

Without the eviction moratorium, we know that there would be a tsunami of evictions that would devastate tenants across the District. The 1000 cases filed during the moratorium will be added to the Landlord Tenant Court pre-pandemic docket of 32,000 cases annually along with any cases that housing providers who are complying with the eviction moratorium may file. This could be catastrophic. Protecting tenants from the aftermath of COVID-19 will entail extensive creativity, collaboration, and proactivity. With that in mind, OAG makes several recommendations to protect tenants and prevent evictions.

² The New York Times recently reported on this phenomenon. See <https://www.nytimes.com/2020/07/04/us/coronavirus-evictions-renters-immigrants.html> (viewed September 11, 2020)

³ See <https://www.bizjournals.com/washington/news/2020/03/30/d-c-attorney-general-plans-new-focus-on-landlords.html>; <https://oag.D.C.gov/blog/know-your-rights-tenants-and-covid-19>; <https://wamu.org/story/20/05/07/when-d-c-s-ban-on-evictions-ends-what-will-happen-its-uncertain/> (viewed September 11, 2020).

OAG Recommendations to Protect Tenants and Prevent Evictions

- ***Extend the Eviction Moratorium***

Currently, the Coronavirus Support Congressional Review Emergency Amendment Act of 2020 prohibits eviction during the public health emergency period. D.C. Act 23-328 § 404 (June 9, 2020). Landlords also cannot file new eviction cases during the public health emergency and for 60 days after the emergency. *See* D.C. Code § 16–1501(b). Finally, landlords cannot *serve* a court summons to a tenant during the public health emergency. *See* D.C. Code § 16–1502. The end of the public health emergency may be fast-approaching. *See* Public Health Emergency Authority Extension Emergency Declaration Resolution of 2020, B23-0816 § 2(b).

Extending the eviction moratorium is essential to prepare for the aftermath of the pandemic. We know too many of our neighbors are financially strapped due to decreased work hours or loss of jobs; the end of unemployment insurance benefits; reduced ability to work due to the health effects of COVID-19; and other unanticipated consequences. This will not change overnight due to the end of the emergency. Protecting our most vulnerable residents requires extension of the moratorium. Crucially, this extension will mitigate the disparate impact of COVID-19 on communities of color.⁴

OAG therefore recommends an extension of the eviction moratorium beyond the existing protections to prevent any eviction, filing of new eviction cases, or serving a summons on tenants, until 120 days after the public health emergency ends. This will allow a reasonable period of time to rebound from the pandemic—or for the Council to evaluate whether further extensions are appropriate. Without this buffer, tenants and the Court will not have sufficient time to recover.

- ***Extend the Freeze on Late Fees and Rent Increases***

Two tenant protections, in tandem, help reduce the monthly costs a tenant pays during the pandemic: (1) the prohibition of rent increases until 30 days after the public health emergency and (2) the prohibition on late fees during any month for which a public emergency has been declared. *See* D.C. Code §§ 42-3505(c)(6) & 42-3194.01. These protections are critical to help tenants stay afloat during the pandemic and during recovery from the pandemic. They should be extended for at least 60 days from the end of the public health emergency. Freezing rent for this longer duration also simplifies the rent calculation process for the rent repayment plan process.

- ***Extend the Repayment Plan Protections***

If a tenant demonstrates that the public health emergency caused them direct or indirect financial hardship, then a landlord must offer a rental repayment plan for rent and fees that came due during the emergency and for one year after the end of the emergency. Landlords must create online or phone-based application procedures for these plans. *See* D.C. Code § 42-3192.01.

⁴ *See* <https://www.npr.org/2020/04/09/831174878/racial-disparities-in-covid-19-impact-emerge-as-data-is-slowly-released>; <https://www.pbs.org/news/hour/show/how-economic-factors-are-putting-people-of-color-at-greater-risk-for-coronavirus> (both viewed September 11, 2020).

Repayment plans facilitate tenants' recovery from the pandemic. Extending the one-year period to at least 18 months will ensure that these plans are actually effective in light of the duration of this emergency and the significant financial effects to the community.

- ***Create a Formal Non-payment of Rent Mediation Program***

Negotiating rent repayment plans is complex, especially with the wide array of COVID-19 protections, when federally subsidized housing is involved, or when tenants have limited education or limited English proficiency. Without adequate support through the process, tenants will struggle to engage with housing providers for repayment plans. OAG recommends that the Council put in place a program to provide this support. One option would be to require mediation before initiation of the eviction process with Superior Court Multidoor Mediation and to provide monetary support to community organizations that can help tenants with this mediation. Another option would be to structure a pre-court mediation process through community mediation centers, with emergency funding support from the District and *pro bono* law firm staffing. Lastly, the repayment agreement law should require that tenants receive full information about rental assistance options and help accessing those benefits.⁵

- ***Expand Rental Assistance Options and Education about Those Options***

Despite the wide array of rental assistance options, more funding is necessary to meet the current need demand and to prevent displacement and resulting costs to the District. Funding is necessary not only to bolster rental assistance programs, but also for the programs that administer rental assistance, educate tenants about their options, and help them apply for rental assistance in the most streamlined way possible. Moreover, the panoply of government agencies that serve tenants should streamline their rental assistance services into a unified call center, to reduce the need to call multiple telephone numbers to access these critical benefits.

Separately, a low- or no-interest rent repayment loan process for tenants could provide housing providers immediate financial relief while allowing the District to recover over a longer time horizon as tenants repay more gradually. Moreover, the Council could expand COVID relief grants to housing providers to provide relief for tenants and small housing providers without forcing tenants through the rental assistance process. Finally, rental assistance received during the public health emergency should not count toward the one-time annual limit on receiving rental assistance, or any other future denials of rental assistance.

- ***Expand the Utility Shut-off Moratorium***

Under the COVID-19 emergency legislation, utility companies (including electric, gas, water, cable, and telecommunications) cannot disconnect services during the public health emergency and for 15 days after the end of the emergency. *See* D.C. Code §§ 34-1501.02(b), 34-1671.06(b), 34-2407.01(c)(2) & 34-1271.01(a). Currently, utility providers must offer a payment plan option to eligible customers for payments that occur during the public health emergency plus (a) 60 days for a cable or telecommunications operator that the Public Service Commission does

⁵ *See* <https://dhcd.D.C.gov/service/covid-19-rental-assistance> (viewed September 9, 2010).

not regulate (Comcast/Xfinity Unlimited, Vonage, and Verizon Fios) and (b) six months for any other utility provider, including electric and gas. *See* D.C. Code § 34-1271.

With the potential that the public health emergency will end before the winter, the utility shut-off protections should extend for at least 60 days beyond the public health emergency. This is particularly important for communities of color because utility shut-offs disproportionately impact Latinx and Black communities.⁶ Finally, the Public Service Commission is a key enforcement mechanism for the utility protections. Because the Commission needs a full set of commissioners to ensure utility rate protections for District consumers, the vacant commissioner position on the Public Service Commission should be filled as soon as possible.

- ***Creation of a COVID-19 Eviction Prevention Task Force***

Recently, District agencies, including the Executive Office of the Mayor, DHCD, DHS and OAG, convened as the District Economic Recovery Team (“DERT”) working group, to address the potential surge of evictions and homelessness as a result of COVID-19 and expiration of the public health emergency protections. The group is working to develop recommendations on how to prevent evictions. The group also will explore, and learn from, the experiences in other States that ended the public health emergency and engage in a mass-outreach and education campaign to tenants. OAG will contribute its broad connections with other State Attorneys General offices and is working with New York Attorney General’s Office to create a multistate group to discuss issues like COVID-related eviction risks. Representatives from the DERT could unite with representatives from the legal services, non-profit, and small housing provider communities, government agencies, and AOBA, along with representative tenants, to discuss holistic solutions to the eviction crisis that considers the needs of all stakeholders.

Conclusion

OAG looks forward to continuing collaboration to protect District of Columbia tenants, through the COVID-19 crisis and beyond. Thank you for your attention to this critical issue.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: /s/

JENNIFER L. BERGER
Chief, Social Justice Section//Public Advocacy Division
Office of the Attorney General for the District of Columbia
400 6th Street NW, 10th Floor
Washington DC 20001
202-531-2917//jennifer.berger@dc.gov

⁶ <https://www.cnbc.com/2020/08/27/millions-of-households-will-lose-their-utility-shutoff-protections-in-the-next-month.html> (viewed September 11, 2020).