

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Statement of Kate Vlach
Office of Attorney General for the District of Columbia

Before the
Committee on Housing and Executive Administration
Councilmember Anita Bonds, Chairperson

Public Hearing
On
Fair Tenant Screening Act of 2021
and Eviction Record Sealing Authority Amendment Act of 2021
May 20, 2021

Introduction

Good afternoon Chairperson Bonds, Councilmembers, staff, and residents of the District of Columbia. My name is Kate Vlach, and I have the privilege of serving as an attorney in the Office of the Attorney General for the District of Columbia. I am pleased to appear before you to testify in support of B24-106, the Fair Tenant Screening Act of 2021 (FTSA), and to provide comment on B24-96, the Eviction Record Sealing Authority Amendment Act of 2021 (the Eviction Sealing bill), and B24-119, the Evictions Protections and Tenant Screening Amendment Act of 2021 (the Evictions Protections bill). This slate of legislation strengthens and expands key antidiscrimination laws and other protections that affect housing access.

The Office of the Attorney General appreciates the Council's ongoing work to ensure equal housing opportunity in the District, including the Fair Criminal Record Screening for Housing Act of 2016 and important emergency protections for tenants throughout the pandemic. The Attorney General looks forward to continuing to work with the Council to build on that progress by supporting and implementing the meaningful protections contained in the Fair Tenant Screening Act, the Eviction Sealing bill, and the Evictions Protections bill.

OAG's Civil Rights Enforcement

OAG is proud to work alongside the Office of Human Rights, community organizations, and residents to use the District's Human Rights Act as a tool to end all forms of discrimination in the District. In particular, OAG has focused its resources on advancing fair housing access and has already made great strides in combatting housing discrimination. Over the past year, OAG brought 11 housing discrimination cases against 15 defendants challenging source-of-income, race, and disability discrimination. We also settled a source-of-income discrimination case that required a large District housing provider to pay the District \$900,000, implement necessary

antidiscrimination policies, and conduct fair housing training.¹ OAG is grateful to the Council for funding our Civil Rights Section and staff to do this important work.

Housing Discrimination and Tenant Protections

OAG has been focused on fighting housing discrimination and defending tenants' rights, as rising housing costs and falling wages have made it harder for low-income residents to remain in their homes. Before the pandemic, we learned from OAG's Civil Rights Listening Sessions that the ability to access affordable housing free from discrimination was residents' top civil rights concern.² Since then, such concerns have only heightened. Prospective tenants face headwinds in finding decent and affordable housing, including being unfairly penalized for credit issues unrelated to their current ability to pay rent; for eviction cases that were dismissed or occurred long ago; and for minor or old criminal convictions that have no bearing on their tenancy. OAG believes the legislation being considered in this committee today and Tuesday will play a significant part in advancing the District's antidiscrimination protections and removing unnecessary barriers to housing for vulnerable residents. I will first address several central provisions of the FTSA before touching on key areas of support for the Eviction Sealing bill and the Evictions Protections bill.

¹ Office of the Attorney General, *AG Racine Announces Real Estate Company to Pay \$900K for Discriminating Against Low-Income District Renters* (Feb. 13, 2020), <https://oag.dc.gov/release/ag-racine-announces-real-estate-company-pay-900k>.

² Office of the Attorney General, *Community Voices: Perspectives on Civil Rights in the District of Columbia* 4 (2019), <https://oag.dc.gov/sites/default/files/2019-11/Civil-Rights-Report.pdf>; see also Office of the Deputy Mayor for Planning and Economic Development, *D.C. Housing Survey Report* (2019), at 16, https://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Formated%20DC%20Housing%20Survey%20Report_FINAL%206-24_1.pdf.

Important Provisions in the Fair Tenant Screening Act

The FTSA holistically addresses discriminatory housing barriers faced by low-income tenants in the District. My comments will focus on barriers related to source of income, as this is an area in which OAG has extensive enforcement experience and insights.

Source-of-income protections are crucial to ensuring equal housing opportunity in the District. High housing costs mean that a majority of very-low-income households spend over half of their income on housing³ and often find themselves unable to access a decent, affordable place to live.⁴ This lack of affordable housing means that subsidies like Section 8 or Housing Choice Vouchers are all the more important as lifelines to low-income households. But source-of-income discrimination—or treating someone differently simply because she plans to pay her rent with a voucher—remains all too common.⁵ And, because more 90 percent of the District’s Housing Choice Voucher holders are Black, source-of-income discrimination is also race discrimination.⁶ Source-of-income discrimination in housing is also distinctly gendered: Fully 83 percent of households participating in the Section 8 Housing Choice Voucher Program are led by women.⁷ So by fighting source-of-income discrimination, we are working to reverse racial and gender

³ Office of the Deputy Mayor for Planning and Economic Development, *D.C. Housing Survey Report* (2019), https://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Formatted%20DC%20Housing%20Survey%20Report_FINAL%206-24_1.pdf.

⁴ *Id.* at 16 (noting that twice as many tenants who receive housing subsidies experience two or more housing condition issues, compared to tenants without subsidies).

⁵ Nick Adjami, *Source of Income Discrimination Perpetuates Racial Segregation in the District*, Equal Rights Center (2019), <https://equalrightscenter.org/voucher-discrimination-perpetuates-segregation/>.

⁶ *Id.*

⁷ Gail Quets, *et al.*, Re:Gender, *A Gender Lens on Affordable Housing* 7 (2016) at https://www.icrw.org/wp-content/uploads/2016/11/gender_lens_on_affordable_housing_by_regender_final-1.pdf.

inequality, tackling historical patterns of segregation, and helping to ensure that all families have access to decent housing.

That is why the Attorney General supports the FTSA's prohibition on housing providers considering voucher holders' incomes and credit scores: Although housing providers need to assess unsubsidized tenants' ability to pay, voucher holders' rent calculations already ensure that their income is sufficient to cover their rent contribution. Allowing landlords to second-guess this determination only opens the door for discrimination. We also commend the bill's prohibition on extraneous application fees because we have seen extra one-time fees serve as an end run around antidiscrimination protections. These fees, which sometimes exceed a voucher holder's monthly rental contribution, are often not clearly explained, might be charged to voucher holders but waived for unsubsidized tenants, and can ultimately shut voucher holders out of a property.⁸ We recommend that the bill go even further in removing barriers by requiring landlords to allow DCHA to conduct the housing inspections necessary to approve a voucher holder's application—inspections that some landlords refuse or delay, causing voucher holders to lose out on housing.

Beyond the bill's prohibitions and requirements, it has become abundantly clear that having laws on the books is not enough; enforcement matters. Laws in this sphere must be designed to allow for pattern or practice enforcement so that residents are not solely responsible for enforcing these protections on an individual level. OAG has worked with tenant advocates to develop a robust enforcement mechanism that we hope the Council will incorporate as this legislation moves through mark up. Our proposal for strengthened enforcement provisions include enforcement by OAG and increased fines for pattern or practice violations under the Human Rights Act. OAG

⁸ See Office of the Attorney General, *AG Racine Sues Major District Landlord Responsible For Nearly 1,000 Apartments Over Source of Income Discrimination* (Feb. 11, 2020), <https://oag.dc.gov/release/ag-racine-sues-major-district-landlord-responsible>.

believes that clarification of these and other aspects of the FTSA’s enforcement will help ensure that the law’s provisions have real teeth.

Eviction Records Sealing and Eviction Protections

I will now turn to antidiscrimination benefits of the protections proposed in the Eviction Sealing bill and the Evictions Protections bill.

Eviction sealing is an important piece of the civil rights puzzle because evictions disproportionately burden tenants of color and female-headed households and can permanently hinder access to safe and affordable housing for vulnerable groups. In a typical year, nearly half of all eviction filings in the District are aimed at tenants in Wards 7 and 8, where upwards of 90 percent of residents are Black.⁹ Nationwide, women, particularly Black women and Latinas, are at markedly higher risk of being evicted from their homes than men are.¹⁰ An eviction filing—even if it is made in error, or is dismissed by the court, as 69 percent of filings in the District are¹¹ — can leave a permanent mark on a tenant’s record, causing landlords and tenant screening companies to deny housing applications or to charge higher rents or fees. A mechanism for sealing old eviction records can help reverse that burden.

Sealing is especially important to remove the stigma of wrongfully filed eviction proceedings or filings that no longer reflect a tenant’s circumstances. For instance, despite the Council’s moratorium on eviction filings during the pandemic, some landlords managed to file

⁹ Brian J. McCabe *et al.*, McCourt School of Public Policy, “Eviction in Washington D.C.,” 15 (Fall 2020), at <https://tinyurl.com/y51ykvfr> (McCourt Report).

¹⁰ Peter Hepburn *et al.*, “Racial and Gender Disparities among Evicted Americans,” *Eviction Lab* (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/> (calculating that approximately 16 percent more women than men were evicted from their homes, including 36 percent more Black women than Black men and 9.6 percent more Latinas than Latinos).

¹¹ McCourt Report at 10.

against tenants after the moratorium went into effect.¹² Additionally, even though District law bars evicting domestic-violence survivors from their homes,¹³ a study of urban landlords suggests that as many as 83 percent file to evict survivors who seek police protection from intimate partner violence.¹⁴ It is obvious that tenants must have the opportunity to clear their records of such filings that contravene public policy.

As for changed circumstances, old eviction records do not necessarily tell us much about a tenant's current ability to pay rent. This is especially true for housing voucher holders, whose rents are covered largely by District funds and whose personal rent contributions are calibrated not to exceed 30 percent of household income. An eviction that predates a tenant's voucher enrollment does not reflect that tenant's newly subsidized payment arrangement and should not bar a voucher holder from the chance at stable housing. Voucher holders also have other unique eviction-sealing needs: We have come across landlords who have filed to evict voucher holders when the *District's* portion of their rental payments was delayed. Certainly, filings based on the housing agency's delinquency should not mar these tenants' rental records forever.

And as with our position on criminal records sealing, OAG supports the sealing of eviction records so long as necessary information remains available for public interest purposes. Given the importance of tracking eviction trends, we suggest adding mechanisms for disclosing sealed records for journalistic, educational, or governmental purposes and for releasing aggregate,

¹² *District of Columbia v. Towers*, No. 21-CV-34, (D.C. May 13, 2021) at 4, https://www.dccourts.gov/sites/default/files/2021-05/DC%20v%20Towers%2021-CV-34_1.pdf (acknowledging that some number of eviction complaints were filed with the court after the eviction filing moratorium was in effect).

¹³ D.C. Code § 42-3505.01(c)(1).

¹⁴ Matthew Desmond & Nicol Valdez, "Unpolicing the Urban Poor," *American Sociological Review* 78, no. 1 (2013) 117-41 at 133, <https://doi.org/10.1177/0003122412470829> (finding that in 83 percent of cases surveyed in one American city, landlords either filed for eviction or threatened eviction for domestic-violence-related police calls).

deidentified data for public transparency. Model disclosure provisions are available in the HOMES Act under consideration in Massachusetts.¹⁵

Finally, a few words about the Evictions Protections and Tenant Screening Amendment Act or the Evictions Protections bill. In addition to incorporating many of the FTSA's tenant screening guardrails, the Evictions Protections bill would make permanent the District's now-temporary ban on eviction suits against tenants who owe less than \$600. This \$600 threshold offers a critical safeguard for seniors and tenants with disabilities, who more often live in lower-rent subsidized housing or rent controlled housing, but it would be helpful for the bill to put tenants and landlords on notice by clarifying that landlords may still file suits for rent owed—rather than for possession of the unit—in Small Claims Court. Further, the bill's requirement of a business license in order to sue for rent is very helpful to OAG's housing enforcement work, as the requirement promotes compliance with rental housing business licensure requirements and provides information to enforce the District's housing and property maintenance codes.

Conclusion

I want to thank the Committee for considering these important bills. Taken together the FTSA, the Eviction Sealing bill, and the Evictions Protections bill make major strides in curbing discrimination against vulnerable tenants and in alleviating housing barriers that disproportionately harm voucher holders, tenants of color, female-headed households, older residents, and people with disabilities. We at the Office of the Attorney General are grateful for the Council's enduring efforts to ensure equal treatment and meaningful opportunity the people of the District. I am happy to answer any questions that members may have.

¹⁵ Bill S.921, 192nd Leg., Reg. Sess. (Mass. 2021), <https://malegislature.gov/Bills/192/S921>.