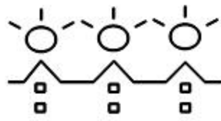

D.C. TENANTS' RIGHTS CENTER
WWW.DCTENANTS.COM

January 26, 2023

Daniel Mayer, General Counsel
Rental Housing Commission
daniel.mayer@dc.gov

Re: Comments on Proposed Rulemaking relating to the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022

Mr. Mayer,

Please accept the following comments and proposed changes regarding the RHC's proposed amendments to Chapter 41 (Coverage and Registration) and Chapter 43 (Evictions, Retaliation, and Tenant Rights) of Title 14 (Housing), of the District of Columbia Municipal Regulations relating to the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022 ("ERSA-FIRA") on behalf of the D.C. Tenants' Rights Center. We are a small private law firm that helps tenants with issues including eviction, lease terminations, repairs, security deposits, TOPA, and rent control issues.

We appreciate the clarification that the new posting service requirements extend to both summons and the underlying notices (4300.25) and the clear list of what must be included in a Notice of Nonpayment and Possible Eviction (4300.7).

Proposed Changes:

4300.9 – Require Review of All Notices

Regarding the distinction between types of notices in 4300.9, why not extend the requirement to file notices with the Rent Administrator to Notices of Nonpayment of Rent? The public policy purposes are the same whether the notice is about nonpayment of rent or other grounds for eviction. The ERSA-FIRA has eliminated the distinction between the two types of notices in many ways, especially by guaranteeing 30 days' notice before the filing of any type of eviction case to give a tenant the opportunity to cure and stay. All notices should be reviewed by the Rent Administrator so that improper notices do not go unchecked. Many tenants simply move out rather than risk an eviction filing and therefore the consumer protection goals of reviewing and voiding improper notices are just as important in nonpayment of rent situations as in alleged breach of lease situations.

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WASHINGTON, DC 20005

4307.2 – Link to Better Information and Provide Contact Information for Legal Services

4307.2(h)(C) includes a link to a website that is outside the RHC's control and may change in the future. For future consistency and ease of understanding, this should refer to a statute or regulation (or even a publication) so that changes in the website do not cause confusion in the future.

4307.2(j) includes the statement regarding a prospective tenant's right to file a complaint with either OHR or the Superior Court. However, the regulations require other notices to include information on how to obtain legal or technical advice from OTA and LTLAN (e.g., 4300.7(f)). This would also be helpful in the notice required to prospective tenants, who may not know how to move forward in filing a complaint without talking to an advisor first.

4307.5 – Explain Fee Limits in More Consumer-Friendly Way

4307.5's limitation on future application fees includes a calculation in technical mathematic terms ("quotient"). Although precision is important, the language could be changed to make this more accessible to the average person or an example could be provided to help people understand what this limit will be in real-life terms. It is hard for the average person to enforce rights they cannot easily understand.

4307.11 - Provide Contact Information for Legal Services

Again, 4307.11's written notice of adverse action should also include information on how to obtain legal or technical advice from OTA and LTLAN, like in 4300.7(f), along with the statement advising prospective tenants about how to file a complaint.

4307.13 – Big Loophole

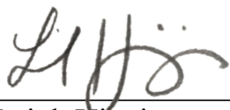
While it is true that the provision stating that nothing should prohibit a housing provider form leasing the rental unit to other prospective tenants is in the ERSA-FIRA, it remains a huge practical loophole that undermines the goal of a fair application system. A housing provider can easily say they didn't "deny" an applicant because of prohibited information or the lack of a credit score, they simply rented the unit to somebody else. The effect is the same to the prospective tenant who is without a home and without recourse. A first in time requirement to assess applicants as they come through the door rather than waiting for a "better" application would help reduce this harm to prospective tenants.

4399.2 – Difficulty in Enforcing Without Information

The proposed definition of "adverse action" includes comparisons between the prospective tenant and "another applicant." However, prospective tenants do not have information about what is offered to another applicant and therefore cannot tell if they have been treated differently – that information is solely in the hands of the housing provider. If the definition were tied to the terms that were publicly advertised, a prospective tenant could easily tell if they were being offered less-favorable terms because of their application.

Overall, these are very positive changes and the D.C. Tenants' Rights Center supports and

appreciate these proposed amendments. We hope that our comments and proposed changes can make these amendments even stronger for D.C.'s tenants.



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