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Via electronic mail

Daniel Mayer
General Counsel
D.C. Rental Housing Commission
441 4th St., NW
Suite 1140B-North
Washington, DC 20001
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Re: Second Notice of Proposed Rulemaking

Dear Mr. Mayer,

Legal Aid D.C. writes to offer our comments and recommendations on the D.C. Rental Housing Commission's Second Notice of Proposed Rulemaking published on March 29, 2024. Legal Aid is the oldest and largest general civil legal services program in D.C. We receive funding from the DC Bar Foundation under the Civil Legal Counsel Projects Program to provide legal information, advice, brief services, and limited and full representation to low-income tenants facing eviction in the Landlord and Tenant Branch of D.C. Superior Court.

We suggest the following revisions to the Proposed Rulemaking:

1) § 4300.22(b) should include a broader category of covered languages in which notices must be provided to accurately reflect D.C. Code § 42-3505.01(a)(3); and
2) A definition of "diligent and conscientious efforts" at service should be added to § 4300.24(c).

I. The Languages in Which Notices Must Be Provided

In order to equally serve D.C. residents with limited- or no-English proficiency, D.C. law requires that, in some cases, housing providers serve pre-eviction notices on tenants in the languages that those tenants speak. § 4300.22(b) as it is currently written enumerates a certain limited set of languages in which housing providers must serve these notices. However, this limited set of languages does not accurately reflect D.C. law. § 4300.22(b) should be revised as follows:

> *The tenant's primary language if the housing provider knows or reasonably should know that the tenant's primary language is~~: Amharic, Arabic, Chinese, French, Korean, or Vietnamese~~ a language covered under D.C. Code § 2-1933.*

The statute that creates the requirement for service in languages other than English and Spanish does not include a limited enumerated list of languages. § 42-3505.01(a)(3). Instead, it references D.C.'s Language Access Act, D.C. Code § 2-1931 et seq., by stating that pre-eviction notices must be served in any of the languages covered by § 2-1933. *Id.* The Language Access Act also does not enumerate a list of covered languages, but instead covers any non-English language spoken by three percent of the population or by 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia. D.C. Code § 2-1933(a). The proposed regulation, as currently written, does not accurately reflect the law.

Practically, even if the list of languages as currently included in the proposed rulemaking matches the languages currently covered by the D.C. Language Access Act, D.C.'s population will continue to change in the years to come, and the rigors of the regulatory process may not keep up with D.C.'s shifting demographics. To ensure that this regulation continues to comply with the law and serve speakers of non-English languages as the Council intended, this regulation should be revised as stated above.

II. "Diligent and Conscientious Efforts"

The section of the regulations that explains appropriate forms of service for pre-eviction notices could be further clarified by adding a definition of "diligent and conscientious efforts." *See* § 4300.24. The proposed regulation allows for service by posting and mailing after the housing provider makes "diligent and conscientious efforts" at service but does not define what constitutes "diligent and conscientious efforts." In order to address this question, the Commission should add the following language to § 4300.24:

> *'Diligent and conscientious efforts' at service for the purposes of § 4300.24(b) shall mean at least two separate attempts at personal service conducted on two different days at two different times of day, for example one effort in the morning and a second effort in the evening.*

This definition of "diligent and conscientious efforts" will not only add clarity for housing providers, but it will also conform with the current standard practice in the Landlord and Tenant Branch of the D.C. Superior Court. Judges typically expect two separate efforts at service on different days and different times of day before determining that sufficient diligent and conscientious efforts were made prior to resorting to service by posting and mailing. *See Capital City Properties v. Watts*, 132 Daily Wash. L. Rptr. 2417 (D.C. Sup. Ct. Oct. 21, 2004).

III. Conclusion

The Commission's proposed rulemaking on the languages in which pre-eviction notices must be served should be amended to reflect D.C. law. In addition, the proposed rulemaking should

incorporate a definition of "diligent and conscientious efforts" at service that provides clarity for when housing providers may permissibly resort to service by posting and mailing.

Sincerely yours,

LEGAL AID OF THE DISTRICT OF COLUMBIA
Mel Zahnd, Supervising Attorney