D.C. Office of the Tenant Advocate
Comments on the Rental Housing Commission's Third Proposed Rulemaking on
Law 24-115, the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022"
and Law 25-65, the "Fairness in Renting Clarification Amendment Act of 2023"
January 6, 2025

Overview

The Office of the Tenant Advocate (OTA) thanks the Commission for this further opportunity to comment on the rulemaking to implement the "Fairness in Renting" legislation (Law 24-115 & Law 25-65). The tenant protections at stake may be unusually technical, however they are also significant in terms of promoting the welfare of District renters. We sincerely appreciate the Commission's incorporation of a number of OTA recommendations pursuant to the Second Proposed Rulemaking (PRM), including:

1. Annual publication of a list of the languages that housing providers may be required to use when issuing a Notice to Vacate[1] (§ 4300.23);

2. Clarifying an apparent statutory contradiction regarding whether the housing provider may file an eviction action for nonpayment of rent if the tenant's partial payment brings the amount still owed to less than $600[2] (§ 4300.7);

3. Clarifying the prohibition on charging the tenant a professional cleaning fee where the condition of the unit upon return of possession meets the ordinary wear and tear standard[3] (§ 301.4).

The OTA hereby submits for the Commission's consideration the following two comments on the Third PRM, both relating to the applicability of the proper licensing and registration requirement in the eviction context.

OTA concerns and recommendations

Concern #1: Licensing & registration requirements and the statutory prohibitions on filing an eviction action or executing a writ of restitution.

In response to the Second PRM, the OTA recommended that the Commission encourage housing providers to enter license and registration/exemption numbers on Notices to Vacate (NTV) by providing a space for those numbers on relevant forms. We did so via a "middle ground" approach that would set forth in the regulations all the relevant statutory requirements, including timing requirements, which would then be reflected on the NTV form.

[1] D.C. Official Code § 501(a)(3) ("If the landlord knows the tenant speaks a primary language other than English or Spanish that is covered under § 2-1933, the landlord must provide the notice [to vacate] in that language.").
[2] D.C. Official Code § 42–3505.01(a-1). As discussed, the OTA will renew its request for a Council clarification of the notice language in this provision.
[3] D.C. Official Code § 42–3505.10(b-2)(1). For the definition of "ordinary wear and tear" see also D.C. Official Code § 42–3502.17(c)(3).

As we understand it, the Commission declined to adopt this recommendation due to the concern that it could convey the false impression that including this information on the form is legally required. We respectfully believe the Commission may have misunderstood the recommendation and/or we may have misconveyed it.

We do not believe that, if adopted, the recommended language could reasonably have the effect of suggesting that the NTV is invalid if it does not include a license or registration/exemption number – certainly not if the regulations as well as the form itself set forth the timing requirements (which of course would have the effect of explicitly acknowledging that the licensing and registration requirements do not apply to the NTV itself).

We note a couple other "values added" to such a middle ground approach: housing provider (1) would receive early notice of downstream licensing and registration requirements and may be nudged toward early compliance; and (2) tenant would be put on alert to be vigilant regarding housing provider's downstream compliance or non-compliance.

Recommendation #1

Thus, while we appreciate the Commission's stated concerns, we are renewing our recommendation – just in general terms – and request that the Commission reconsider incorporating in some form or fashion the two "downstream" licensing and registration/exemption requirements into the regulations (as well as in the form in consultation with the RAD as the Commission suggested in its response to the prior OTA recommendation). To reiterate, the two downstream requirements are: (1) housing provider must be licensed at the time of an actual eviction per § 501(q) of the Rental Housing Act (the Act);[4] and (2) housing provider must have both a license and registration / proof of exemption at the time of filing the eviction action per D.C. Official Code § 16–1501(c).[5]

Concern #2*: Exemption from the licensing and registration requirements for "complaints involving subtenants."*

We note that these two statutes each include an exemption for "complaints involving subtenants" with respect to both the licensing and registration requirements cited above. We are inclined to interpret the Act's exemption of complaints involving subtenants as referring to complaints where a *tenant* is evicting a subtenant – not where a *housing provider* is doing so. A contrary interpretation, we believe, could run afoul of basic norms of District rental housing law and housing provider obligations toward a subtenant -- as reflected in the Act's definition of the term "tenant"[6] and the "housing provider consent before subletting" provision.[7]

[4] D.C. Official Code § 42–3505.01(q).

[5] We note that while D.C. Official Code § 16–1501 is not a part of the Act, the Commission has previously gone beyond the four corners of the Act to better ensure the Act's related tenant protections and good administration of the Act itself. Two examples are the Commission's commendable willingness to annually calculate and publish the cap on the rental application fee; and -- in the instant rulemaking -- to annually publish the set of relevant languages under the Language Access law.

[6] The Act defines the term "tenant" as including "a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D.C. Official Code § 42–3501.03(36).

[7] D.C. Official Code § 42–3505.55.

We understand that this could be deemed to be a policy matter for the Council to address, rather than a matter of statutory interpretation for the Commission to decide. We are looking further into this issue and look forward to discussing it with the Commission.

***Recommendation #2*:** To address both concerns above, the Commission should add new § 4300.4(b) and (c) to read as follows:

"4300.4(b) No action or proceeding to evict a tenant shall be filed by a housing provider unless the housing provider holds a valid rental registration or claim of exemption pursuant to § 42-3502.05, and a current license for rental housing issued pursuant to § 47-2828(c)(1), as certified at the time of filing and documented at the initial hearing; provided, that the court may waive the license requirement as provided under § 16–1501(c)(2). This requirement shall not apply where a tenant evicts a subtenant.

"4300.4(c) No housing provider shall evict a tenant unless the housing provider holds a rental housing business license pursuant to § 42–3505.01(q), unless the court waived the license requirement. This requirement shall not apply where a tenant evicts a subtenant."

Thank you for considering these comments and please let us know if you have any questions or concerns.