January 6, 2025

Via electronic mail

Daniel Mayer, General Counsel
Rental Housing Commission
441 Fourth Street, N.W., Suite 1140B-North
Washington, DC 20001
Daniel.mayer@dc.gov

Re: Third Notice of Proposed Rulemaking

Dear Mr. Mayer,

Legal Aid DC ("Legal Aid"), Bread for the City ("Bread"), Neighborhood Legal Services Program ("NLSP"). Rising for Justice, and Legal Counsel for the Elderly write to offer our comments and recommendations on the DC Rental Housing Commission's (RHC's) Third Notice of Proposed Rulemaking published on November 22, 2024.[1]

We applaud the RHC's effort to ensure that the regulations are amended to reflect the current changes in the law. In particular, we appreciate RHC's clarification of the requiments for efforts to make personal service of Notices to Vacate in § 4300.25. To help build upon the work already done, we suggest the following revisions to the Proposed Rulemaking:

1) Section 4300.8 should add a section (c) that expressly states that the Rent Administrator does not have to take any action concerning notices served on them and that any inaction is not to be interpreted as a notice being valid or invalid.
2) Section 4300.24 should include a more expansive set of facts that would indicate a housing provider knew or should have known that a tenant primarily speaks a language covered by § 4300.22(b).
3) Notices to Correct or Vacate should include a registration or exemption number for the rental unit.

[1] Legal Aid is the oldest and largest general civil legal services program in DC. Bread for the City is a non-profit organization located in Northwest and Southeast DC. Since 1974, Bread has provided food, clothing, medical, legal, and social services to thousands of low-income District residents. NLSP is a non-profit law firm that has provided free legal information, advice, and representation to low-income DC residents on civil matters for 60 years. Rising for Justice is a nonprofit organization dedicated to providing legal assistance to those in need while mentoring the next generation of lawyers. For over 50 years, it has offered free legal assistance and advocacy to low-income residents of DC. Legal Counsel for the Elderly champions the dignity and rights of DC elders by providing free legal and social work services to those in need—empowering, defending, and protecting vulnerable seniors. Bread, Legal Aid, NLSP, Rising for Justice, and Legal Counsel for the Elderly all provide legal information, advice, brief services, and limited and full representation to low-income tenants facing eviction in the Landlord and Tenant Branch of DC Superior Court.

I. The Regulations Should Clarify that the Rent Administrator's Action/Inaction Concerning Notices Served on It Has No Bearing on Their Validity.

The Rent Administrator has always had the authority to either review Notices to Correct or Vacate or do nothing. The current draft preserves that status quo. Specifically, Section 4300.8 currently states, "[t]he Rent Administrator shall review each notice promptly and *may* (a) Issue an order disapproving and voiding the notice if he or she finds that the notice is defective on its face or in conjunction with any supporting documentation; or (b) Issue a show cause order in accordance with § 3926 if he or she finds substantial grounds to believe that a possible violation of the Act or this chapter has occurred."

While we appreciate that the current draft uses the word "may," it does not go far enough to prevent confusion. Since last year, challenges have been raised in our cases that the Landlord and Tenant Court cannot find a notice invalid if the Rent Administrator issued no disapproving or voiding order. Due to the sheer volume of notices served to the Rent Administrator each year, it is unrealistic for the Rent Administrator to find and issue orders for all faulty notices. Therefore, we recommend that the regulaations clarify that the Rent Administrator can opt to take no action on notices and that such inaction is not indicative of the validity or invalidity of any notice. To do so, we propose the following amendments to Section 4300.8 be further amended to read:

> 4300.8 Any notice served on a tenant for any reason other than the nonpayment of rent shall also be filed with the Rent Administrator, in accordance with § 3901 ~~of this title~~, no later than five (5) days after service on the tenant and shall include a certification that the tenant was served in accordance with § 4300.24 and by what means. The Rent Administrator shall review each notice promptly and may:
> (a) Issue an order disapproving and voiding the notice if he or she finds that the notice is defective on its face or in conjunction with any supporting documentation; ~~or~~
> (b) Issue a show cause order in accordance with § 3926 if he or she finds substantial grounds to believe that a possible violation of the Act or this chapter has occurred~~;~~. or
> (c) take no action on the notices. The Rent Administrator's inaction concerning any notice does not indicate that it is valid or invalid, and it remains open to any lawful challenge by a tenant or the Court.

II. The Regulations Should Expand the Expressly Listed Indicia that a Housing Provider Knew or Should Have Known a Tenant Primarily Speaks a Covered Language.

Section 4300.24 should include a more expansive list of facts to suggest that a housing provider should make further inquiries to determine whether the tenant speaks a covered language. We recognize and appreciate that Section 4300.24, as currently written, does not claim to lay out an all-inclusive list of facts that would lead a housing provider to make such inquiries. As currently written, the rule states that "among all other relevant facts," relevant facts "may include: a) Signed written lease or lease addendums . . . or b) The distribution of "I speak" cards as published by the Office of Human Rights or similar materials." § 4300.24.

While this list does not limit the relevant facts to written communications, we are concerned that the failure to include verbal or other kinds of communications might later create confusion for tenants, housing providers, and judges. For this reason, we believe the following kinds of communications should be added to the list of relevant facts in Section 4300.24:

> a) any efforts by the tenant or housing provider at written or verbal communications regarding the property in a covered language,
> b) any requests for interpretation or translation of documents regarding the property into a covered language,
> c) any communications between the tenant and housing provider in which the tenant relied on a friend, family member, third party, or mobile technology or device for assistance in communicating in a covered language, or
> d) any indication in written or verbal communications that the tenant was having trouble communicating in English.

Legal Aid and Bread work with many low- and moderate-income tenants who speak languages other than English or Spanish. In our experience, not all tenants who speak covered languages know to ask for documents—like lease agreements—in their primary language. Through direct verbal communication with our clients, we often realize that most non-English speaking tenants did not know that they could ask for interpretation services in a covered language and instead rely on family or friends to help them interpret or were struggling to understand our English communications on their own. We frequently rely on the above-mentioned facts to quickly identify clients who needed written and oral communication in another language to allow them to meaningfully access services and engage in their representation. Relying on the facts outlined above would be an appropriate way for a housing provider to realize that they should inquire further to determine if the tenant's primary language is covered.

It is realistic and practical to expect housing providers to look to this wider array of facts. Many service providers, including housing providers, realize through informal verbal communications that an individual needs language assistance. The facts outlined above reflect the reality of how these kinds of communications usually happen. Therefore, the RHC stating in the regulation that housing providers should use the facts noted above would strengthen the legislation and emphasize the RHC's commitment to ensuring that tenants receive notices they can readily understand.

III. The Regulations Should Require Notices to Include Housing Providers' Registration and Exemption Numbers.

We recognize that, in this proposed rulemaking, RHC considered and ultimately rejected a requirement that all Notices to Correct or Vacate include both documentation of a basic business license as well as the housing provider's registration or exemption number. We urge RHC to reconsider requiring registration and exemption numbers in all notices, especially notices based on nonpayment of rent.

In nonpayment of rent matters, these notices give tenants a much-needed opportunity to dispute any illegal rent charges, including any rent increases taken in contravention of the rent

stabilization laws. As the Council has acknowledged, many eviction cases are unfair or based on outright error. DC Council Rep. on B24-0096, at 8 (Dec. 1, 2021). In some cases, tenants may be challenging the rent owed because they believe that the housing provider took a rent increase that was not allowed by DC rent stabilization laws.

Inclusion of the registration or exemption number in the Notice will give tenants an opportunity to investigate whether prior rent increases were properly taken. While it would be challenging for the tenant to track down information on the rental unit's registration status without this information, the housing provider should have this information readily available. The housing provider is already under a pre-existing legal obligation to register the rental unit or file a claim of exemption. D.C. Code § 42-3502.05(f)(1). The housing provider will also need to provide the registration or exemption number when they file the claim for possession. D.C. Code § 16-1501(c)(1).

The requirement that the housing provider include the registration or exemption number in the claim for possession is not waivable. *See* D.C. Code § 16-1501(c)(2). This differentiates the registration requirement from the licensing requirement, which is waivable. *See id.* The different treatment of the registration and licensing requirements makes sense because an inspection of the property is necessary to obtain or renew a license, and extenuating circumstances can prevent a housing provider from getting a license. *See id.* Registering a rental property with the Rental Accommodations Division is a simple process of serving a form on the Rental Accommodations Division and the tenants. The Council properly decided that there is no basis for waiving the registration requirement. *See* D.C. Code § 16-1501(c)(2).

If tenants want to investigate whether the rent increases for their rental unit are legal, they almost always need to receive the registration or exemption number from the housing provider. Even though DC law requires the creation of a publicly available database for the review of registration forms and claims of exemption, this database does not yet exist. D.C. Code § 42-3502.03c. Until such a database exists, tenants will need to get registration and exemption numbers from the housing provider if they are to have any meaningful opportunity to investigate whether the rent increases for their units were appropriate.

Further, it is not burdensome to require a housing provider to state its registration/claim of exemption number and the reason for any exemption in their notices. Because of RAD's size and capacity, it is nearly impossible for it to investigate whether the exemption a housing provider indicates on the RAD form is correct. In our practice, we have seen housing providers claiming that they are exempt from rent stabilization when they should not be exempt. For example, a claim that the basis of the exemption was because they are allegedly a small landlord (owning four or fewer rental units), only for us to find otherwise. Therefore, the negligible burden, if any, that arises from requiring housing providers to include the registration number/claim of exemption number and the reason for the exception in their notices is greatly outweighed by the benefits to tenants and other DC agencies.

Conclusion[2]

For the reasons described above, 1) Section 4300.8 should add a subsection (c) that expressly states that the Rent Administrator does not have to take any action concerning notices served on them and that any inaction is not to be interpreted as a notice being valid or invalid; 2) Section 4300.24 should include a more expansive set of facts that would indicate a housing provider knew or should have known a tenant's primary language is one of the covered languages; and 3) all Notices should be required to include registration or claim of exemption numbers and the reason for any exemption, especially for nonpayment of rent matters.

Sincerely,

LEGAL AID DC, BREAD FOR THE CITY, NLSP, RISING FOR JUSTICE & LEGAL COUNSEL FOR THE ELDERLY
Mel Zahnd, Supervising Attorney at Legal Aid
Natasha Bennett, Supervising Attorney at Bread
Adam Marshall, Managing Attorney at NLSP
Chijioke Akamigbo, Executive Director at Rising for Justice
Rhonda Cunningham Holmes, Executive Director at Legal Counsel for the Elderly

[2] Subsection 4399.2, there is a typographical error under the "Application Fee" definition. The last line says "holing deposits" when it should state, "holding deposits."