



COUNCIL OF THE DISTRICT OF COLUMBIA

THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

MEMORANDUM

TO: Nyasha Smith, Secretary to the Council
FROM: Councilmember Mary M. Cheh and Chairman Phil Mendelson
DATE: October 1, 2020
SUBJECT: Requests for the October 6, 2020 Legislative Meeting

We request that the following emergency measures be agendized for the October 6th Legislative Meeting:

- Fairness in Renting Emergency Declaration Resolution of 2020
- Fairness in Renting Emergency Amendment Act of 2020
- Fairness in Renting Temporary Amendment Act of 2020

Since the Mayor's declaration of a public health emergency on March 11, 2020, thousands of residents have lost their employment or face underemployment; 37% of District resident have reported losing some source of income. The Council has passed several pieces of emergency legislation to support residents, including a moratorium on evictions and a requirement that landlords offer payment plans to tenants in arrears. For some residents, these protections are the only reason they've been able to afford to stay in their homes.

Without further action to protect tenants, however, the District could see upwards of 39,000 new eviction cases in the weeks following the lifting of the public health emergency. Those eviction filings will be in addition to the over 8,000 claims already brought this year, an estimated 1,800 of which were filed during—and in violation of—the eviction moratorium.

This emergency legislation seeks to provide additional protections to tenants, both during the remainder of the public health emergency, and in the period following, during which time many residents will continue to face financial hardship. Specifically, the emergency legislation:

- **Authorizes the Superior Court to seal eviction records:** The legislation provides the Superior Court with the discretion to seal certain eviction records, and requires that the Court seal all eviction records (1) within 30 days, where the Court did not find

for the landlord, and (2) where the claim is 3 years or older, and the tenant has not been subject to another eviction filing in that 3 year period. Currently, the Superior Court lacks the authority to seal evictions records for any reason; once a landlord files for eviction, the court record created is permanent. This is true even where the Court found for the tenant, the filing was withdrawn, or the landlord filed in error. Landlords regularly use evictions records to screen prospective tenants, and the fact that a tenant has an eviction record—not that they were ultimately evicted—can often be the basis for a landlord denying a tenant’s rental application or demanding higher rent, larger security deposit, or other concessions. Vulnerable tenants report that eviction records are one of the biggest barriers they face when searching for safe, affordable housing. Providing the Court with the authority to seal these records will ensure that the estimated 1,800 eviction filings illegally filed during the eviction moratorium will be quickly sealed by the court, therefore not harming these tenants as they search for housing after the eviction moratorium is lifted. It will also ensure that struggling tenants who will have eviction records as a result of being unable to meet rent during and following the public health emergency are not negatively impacted by this record for the remainder of their time as a renter. Of course, importantly, this legislation will also provide the court with the ability to seal decades of eviction records for claims that were settled out of court, filed in error, in retaliation, or otherwise in violation of District law, or that are many years old. To note, 94.5% of eviction filings made in the District between 2014 and 2018 did not result in an executed eviction; nevertheless, all of those files created a damaging, permanent eviction record for those tenants; this legislation would allow those records to be sealed.

- **Establishes protections in tenant screening processes:** The legislation sets common-sense limitations on how landlords may use certain tools or information to screen tenants, and sets requirements that landlords provide notice to tenants regarding their tenant screen processes. Specifically, it requires landlords to provide notice to prospective tenants of the criteria used to screen tenants, prohibits landlords from requesting information about certain eviction records and lease breaches, requires that landlords provide tenants with the information used as a basis for denying a rental application or demanding concessions as conditions of accepting a rental application, and requires that landlords provide tenants the opportunity to rebut any information used by the landlord to make those decisions. These changes will provide transparency and clarity to prospective tenants searching for housing and help ensure that landlords comply with the District’s rental housing and nondiscrimination laws. The legislation includes a penalties provision that would allow the District to fine landlords who knowingly violate the requirements of this section, up to \$1,000 per violation. To allow time for landlords

to establish protocols to comply with these new requirements, the effective date of this language is January 1, 2021.

- **Expresses the Sense of the Council that the Superior Court should raise filing fees for eviction cases:** The legislation expresses the Sense of the Council that the Superior Court should raise the cost for a landlord to file a claim for eviction from \$15 to \$100. The Court's current filing fee is far below a number of other jurisdictions, where fees may range from \$50 to over \$200. In Virginia, filings fees for evictions cost between \$120 and \$350. These low fees charged by the Court provide an incentive for landlords to bring a claim, even for small amounts, rather than work with the tenant to make a plan to resolve any amounts owed. Data from the Superior Court from 2014 through 2018 shows that approximately 12% of all eviction filings were for non-payment of rent in amounts totaling \$600 or less; 50% of filings were for \$1,000 or less. The Court's low fee also encourages serial-filing—in fact, in 2018, Superior Court records show that ten District housing providers were responsible for 40% of eviction filings. Jurisdictions with higher costs to file for eviction report lower numbers of “serial-filers.” Raising this fee will incentivize landlords to work with tenants in arrears, raising than immediately resorting to filing with the Court.
- **Prohibits evictions where the amount owed is less than \$600, or where a landlord lacks a business license:** Lastly, the legislation prohibits a landlord from filing a complaint to recover possession of a unit where the rent owed totals less than \$600, or where the housing provider does not have a current business license for rental housing. As noted above, in 2018, 12% of eviction filings in the District were for amounts totaling \$600 or less. For most units in the District, this is less than one month's rent—and, for many units, far less. Prohibiting landlords from filing for eviction until the amount owed is \$600 or greater will incentivize landlords to work with tenants directly to lay out payment plans or other methods to recover small amounts owed, reducing the volume of eviction filings in the District. Of note, the legislation does not prohibit landlords from bringing a civil claim to recover actual amounts owed, if under \$600; it only prohibits bringing a claim for eviction. In addition, the provision regarding business licenses will ensure that tenants are not displaced where their landlord is not in compliance with District law.

Draft copies of the emergency legislation are attached. Please contact Michael Porcello at 724-8062 or mporcello@dccouncil.us if you have any questions.