

GOVERNMENT OF THE DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION

Fiscal Year 2021
Performance Oversight Hearing

Testimony of
Michael T. Spencer
Chief Administrative Judge

Before the
Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia
The Honorable Anita Bonds, Chairperson

John A. Wilson Building
Room 120
1350 Pennsylvania Avenue, NW
Washington, DC 20004
March 9, 2019
9:00 a.m.

Good morning, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Michael T. Spencer, the Chief Administrative Judge at the D.C. Rental Housing Commission. I am joined by Daniel Mayer, the Commission's General Counsel. I am excited to testify at this year's performance oversight hearing the Commission's performance during Fiscal Years 20 and 21 to-date.

The Commission is the administrative court and regulatory body responsible for the impartial interpretation, implementation, and enforcement of the Rental Housing Act. Tenants and housing providers trust the Commission to resolve administrative appeals, implement clear and comprehensive regulations, and determine permissible annual adjustments of rent for covered units. Our partner agencies also play an important role in administering and enforcing the Rental Housing Act.

The Rental Accommodations Division (RAD), which is part of the Department of Housing and Community Development's (DHCD) Housing Regulation Administration (HRA), is responsible for administering the Act. This is the first step to any matter arising under the Act.

The Office of Administrative Hearings, the city's centralized, trial-level administrative court, conducts hearings on Rental Accommodation Division petitions. Once OAH issues a decision, either party can appeal the case to the Commission. The Commission is the first level of appeal of the decisions made on Rental Accommodation Division petitions and we are the last stop of the process before a matter reaches the D.C. Court of Appeals, which functions as our city's supreme court.



As with agencies across the District government, the Commission adapted its workplace processes and practices over the past year so it could continue to deliver its services during these difficult times.

During FY 2020 and FY 2021, to date, the Commission spent a considerable amount of time finalizing regulations and enhancing its ability to resolve cases through mediation and adjudication.

Regarding regulations, the most important focus for the RHC in its rulemaking function is that District residents and housing providers can follow clear legal requirements and obtain efficient, consistent resolution to any disputes under the Act. The rulemaking will improve the well-being of tenants and housing providers and the families, businesses, and communities that depend on them to the greatest extent possible under the current Act. Our work will account for at least 20 major, minor, and technical legislative amendments to the Rental Housing Act. It will also incorporate decades of legal decisions from the Court of Appeals and the Commission as well as thoughtful feedback from stakeholders representing tenants, housing providers and other diverse perspectives.

The Commission published a first draft of a 191-page proposed rulemaking for public comment in August 2019. The Commission incorporated stakeholder feedback and published a 211-page second draft of proposed rulemaking in November 2020. Three weeks ago, the Commission closed a thirteen-week public notice and comment period. Several stakeholders provided feedback to the Commission on the second draft of the proposed rulemaking. The Commission is reviewing that feedback and will soon



decide whether it will publish a third notice of proposed rulemaking or a final notice of rulemaking.

The Commission is also continuing its efforts to improve its case resolution processes. The Commission has implemented a mandatory mediation process so the Commission could resolve additional cases without a full decision-writing process by the Commission and its legal staff; standardized the internal process for scheduling of briefing and hearings; and drafted regulations that establish a fairer, more standard schedule for briefing and oral arguments, in line with the rules of the DC Court of Appeals.

The Commission also recommends legislative action to extend the deadline for litigants to appeal from OAH to the RHC and to expand the RHC's mediation program. After OAH issues a decision, parties generally have ten days to file a notice of appeal with the Commission. The general deadline for most appeals is 30 days from entry of a final judgment. This 30-day deadline applies when a party appeals a Commission decision to the DC Court of Appeals. Therefore, the Commission believes the same should apply when a housing provider or tenant appeals an OAH decision to the Commission.

As stated, the Commission has implemented a mandatory mediation process so the Commission could resolve additional cases without a full decision-writing process by the Commission and its legal staff. Our mediator has held a record number of mediations over the past year. Despite her diligence, the Commission has not settled many matters through mediation. Attorneys and litigants know the Commission does not have any regulations that outline the mediation program, and know they are not even required to



participate in good faith. OAH and DC Court of Appeals both have language on mediation. The Commission would need a simple statutory amendment to develop a more effective mediation program.

The Commission is aware that the extended deadline to file a notice of appeal would likely increase the number of appeals filed, while an enforceable mediation program would likely reduce some of the need for briefing, hearing, and deciding at least some of these.

As I prepare to close my testimony, I would like to thank the entire team at the Commission. I would also like to thank Mayor Bowser for her resilience and strength as she continues to lead our city through one of its darkest years. Likewise, I would like to thank you, your staff and your colleagues on DC Council your tireless work in also helping our city get through the past year. Most importantly, I would like to thank the tenants, housing providers, and our partners at DHCD and OAH for believing in the Rental Housing Commission and for being more than patient as the Commission has worked on the regulations and resolving disputes.

The Commission looks forward continuing to work with tenants, housing providers, legal professionals, advocates, and our partners across government. The Commission appreciates this opportunity to share its accomplishments and plans for continuous improvement. This concludes the Commission's presentation. I am happy to address your questions.



