



COUNCIL OF THE DISTRICT OF COLUMBIA

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

MEMORANDUM

To: Secretary Nyasha Smith
FROM: Councilmember Mary M. Cheh, Chairman Phil Mendelson, and
Councilmember Anita Bonds
DATE: September 30, 2021
SUBJECT: Requests for the October 5, 2021 Legislative Meeting

We request that the following emergency measures be agendized for the October 5, 2021 Legislative Meeting:

- Fairness in Renting Emergency Declaration Resolution of 2021
- Fairness in Renting Emergency Amendment Act of 2021
- Fairness in Renting Temporary Amendment Act of 2021

On October 6, 2020, the Council passed the Fairness in Renting Emergency Amendment Act of 2020, which expired on February 7, 2021. On October 20, 2020, the Council passed the Fairness in Renting Temporary Amendment Act of 2020, which will expire on October 27, 2021. The Eviction Record Sealing Authority Amendment Act of 2021 (B24-96) and the Eviction Protections and Tenant Screening Amendment Act of 2021 (B24-119) are currently before the Committee on Housing and Executive Administration and together serve as a permanent version of this emergency legislation. This emergency legislation is necessary to prevent a gap in the law between the expiration of the temporary act and the passage of the permanent legislation.

Since the Mayor's declared a public health emergency on March 11, 2020, thousands of residents have lost their employment or face underemployment. 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.

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. Until the passage of the Fairness in Renting Emergency Amendment Act of 2020 , the Superior Court lacked the authority to seal evictions records for any reason; once a landlord filed for eviction, the court record created was permanent. This was 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 help ensure that 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 pay rent now, in the months following the end of 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. The court has already sealed thousands of records, and is poised to seal many more, if this legislation is extended.
- **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.

- **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. 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.