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B24-0096 - Eviction Record Sealing Authority Amendment Act of 2021

B24-0106 - Fair Tenant Screening Act of 2021

Testimony of Leigh Higgins, Senior Attorney at the D.C. Tenants' Rights Center

May 20, 2021
12:00 pm via Zoom

Before the Committee on Housing and Executive Administration
Councilmember Anita Bonds, Chairperson

Good afternoon. My name is Leigh Higgins. I am a senior attorney at the D.C. Tenants' Rights Center. We are a small private law firm that helps tenants with issues including eviction, lease terminations, repairs, security deposits, TOPA, and rent control.

Thank you, Madam Chair, for calling this hearing. We support both the Eviction Record Sealing Authority Amendment Act of 2021 and the Fair Tenant Screening Act of 2021 and have some suggestions for reconciling them with the Eviction Protections and Tenant Screening Amendment Act of 2021 (B24-0119), as well as some proposed changes to the three bills. Today's two bills work well together to protect tenants from the long-term negative effects of an eviction filing, and we urge the Council to pass them together.

Continue Protections Against Sewer Service

First, tenants are already seeing the positive impacts of the temporary Fairness in Renting Act and we applaud the Council for moving to make these types of protections permanent, especially the provisions regarding sealing of cases and requiring notice before the filing of eviction cases for nonpayment of rent.

However, none of the proposed permanent bills continue the requirement that a process server include photographic evidence of service by posting along with the affidavit of service.ⁱ Sewer service is a completely avoidable problem and should not be permissible once the eviction moratorium is lifted. Josh Kaplan's well-researched article from 2020 shows how hard it was for individual tenants to spot apparently fraudulent service patterns and how easily technology could help prevent this problem in the future.ⁱⁱ If this provision was important enough to pass during the public health emergency after the

article was released, it should be kept once eviction filings resume - that's when it will be needed. It is our understanding that New York City and other jurisdictions require photographic evidence of service. Landlords should be required to take pictures when they post Complaints on tenants' doors and provide that proof to the court. It's easy to do.

Researcher and Journalist Access to Sealed Cases

We support the Eviction Record Sealing Authority Amendment Act of 2021 and propose an additional provision to permit researchers and journalists investigating the workings of the court to gain access to all filed cases upon a proper and standardized application. These users should also be required to obtain a second court approval, showing public interest that outweighs a tenant's privacy interests, before being permitted to publish or otherwise disseminate sealed information. Mr. Kaplan's recent story and the Georgetown study by Eva Rosenⁱⁱⁱ are two recent examples of the types of research and journalism that are important to understanding the full picture of how our eviction court works. We think that the benefit to tenants of sealing eviction cases is hugely important, but systemic change that comes from research is also important. Good data helps inform good decisions, and we shouldn't completely cut off access to that data.

Additional Permissible Reasons to Seal a Case - COVID-19 and Stipulation of the Parties

Further, we propose two more categories of cases that should be included in the list of permissible reasons to seal a case. First, we think that circumstances connected to the COVID-19 pandemic should be a reason to seal a case - this would help tenants who have been temporarily affected by loss of income or health-related costs get back on their feet with a clean record. Second, both parties in an eviction action should be able to agree to seal a case even if it doesn't meet any of the other criteria. Sometimes, both the landlord and tenant would like to agree to part ways and settle a case, but the pending eviction action makes it harder for a tenant to find a new place to move. This could benefit both sides and should be allowed by agreement.

Tenant Attorney Access to Sealed Records

Finally, as a logistical issue, we propose that defendant tenants should be able to gain access to the entire sealed court file quickly and easily. There should also be a standardized form for tenants to easily authorize this disclosure to a new attorney. Many attorneys provide brief advice or limited term representation to tenants and need to review the court file quickly to provide that advice or representation. We hope that there will be a simple way for the tenant to request access to the sealed

records and that those records could be provided electronically and quickly to both the defendant tenant and their attorney.

Tenant Screening - Copy of Report to Tenant and Remedies

Regarding the Fair Tenant Screening Act, we appreciate the level of detail included in this bill and that it prohibits consideration of any court actions initiated by a tenant against a previous housing provider. Tenants should be able to access the courts to protect their rights without worrying that a future landlord will deny their application because of it. We also appreciate the provision requiring housing providers to provide a full copy of any report obtained - this is so important and without requiring a copy be provided, mistakes and misinformation can persist for years. The only change that we would request is to clarify that a private right of action exists along with the civil penalty to help encourage prospective tenants to enforce their rights.

These bills should be passed together and reconciled with the Eviction Protections and Tenant Screening Amendment Act of 2021 (B24-0119), which also includes the helpful provisions prohibiting eviction filings for **less than \$600** or by a housing provider without a current **basic business license**. If these two provisions are added to the current acts, along with the other suggestions above, then these bills will go a long way to help tenants access safe and appropriate housing in the District.

ⁱ <https://lms.dccouncil.us/downloads/LIMS/45746/Meeting1/Amendment/B23-0940-Amendment4.pdf>

ⁱⁱ <https://dcist.com/story/20/10/05/thousands-of-d-c-renters-are-evicted-every-year-do-they-all-know-to-show-up-to-court/>

ⁱⁱⁱ <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>