May 20, 2021

Good afternoon.

My name is Brian McCabe and I am submitting this testimony of behalf of myself and my colleague, Eva Rosen. We are faculty at Georgetown in the McCourt School of Public Policy and the Sociology Department. As many of you know, we recently completed a comprehensive report on evictions in the District drawing on five years of court records about the eviction process. The report has been widely cited by policymakers, advocates and the legal community as discussions have unfolded over the last year about the eviction process in the city. I’m here today to underscore the importance of record sealing to protect tenants from unnecessary harm and housing instability, but also to make a plea – as a researcher – to ensure the availability of these records to continue to provide access for researchers so we, in turn, can help to inform and improve public policy.

I would like to make three points.

**First, record sealing will help to ensure housing stability for renters in the District.**

Currently, all eviction records in Washington, DC are publicly searchable on the Superior Court website. This searchable public information includes the full names and address of tenants for every *eviction filing* in the city – regardless of the outcome of the case. This includes filings that are quickly dismissed when back rent is paid, which make up the overwhelming number of cases filed with the court system. You should know that landlords can and do access them—often with the help of third-party data aggregating companies—to discriminate against tenants who are looking for housing. Simply having a filing – even a filing that is quickly dismissed when the rent is paid – is harmful for tenants.[[1]](#endnote-1)

These public records leave a lasting mark on tenants who have experienced the eviction process. Especially during the last year, but more generally in the lives of low-income renters, income volatility is common. As a result of this income volatility, tenants do miss rental payments, but an eviction filing typically does *not* result in an executed eviction. Our research shows that one out of every nine renter households in the city received at least one eviction filing in 2018. In Ward 8, it was one out of every four renter households. The overwhelming majority of tenants with an eviction filing – about 19 out of 20 – do *not* ultimately get evicted. That is to say, they have no legal judgment against them. But they do have eviction filings, which are in and of themselves, extraordinarily detrimental.

Research shows that an eviction record – whether a filing or an executed eviction – makes it harder for tenants to find housing in the future. While we all make the distinction between a filing for late rent and an executed eviction, landlords unfortunately do not. Professor Rosen’s work, which focuses partly on DC, shows that landlords in the city regularly cite either type of eviction record – whether a filing or an executed eviction – as the top reason for turning a prospective tenant away. This creates instability for low-income renters. It makes it harder to find housing.

**Second, I want to implore you to recognize that records must be sealed *immediately upon filing***

In order for record sealing to be effective, it needs to occur at the moment of the filing—not later in the eviction process. This is for one simple reason – we live in an era of big data with a number of third-party data aggregating companies that regularly scrape court records, compile them, and sell the data. They usually sell a “screening score,” but sometimes they include direct information about eviction history. Property owners buy this information and utilize it to make decisions about whether or not to rent to prospective tenants.

Any legislation that allows the record to stay public through to the eviction proceeding – or for a period after the resolution of a case – provides an opportunity for these companies to scrape data and use this information against tenants. Again, *any* period of public availability – a week, two weeks – gives these companies a window to scrape data. It is exceedingly difficult to get these companies to update their records upon completion of a court case – in other words, to remove cases that do not end in an eviction. If you allow any sort of public availability, then you’ve defeated the purpose of the legislation. Records must be sealed or masked the moment they are filed.

**Third, I want to encourage you to carve out specific exemptions in the records sealing legislation to enable researchers to access the data to serve public policy.**

Here, I will point to our report – a report that has been widely cited. In fact, yesterday I read a tweet by Councilmember George about the geography of eviction, noting that 60 percent of evictions are east of the river. The information comes directly from our report. It has been cited regularly by the Council, advocates and the legal community. This report – which has informed policy and, I believe, shaped the thinking of the Council in crafting more equitable policies – was only possible because we, as researchers, had access to data.

We need to preserve access to all eviction records by researchers in order to properly understand and analyze ongoing eviction trends in the District. Research leads to better policy to improve the lives of low-income renters. Where cities have passed record sealing bills without delineating a clear pathway for researchers to access data, tracking eviction has become more difficult. It hurts tenants. It creates challenges to developing policy-driven research.

I’m pleased to report that the Superior Court system has an excellent system of Data Use Agreements with researchers that provide access to court records – a system that should be widely emulated by other agencies in the city looking to provide access to data for researchers. The Council must ensure that researchers who comply with the requirements of the Court system are able to access the full database of eviction records. A`s we continue to have conversations about data availability throughout the city, I hope that the Court system will serve as a model.

Thank you again for the opportunity to testify today. We are appreciative of your continued leadership on this key issue, and we are grateful for the seriousness with which the Council has considered our recent report in shaping legislation in the city.

Brian McCabe & Eva Rosen

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1. Katelyn Polk, “Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions” 15 (2020). [↑](#endnote-ref-1)