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2 Chairman Phil Mendelson


Councilmember Mary Cheh

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5 A PROPOSED RESOLUTION
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9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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14 To declare the existence of an emergency with respect to the need to amend the Rental Housing
15 Act of 1985 to serve a written notice to vacate on a tenant before evicting the tenant for
16 nonpayment of rent, to prohibit a housing provider from filing a claim to recover
17 possession of a rental unit for the nonpayment of rent unless the housing provider has
18 provided the tenant with at least 30 days' written notice of its intent to do so, to prohibit
19 housing providers from filing claims to recover possession of a rental unit for the non-
20 payment of rent unless providing the tenant 30 days' notice of their intent to do so; to
21 require the Court to seal certain eviction records; to authorize the Court to seal certain
22 evictions records upon motion by a defendant; to amend Title 16 of the District of
23 Columbia Official Code to prohibit a housing provider from filing to evict a tenant if
24 amount of nonpayment of rent is less than \$600; to amend the Rental Housing Act of
25 1985 to prohibit a tenant from being evicted from a unit where the housing provider does
26 not have a current business license; to require a housing provide to provide notice to
27 prospective tenants of information and criteria used by the housing provider to screen
28 tenants; to prohibit a housing provider from requesting information from a prospective
29 tenant on an eviction filing that did not result in a judgment for possession in favor of the
30 housing provider or that was filed 3 or more years ago, or about an alleged breach of
31 lease by the tenant if the alleged breach stemmed from a incident in which the
32 prospective tenant was a victim of a crime or took place 3 or more years ago; to require
33 that a housing provider provide written notice to a prospective tenant of the housing
34 provider's basis for taking adverse action against the prospective tenant, and providing
35 the tenant the right to dispute the information forming that basis; to provide a prospective
36 tenant with the right to provide a housing provider with evidence showing that
37 information relied upon by the housing provider in taking an adverse action was
38 inaccurate or was information that the landlord was prohibited under District law from
39 inquiring about; and to express the Sense of the Council that the Superior Court should
40 raise filing fees for eviction cases to \$100.

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42 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
43 resolution may be cited as the "Fairness in Renting Emergency Declaration Resolution of 2020".

44 Sec. 2. (a) On March 11, 2020, the Mayor of the District of Columbia issued Mayor's
45 Order 2020-046, declaring a public health emergency in the District due to the imminent threat to
46 the health, safety, and welfare of District residents by the spread of COVID-19. That order is
47 currently in effect through October 9, 2020.

48 (b) Unfortunately, the number of residents effected by COVID-19 and the public health
49 emergency grows each day. Thousands of District residents have lost their employment or face
50 underemployment. A United States Census Pulse Survey found that 37.3% of District residents
51 have lost some level of income during the public health emergency.

52 (c) Since the Mayor's declaration of a public health emergency in March, the Council has
53 passed several pieces of emergency legislation to provide relief to residents and businesses
54 effected by the pandemic. Among the protections provided through that legislation were several
55 measures tailored to protect vulnerable tenants. The Council has issued a moratorium on
56 residential evictions for the length of the public health emergency, plus 60 days, and required
57 that landlords offer rent payment plans to tenants with outstanding rent accrued during the public
58 health emergency; where a tenant with a rent payment plan is current on both their rent and
59 payments owed under the plan, that tenant cannot be evicted for non-payment of rent.

60 (d) Many residents have only been able remain in their homes due to the current
61 moratorium on evictions. When the moratorium is lifted, a number of landlords will take
62 immediately action to evict these tenants with outstanding rent. A recent study estimated that
63 there could be upwards of 39,000 new eviction cases after the District's eviction moratorium is
64 lifted.

65 (e) Landlords currently face few disincentives to filing to evict a tenant, even where the
66 Court does not ultimately find for the landlord. The cost to file with the Superior Court is

67 currently set at \$15, which is significantly less than other jurisdictions, where fees may range
68 from \$50 to nearly \$200. In Virginia, filings fees for eviction cases range from \$120 to up to
69 \$350. This minimal cost to file an eviction claim with the Superior Court discourages landlords
70 from working directly with tenants to address amounts in arrears, even where the rent owed is
71 minimal. Data from the Superior Court from 2014 through 2018 shows that approximately 12%
72 of all eviction filings were for non-payment of rent in amounts totaling \$600 or less; 50% of
73 filings were for \$1,000. For the majority of units across the District, the amounts owed are less
74 than even one month's rent. Unfortunately, District law does not distinguish between tenants
75 who owe significant amounts of unpaid rent, and those who owe de minimis amounts.

76 (f) Some District landlords have exploited the low, low cost to file with the Court, filing
77 dozens, if not hundreds, of eviction cases each year. In 2018, just ten District housing providers
78 were responsible for 40% of all eviction filings in the District. And filing costs have been found
79 to have a direct effect on landlord behavior: a 2020 *Housing Studies* study found that
80 neighborhoods in states that charge higher eviction filings fees had fewer landlords making serial
81 eviction-filings.

82 (g) When a landlord files with the Superior Court to evict a tenant, the act of filing with
83 the Court—not the Court granting the eviction—creates an eviction record. From 2014-2018,
84 only 5.5% of eviction filings in the District resulted in an executed eviction. In these instances,
85 landlords and tenants may have settled out of court. Landlords may have named the wrong tenant
86 in an eviction filing, or filed for eviction for “underpayment of rent” when the tenant was not in
87 arrears, due to the landlord's accounting error. Landlords may have wrongfully file for eviction
88 after a tenant legally withheld rent, objected to an illegal rent increase, or otherwise exercised
89 their tenant rights. In some instances, landlords may even use an illegal eviction proceeding to

90 pressure a tenant to move out. In all these examples—and for every tenant in the 94.5% of
91 eviction filings that did not result in an executed eviction—a permanent eviction record was
92 created the moment the landlord files with the Court.

93 (h) Even with a moratorium on evictions for the length of the public health emergency,
94 nothing prevents landlords from filing for an eviction with the Superior Court. Since the start of
95 2020, there have been over 8,000 eviction filings with the District Court. More than 1,800 of
96 these filings were made during the public health emergency, when the moratorium on evictions
97 was in effect; as a result of the moratorium, those filings are subject to dismissal by the Court.
98 Nevertheless, the very act of filing for eviction has created an eviction record for those tenants.

99 (i) Currently, District law has no mechanism to provide for eviction records to be sealed
100 or expunged. That means, whenever a landlord files to evict a tenant, a permanent court record is
101 created. Even where the Court believes there is a good cause to seal the record, it lacks the
102 statutory authority to do so. As a result, the eviction record—and the harm the record causes—
103 will follow that tenant for the remainder of their lives.

104 (j) Eviction records can have devastating consequences for tenants: landlords may charge
105 a higher rent based on the “risk” posed by the tenant, or may deny the tenant’s rental application
106 outright. When using eviction records to screen clients, landlords typically do not consider
107 whether the landlord was successful in evicting the tenant; rather, the fact that a prior landlord
108 filed for eviction, creation an eviction record for that tenant, is the determinative factor.

109 (k) The harm caused by eviction records is particularly acute for low income residents
110 and those who have experienced homelessness. In fact, eviction records are one of the primary
111 barriers to housing for vulnerable residents and may exacerbate the financial difficulties that led
112 to the tenant facing eviction in their previous residence.

113 (l) Of the more than 8,000 eviction filings in the District since the start of 2020, at least
114 1,800 were in violation of District law. More filings will invariably be filed before the
115 moratorium is lifted, or, in the months following the end of the public health emergency, against
116 tenants with payments plans, in violation of District law. Other filings will target tenants who are
117 facing unprecedented struggles due to the public health emergency. As noted, a recent study
118 estimated that there would be 39,000 new eviction cases after the District's eviction moratorium
119 is lifted. Under current District law, an eviction record will be created for all of these tenants,
120 each of whom will face permanent, drastic harm because they have an eviction record.

121 (m) Emergency legislation is need to provide the Superior Court with the authority to seal
122 these and other eviction records, to prohibit housing providers from filing to evict a tenant where
123 non-payment of rent is less than \$600, to set requirements for landlords to provide tenants with
124 notice of information and criteria used to screen tenants, and an opportunity to review and appeal
125 such information, and to express the Sense of the Council that the Superior Court should raise
126 filing fees for eviction cases to \$100, to ensure that the temporary struggles that residents are
127 facing due to the COVID-19 pandemic do not permanently hamper those residents' ability to
128 find safe, affordable housing.

129 Sec. 3. The Council of the District of Columbia determines that the circumstances
130 enumerated in section 2 constitute emergency circumstances making it necessary that the
131 Fairness in Renting Emergency Amendment Act of 2020 be adopted after a single reading.

132 Sec. 4. This resolution shall take effect immediately.