

A RESOLUTION

23-546

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2020

To declare the existence of an emergency with respect to the need to amend the Rental Housing Act of 1985 to require a housing provider to serve a written notice to vacate on a tenant before evicting the tenant for any reason, to require a housing provider to provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim, , to require the Superior Court to dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider, in cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, to provide that no tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing, to require the Superior Court to seal certain eviction records, to authorize the Superior Court to seal certain evictions records upon motion by a tenant, to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action; to amend section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than \$600; and to declare the sense of the Council that the Superior Court should raise filing fees for eviction cases to \$100.

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

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

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

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

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

(e) Landlords currently face few disincentives to filing to evict a tenant, even where the Court does not ultimately find for the landlord. The cost to file with the Superior Court is currently set at \$15, which is significantly less than other jurisdictions where fees may range from \$50 to nearly \$200. In Virginia, filings fees for eviction cases range from \$120 to up to \$350. The minimal cost to file an eviction claim with the Superior Court discourages landlords from working directly with tenants to address amounts in arrears, even where the rent owed is minimal.

(f) Data from the Superior Court from 2014 through 2018 shows that approximately 12% of all eviction filings were for non-payment of rent in amounts totaling \$600 or less, and 50% of filings were for \$1,000. For the majority of units across the District, the amounts owed are less than even one month's rent. Unfortunately, District law does not distinguish between tenants who owe significant amounts of unpaid rent and those who owe de minimis amounts.

(g) Some District landlords have exploited the low, low cost to file with the Court, filing dozens, if not hundreds, of eviction cases each year. In 2018, just 10 District housing providers were responsible for 40% of all eviction filings in the District. And filing costs have been found to have a direct effect on landlord behavior. A 2020 "Housing Studies" study found that neighborhoods in states that charge higher eviction filings fees had fewer landlords making serial eviction-filings.

(h) When a landlord files with the Superior Court to evict a tenant, the act of filing with the Court—not the Court granting the eviction—creates an eviction record. From 2014 through 2018, only 5.5% of eviction filings in the District resulted in an executed eviction. In these instances, landlords and tenants may have settled out of court. Landlords may have named the wrong tenant in an eviction filing or filed for eviction for underpayment of rent when the tenant

was not in arrears, due to the landlord's accounting error. Landlords may have wrongfully filed for eviction after a tenant legally withheld rent, objected to an illegal rent increase, or otherwise exercised their tenant rights. In some instances, landlords may even use an illegal eviction proceeding to pressure a tenant to move out. In all these examples—and for every tenant in the 94.5% of eviction filings that did not result in an executed eviction—a permanent eviction record was created the moment the landlord filed with the Court.

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

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

(k) Eviction records can have devastating consequences for tenants: landlords may charge a higher rent based on the perceived risk posed by a prospective tenant or may deny the prospective tenant's rental application outright. When using eviction records to screen clients, landlords typically do not consider whether the landlord was successful in evicting the tenant; rather, the fact that a prior landlord filed for eviction, creating an eviction record for that tenant, is the determinative factor.

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

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

(n) Emergency legislation is needed to provide the Superior Court with the authority to seal these and other eviction records, to prohibit housing providers from filing to evict a tenant where non-payment of rent is less than \$600, to set requirements for landlords to provide tenants with notice of information and criteria used to screen tenants, and an opportunity to review and

appeal such information, and to express the sense of the Council that the Superior Court should raise filing fees for eviction cases to \$100 to ensure that the temporary struggles that residents are facing due to the COVID-19 pandemic do not permanently hamper those residents' ability to find safe, affordable housing.

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

Sec. 4. This resolution shall take effect immediately.