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The Washington LEGAL CLINIC for the Homeless
*A Voice for Housing and Justice*

**Committee on Housing and Executive Administration**
**Fair Tenant Screening Act and Eviction Record Sealing Authority Act**
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The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive. I am testifying in strong support of the Fair Tenant Screening Act and the Eviction Record Sealing Authority Act.

Since 2015 I have chaired or co-chaired a workgroup on eliminating barriers to rental housing for DC residents experiencing homelessness. This workgroup was created to implement a section of the Homeward DC plan to end homelessness when the Interagency Council on Homelessness recognized that restrictive or unfair housing eligibility policies and practices were interfering with efforts to efficiently and effectively end homelessness. Eventually the workgroup became an independent workgroup of advocates, organizers, government agencies and service providers.

At our first meeting in September of 2015, we identified major barriers to housing beyond lack of affordability. We identified credit, rental history, criminal history and voucher discrimination as the most prevalent and significant barriers to rental housing for people experiencing homelessness. The workgroup determined early on that, no matter how many tweaks we made to agency practices or services, housing applicants would still face insurmountable barriers unless landlords were required to implement fair, rational and nondiscriminatory screening standards. We reviewed tenant screening legislation from many other jurisdictions and developed legislative proposals that eventually became the Fair Criminal Records Screening Act (which went into effect in 2014), the Fair Tenant Screening Act and the Eviction Record Sealing Authority Act.

Our workgroup learned quickly that many landlords are relying on background screening companies to tell them whether they should rent to an applicant, often with near total deference to the company. There is very little transparency to the business practices of screening companies, including what data they are accessing and how they rate applicants. We tried to get the companies to speak to us for years, only to be ignored or told that the algorithm was proprietary.

Over the years we have heard countless stories of landlords using arbitrary or even shifting standards to deny applicants housing, particularly extremely low-income applicants who are trying to rent with a housing subsidy. In the fall of 2019, we held more than 8 community sessions to hear from hundreds of people who are homeless about what was keeping them from finding a home, besides affordability. Here are the most common things we heard:

- Minimum income requirements set at a level that would screen out any person renting with a voucher or rapid re-housing;
- Exorbitant fees that are impossible for low-income renters to pay: including up to $120 per adult household member application fees, several hundred dollar "holding fees," and "amenity fees" of $1000 or more;
- Not telling applicants what the eligibility standards are and then denying them with broad reasons given such as "credit," sometimes only after finding out they have a voucher;
- Denying applicants for having eviction cases on their record, even if they won their case, it was a mistake, or they never got evicted;
- Denying applicants because a background screening company has recommended they be denied, without any reason given; and
- Widely divergent standards for screening, and little to no transparency or accountability for eligibility determinations.

While landlords are not allowed to discriminate against people based on protected classes, including source of income or vouchers, many landlords use credit or rental history, minimum income requirements or exorbitant fees as pretext to deny people housing based on race, family size, disability, source of income, or other protected classes. Landlords are bound to no law when it comes to deciding what screening standards they should use for credit or rental history or minimum income requirements. No law limits the amount or type of fees that can be charged to applicants, other than security deposits. The lack of legal restrictions gives landlords near carte blanche to use opaque, arbitrary or unreasonable standards as cover when bias is the real motivation.

Even when landlords carry no conscious bias towards low-income housing applicants in DC, the majority of whom are Black, using credit or rental history as a blunt tool to deny applicants compounds the racism that is inherent in both credit and eviction systems. Credit scores and history reflect a systemically racist system that includes predatory lending, denial of opportunities to build credit and other racist practices.[1] Using credit to deny a housing applicant without looking more deeply into whether it fairly reflects the applicant's likelihood of being a good tenant is deeply problematic. Similarly, a recent Georgetown study, which looked at four years of eviction data, found that evictions disproportionately took place in Wards 7 and 8 and that, the more Black renters there are per census tract, the more evictions took place.[2] Because landlords disproportionately target Black DC residents for eviction, reliance on eviction history as a predictor of good tenancy compounds the effects of racism.

The Georgetown eviction study also highlights the unreasonable reliance on eviction records as determinants of good tenants:

> Th[e] public availability of eviction records means that landlords can and do access them—often with the help of third-party data aggregating companies—to legally discriminate against tenants who are looking for housing after receiving an eviction filing or being

[1] See "Credit scores are supposed to be race-neutral. That's impossible." https://www.washingtonpost.com/business/2020/10/16/how-race-affects-your-credit-score/?arc404=true

[2] Brain J. McCabe, Eva Rosen "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability," https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk

> evicted. Public eviction records thus create a sort of "blacklist," leaving a lasting mark on tenants who have experiences of the eviction process… Since the overwhelming majority of tenants with an eviction filing do not ultimately get evicted and have no legal judgment against them, public records may mischaracterize the experiences of low-income tenants. Public records follow tenants through their residential records and often through their credit records, and have been shown to have a negative impact on their future housing opportunities.

We believe that the Fair Tenant Screening Act and the Eviction Record Sealing Authority Act combine to establish a fairer system for renters in DC. While the Eviction Sealing bill seals eviction records, and could be amended to seal more records and seal records more tightly, we know that landlords will still inquire about those records unless they are prohibited from doing so. The Fair Tenant Screening Act complements the eviction record sealing bill by setting specific and enforceable standards for what landlords can inquire about or use when it comes to rental and credit history and strengthening the law that prohibits voucher discrimination.

To be clear, these bills mandate enforcement at the Office of Human Rights because they are at their core civil rights bills. While OHR definitely needs support and oversight to improve its function, DHCD should not be the agency enforcing these bills. OHR enforces all other fair housing laws, including the Fair Criminal Records Screening Act, which recognized that criminal record is often used a proxy for race, just like credit and rental history are. If these bills were under DHCD, prospective tenants would have to file cases with two different agencies in the following, all too common scenarios:

- Applicant denied housing and not told the reason, which would violate Fair Criminal Records Screening Act and Fair Tenant Screening Act;
- Applicant denied housing and not told the reason and files at OHR, only to find out during investigation that the denial was based on credit;
- Applicant told denial is based on rental history, but suspects it is also because applicant is Black or is using a housing voucher; or
- Applicant told denial is based on criminal record, but applicant later learns that landlord pulled sealed eviction records prior to the denial.

We look forward to working with the Committee on the following:

- Reconciling Fair Tenant Screening Act and the Eviction Sealing Authority Act into a cohesive system;
- Ensuring both laws are easily enforceable in the court and in the Office of Human Rights, with a full range of penalties and damages, and that OHR has the resources it needs to effectively enforce the law;
- Exploring sealing more records, earlier in the process, and making the sealing process easier for pro se tenants;
- Limiting even further what landlords can use to screen applicants, including excluding court records from consideration entirely;
- Prohibiting landlords from using conclusions or recommendations by background screening or credit reporting companies related to the fitness of prospective tenants, including credit and risk scores.

- Capping application fees and prohibiting any mandatory fees other than application fees and security deposits;
- Adding a “first-in-time” rule so applicants are assessed in the order in which they apply;
- Other technical and clarifying amendments

We will be following up with specific suggested language for amendments.