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**Testimony of Mel Zahnd  
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**Before the Committee on Housing  
Council of the District of Columbia**

**Public Hearing Regarding Bill 25-74 “Fairness in Renting Clarification Amendment  
Act of 2023”**

**May 18, 2023**

Legal Aid of the District of Columbia<sup>1</sup> submits the following testimony regarding the Fairness in Renting Clarification Amendment Act of 2023. While we believe that the Act overall represents a significant improvement in the law, Legal Aid urges an amendment to the provision of this bill regarding fees to process applications for rental housing. We support the provisions of the legislation regarding notices of rent increases and fees associated with maintaining the implied warranty of habitability.

**Processing Fees**

Legal Aid applauds the Council’s recognition that tenants need predictability in the types and costs of fees for rental housing applications and that exorbitant fees are a barrier to

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<sup>1</sup> Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 91 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From experiences of our client, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

securing housing.<sup>2</sup> Many of Legal Aid’s clients are trapped in housing that is unsafe or unaffordable because they cannot cover the cost of applying for other options. Our clients often submit multiple applications before being approved for a suitable housing option, assuming they are approved at all; some will spend hundreds of dollars on unsuccessful applications and ultimately run out of funds to cover application fees before securing new housing. This is especially true for those who have withheld rent due to housing conditions and may be facing a pending eviction matter, which makes it all the more difficult to secure new housing.

To maximize the effect of this law and avoid unintended consequences, Legal Aid recommends that, rather than create a new category of “processing fee,” this bill could more clearly accomplish the same purpose by defining the broad category of “application fee” and by including processing fees within this category.

This new bill may have the unintended effect of doubling application fees, rather than reducing them. Current law already caps application fees at \$50 but does not define exactly what an application fee is.<sup>3</sup> Rather than filling the gap by defining application fees, this bill instead adds a new term, processing fees.<sup>4</sup> It then goes on to state that neither application fees nor processing fees should exceed \$50.<sup>5</sup>

This could be misinterpreted to create a new category of potential fees, each of which could individually be up to \$50. As written, the bill could frustrate its own purpose, by facing potential renters with double the fees they currently have to pay.

To address the current lack of definition for “application fees” under the law, we recommend that Council add a definition of “application fees.” The definition should clarify that any “processing fees” fall under the umbrella of “application fees.” This will provide landlords and prospective tenants with a common and predictable understanding of what fees are and are not allowed.

Legal Aid suggests the following amendment to this bill:

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<sup>2</sup> “Statement of Introduction for the Fairness in Renting Clarification Amend. Act of 2023,” Bill 25-74 (Jan. 27, 2023); See also Eric Dunn, The Case Against Rental Application Fees, Georgetown J. on Poverty Law and Policy, Fall 2022, at 21-47.

<sup>3</sup> See D.C. Code § 42-3501.01; § 42-3505.10(b)(1).

<sup>4</sup> Bill 25-74 § 2.

<sup>5</sup> *Id.*

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 42-3501.03) is amended by adding a new paragraph ~~(24A)~~ (2A) to read as follows:

~~“(24A) “Processing fee” means any fee associated with processing or reviewing an application for rental housing.~~

“(2A) “Application fee” means any fee associated with processing or reviewing an application for rental housing.

(b) Section 510 (D.C. Official Code § 42-3505.10) is amended as follows:

(1)—— Subsection (a)(9) is amended by striking the phrase “; and” and inserting the phrase “and processing fee; and” in its place.

~~(2)—— Subsection (b) is amended to read as follows:~~

~~“(b)(1) A housing provider may require a prospective tenant to pay an application fee or a processing fee.~~

———~~“(2) An application fee may not be more than \$50; provided that beginning on January 1, 2024, the application fee may be adjusted annually by the housing provider, or his or her agent, commensurate with an increase in the Consumer Price Index for All Urban Consumers published by the United States Bureau of Labor Statistics.~~

———~~“(3) A processing fee may not be more than \$50; provided that beginning on January 1, 2024, the application fee may be adjusted annually by the housing provider, or his or her agent, commensurate with an increase in the Consumer Price Index for All Urban Consumers published by the United States Bureau of Labor Statistics..”.~~

## **Notices of Rent Increases**

Legal Aid supports the rest of the “Fairness in Renting Clarification Amendment Act of 2023” as drafted. The provision of this bill that extends the notice period for rent increases from 30 days to 60 days is a welcome improvement on the current law. Many low- and middle-income District tenants are paying rents that are at the edge of what their families can afford, and a rent increase can render their tenancies unsustainable. A 60-day notice period will give tenants more time to plan for an impending rent increase, whether that means reworking their finances or locating new housing and making arrangements to move.

Many of the tenants Legal Aid represents could have avoided accruing rental arrears as well as the ordeal and the destabilizing effects of an eviction case – as well as the correlating hit to their credit - if they had more time to prepare for a rent increase. Extending the notice period for rent increases will make rent a more predictable and stable experience for low-income tenants, although it will not solve the underlying problem of the lack of affordable housing in the District.

## **Fees Associated with Maintaining the Implied Warranty of Habitability**

Finally, we support the provision of this bill that prohibits fees to tenants and prospective tenants based on the maintenance of the implied warranty of habitability. This provision clarifies the pre-existing state of the law. The law already places the obligation of keeping an apartment in compliance with the implied warranty of habitability on landlords.<sup>6</sup> This provision makes clear that landlords cannot shift this burden onto tenants through fees at the beginning or at the end of the tenancy. Landlords are legally obligated to maintain rental housing in good repair, and this provision will help ensure that they do so in a way that does not further prejudice the tenant.

## **Conclusion**

Legal Aid urges Council to amend the Fairness in Renting Clarification Amendment Act of 2023 to define “application fees,” rather than creating a new category of “processing fees,” which could have the unintended consequence of doubling fees for prospective renters. Legal Aid otherwise supports the provisions in this bill as drafted.

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<sup>6</sup> See, e.g., 14 D.C.M.R. § 301.1; *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1072 (D.C. Cir. 1970).