Councilmember Mary Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, due to congressional review, 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.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fairness in Renting Congressional Review Emergency Amendment Act of 2021".

Sec. 2. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "any reason other than the nonpayment of rent" and inserting the phrase "any reason" in its place.

(2) A new subsection (a-1) is added to read as follows:

"(a-1)(1) A housing provider shall 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. Such notice may be served concurrently with notice provided under subsection (a) of this section.

"(2) The Superior Court shall dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider:

"(A) Did not provide the tenant with notice as required by this subsection;

"(B) Filed the claim to recover possession of the rental less than 30 days after providing the tenant with notice as required by this subsection; or

"(C) 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, including evidence of the time and date of the service.".

(b) A new subsection (q) is added to read as follows:

"(q) No tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1); except, that a housing provider that obtains the required license shall not be precluded by this subsection from proceeding with an eviction."

(c) New sections 509 and 510 are added to read as follows:

"Sec. 509. Sealing of eviction court records.

"(a) The Superior Court shall seal all court records relating to an eviction proceeding:

"(1) If the eviction proceeding does not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding; or

"(2) If the eviction proceeding results in a judgement for possession in favor of the housing provider, 3 years after the final resolution of the eviction proceeding; except, that, if the tenant was the defendant in any additional eviction proceedings that resulted in judgment for possession in favor of the housing provider during the 3-year period after the final resolution of the first eviction proceeding, the court shall seal the court records of all such proceedings at the completion of a 3-year period in which the tenant is not a defendant in another eviction proceeding that resulted in judgment for possession in favor of the housing provider.

"(b) For court records relating to an eviction proceeding filed before March 11, 2020, the requirements of subsection (a) of this section shall apply as of January 1, 2021.

"(c)(1) The Superior Court may seal court records relating to an eviction proceeding at any time, upon motion by a tenant, if:

"(A) The tenant demonstrates by a preponderance of the evidence that: "(i) The housing provider brought the eviction proceeding because the tenant failed to pay an amount of $600 or less;

"(ii) The tenant was evicted from a unit under a federal or District site-based housing assistance program or a federal or District tenant-based housing assistance program;

"(iii) The housing provider's initiation of eviction proceedings against the tenant was in violation of:

"(I) Section 502; or

"(II) Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61);

"(iv) The housing provider failed to timely abate a violation of 14 DCMR § 100 et seq. or12G DCMR 100 et seq. in relation to the defendant tenant's rental unit;

"(v) The housing provider initiated the eviction proceedings because of an incident that would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(vi) The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the rental unit; or"(B) The Superior Court determines that there are other grounds justifying such relief.

"(2) An order dismissing, granting, or denying a motion filed under this subsection shall be a final order for purposes of appeal.

"(3)(A) A copy of an order issued under this subsection shall be provided to the tenant or his or her counsel.

"(B) A tenant may obtain a copy of an order issued under this subsection at any time from the Clerk of the Superior Court, upon proper identification, without a showing of need.

"(d) Records sealed under this section shall be opened only:

"(1) Upon written request of the tenant; or

"(2) On order of the Superior Court upon a showing of compelling need.

"(e) The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.

"Sec. 510. Tenant screening.

"(a) Before requesting any information from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"(1) The types of information that will be accessed to conduct a tenant screening;

"(2) The criteria that may result in denial of the application; and

"(3) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action.

"(b) For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"(1) Whether a previous action to recover possession from the prospective tenant occurred if the action:

"(A) Did not result in a judgment for possession in favor of the housing provider; or

"(B) Was filed 3 or more years ago.

"(2) Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"(A) Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(B) Took place 3 or more years ago.

"(c) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"(d) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"(1) The specific grounds for the adverse action;

"(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"(e)(1) After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"(A) Inaccurate or incorrectly attributed to the prospective tenant; or

"(B) Based upon prohibited criteria under subsection (b) or subsection (c) of this section.

"(2) The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information

provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"(3) Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"(f) Any housing provider who knowingly violates any provision of this section, or any rule issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"(g) For the purposes of this section, the term:

"(1) "Adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"(2) "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant.

"(h) This section shall apply as of January 1, 2021.".

Sec. 3. Section 16-1501 of the District of Columbia Official Code is amended by adding a new subsection (c) to read as follows:

"(c) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600; except, that the person aggrieved may file a complaint to recover the amount owed.".

Sec. 4. Sense of the Council.

(a) In 2018, there were over 30,000 eviction filings in the Superior Court of the District of Columbia. These filings represent over 17,000 unique households in the District, most of which were concentrated in Wards 7 and 8.

(b) Just 10 housing providers were responsible for 40% of all eviction filings in the District, and around 50% of all filings in the District were for less than $1,000 in rent owed.

(c) A vast majority of these filings did not result in a judgement against the tenant. The Superior Court has reported 1,600 executed evictions annually from 2014 through 2018.

(d) Even when an eviction filing does not result in a judgment against the tenant, the tenant may experience adverse effects associated with the eviction proceeding itself, and the presence of an eviction filing on their record.

(e) Currently, the filing fee for an eviction action in the Landlord-Tenant Branch of the Superior Court is only $15. In most larger jurisdictions across the country, filing fees range from $50 to nearly $200. In Virginia, filing fees for eviction cases are anywhere from $120 to nearly $350.

(f) Emerging research is finding that filing fees can deter housing providers from filing frivolous cases in Superior Court. A recent study, published in Housing Studies, found that all else being equal, neighborhoods in states with higher eviction filings fees had fewer serial filings. (Housing Studies, Dan Immergluck, et al., (Vol. 35, 2020)).

(g) It is the sense of the Council that the Superior Court should raise filing fees for eviction cases to $100 so that serial filers seeking small sums of money from their tenants are deterred from using eviction filings as a mechanism to collect rent from their tenants.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).