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Testimony Before the District of Columbia Council
Committee of the Whole and Committee on Health
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Public Hearing:
Bill 23 - 0045, "Bedbug Control Act of 2019"

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Good morning Chairman Mendelson, Councilmember Gray, Councilmember Nadeau, members of the Committees, and staff. My name is Caitlin Russi, I am a Senior Attorney with Children's Law Center. I am a resident of the District, and I am testifying on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. We appreciate this opportunity to testify about the Bedbug Control Act of 2019.

Through our medical-legal partnerships with Children's National Hospital, Mary's Center, and Unity Health Care, families are referred to us when the conditions in their homes are harming the health of their children. Through our work, we know that infestations, mold, and lead paint are just a few of the environmental factors in a home that can impact the health of the family living there. Cockroaches, mold, and mice exacerbate asthma and other respiratory conditions, and lead exposure can cause permanent damage to a child's development. These issues are not just housing conditions issues. A child who ends up in the emergency room for his asthma misses school, his parents miss work, and the visit increases healthcare costs. Bedbug and other insect infestations can have a profound impact on a family's emotional well-being, on feeling safe and comfortable in one's own home.

Children’s Law Center (CLC) applauds the intent behind the Bedbug Control Act (“The Act”). In our experience, landlords can be quick to find a reason not to employ best practices in extermination and remediation measures. This is especially true in cases where bedbugs are an issue. In just the last four months, I have had two cases where tenants reported the presence of bedbugs in their home over and over again to landlords. Each time, the landlord put off treating for bedbugs until our office became involved. Each tenant lived in multiunit buildings, where the onus for treatment under the DC Housing Code is already on the landlord.¹ It should not take an attorney to compel a landlord to treat for bedbugs or other insect infestations in homes.

CLC has worked closely with the National Pest Management Association’s team to review the Act as written and propose recommendations that will bolster protections for tenants in the District. These recommended amendments are based on CLC’s experience representing low-income tenants in cases where housing conditions are affecting the health of children in the home and the National Pest Management Association’s epidemiological expertise.

Landlords Have a Duty to Act and Timelines to Remediate Infestations

Through the implied warranty of habitability, implicit in all leases executed in the District, a landlord is responsible for maintaining clean, safe, and sanitary conditions in a rental property.² The Act imposes an affirmative duty and requires a landlord’s immediate action when bedbugs are identified; we support this provision

and it will clarify responsibility in a gray area of the housing code.³ The Act also requires immediate action on other insects, which we recommend be defined as public health risk pests. This is a crucial protection provided to low-income tenants facing health harming pest infestations in rental units. When treating bedbugs and other public health risk pests, time is of the essence. Infestations can spread quickly, both within a unit and a multiunit building.

The Act as written requires remediation measures begin within two working days of receiving a tenant's complaint of bedbugs. We recommend the Act clarify that a landlord's duty begins when the tenant provides oral or written notice of a bedbug or other public health pest infestation. After the tenant provides notice of the infestation, the remediation timeline should be triggered and an inspection by a licensed pest management professional to identify or confirm a bedbug or public health risk pest infestation should be conducted within two business days of the tenant's report. Next, remediation measures should begin within two business post inspection, and those remediation efforts should require that pest management professionals use scientifically sound eradication measures based on industry best practices. Bedbugs can be particularly painful and disruptive to a tenant's life, and remediation should begin as quickly as possible.

Time and again, we have seen clients deal with infestations longer than necessary because the landlord employs ineffective eradication measures. As written,

the Act requires that landlords apply eradication measures, defined as any method of extermination. Landlords should be statutorily required to utilize scientifically sound eradication measures that are known to treat bedbug and other public health risk pests effectively. Further, we recommend that regulations be used to spell out a non-exhaustive list of which eradication measures are considered effective and in line with current best practices. It has been scientifically proven that just using over the counter products like sprays may not effectively treat bedbug infestations and can even cause the bedbugs to spread further into buildings and neighborhoods.⁴

By requiring pest management professionals to treat infestations and use techniques and products that are known to be effective in the treatment and eradication of bedbugs, there will be quicker remediation for families dealing with the infestation and the corresponding health concerns. Additionally, tenants should be provided thorough treatment preparation instructions when eradication measures are about to commence. In my clients' experience, following preparation instructions provided by a licensed professional resulted in more effective treatment and faster eradication. If a tenant has a disability or is otherwise unable to comply with these instructions, the landlord should be obligated to provide assistance as is reasonable. For example, if an elderly tenant or a tenant in a wheelchair is unable to prepare their home for a heat treatment to eradicate bedbugs due to physical limitations, the landlord should provide

reasonable assistance and support to prepare the unit. The Act can provide valuable protections to tenants while clarifying a landlord's responsibilities.

Landlords Should be Required to Provide Notice to Tenants and Prospective Tenants

We support the Act's current inclusion of an affirmative responsibility requiring landlords to notify tenants in adjacent units and inspect those adjacent units when a neighbor has a confirmed bedbug infestation. Requiring notice and inspection of neighboring units owned or managed by the same landlord, and imposing the same scientifically sound remediation requirements if bedbugs are discovered there, will help reduce the spread of bedbugs which can travel through walls and can quickly spread through multiunit buildings.⁵

We strongly support the notice requirement currently included in the Act, requiring landlords provide incoming tenants with the recent infestation history of the prospective unit. A landlord should provide written notice to incoming tenants about the unit they propose to rent and whether or not it has been infested with bedbugs in the last year. As mentioned above, we strongly agree with including an affirmative duty for landlords to notify tenants in adjacent units provide inspections for those units adjacent to those identified as having bedbugs, thus triggering the timeline for implementing eradication measures.

Landlords should be prohibited from renting units to prospective tenants when they have reason to know there is a bedbug infestation in the unit, full stop. Time and

again, I have had clients move into a new home, only to discover shortly after moving in that their home has an outstanding public health pest infestation. Tenants and families should not be subject to the hardships of living with and remediating a bedbug infestation when a landlord knows or should have reason to know there are bedbugs in the unit.

Public Postings and Bedbug Registry Will Cause Discrimination Against Tenants

CLC has significant concerns about the infestation history posting and registry requirements currently required by the Act. The legislation proposes that landlords publicly post the units in their buildings affected by bedbugs. That public posting could result in backlash against affected tenants. I often hear my clients talk about the shame they experienced associated with the discovery of bedbugs in their homes. Although bedbugs can happen to anyone, and are not limited to existing in dirty or poor housing conditions, they do carry a particular stigma and this could create conflict between affected tenants and their neighbors.

The Act also requires comprehensive reporting from landlords about bedbug infestations to the Department of Consumer and Regulatory Affairs (DCRA), effectively creating a bedbug registry. This bedbug registry could create serious consequences for low-income families across the District. Landlords would have access to this registry when considering prospective tenants. There is a housing crisis in DC, with a dearth of affordable housing available for low-income families.⁶ In a tight rental housing market

that is already close to impossible to navigate for low-income families, this publicly available bedbug registry will create yet another barrier for tenants to overcome. A family in need of new rental housing coming from a building reported to have bedbugs could be easily passed over in favor of a tenant from a building that does not appear on the registry.

Notice provided directly to prospective and neighboring tenants balances the right to know about a property's bedbug infestation history while protecting low-income tenants from prospective housing discrimination. An additional way to protect tenants would be to include information or fact sheets to tenants at the outset of a tenancy. We recommend that this legislation specify that along with the initial notice of any infestation history, landlords provide incoming tenants with information and resources about bedbugs. These notices will help to educate the public about bedbug remediation resources, best practices for remediation, and help to educate tenants to help eliminate the stigma of bedbugs.

While statutory protections for retaliation against tenants exercising their legal rights exist in the District, we recommend adding a specific provision prohibiting any retaliation against tenants who report a bedbug infestation and who require bedbug and other public health pest remediation in their units. We strongly urge the Council to remove the posting and reporting requirements to avoid the unintended consequences

of conflict between tenants and the potential housing discrimination against the most vulnerable tenants in the District.

Private Owners

CLC recognizes that when units with bedbugs and other public health risk pest infestations are owned by private landlords, it becomes more difficult to compel remediation. Therefore, DCRA, as the housing code enforcement and inspection agency in the District, should independently pursue notice and, when authorized, inspection of neighboring rental units when DCRA is notified or discovers bedbugs in an adjacent rental unit.

The Act as written includes a new right of entry for DCRA inspectors who have received documented evidence of a suspected external source of bedbug infestation. To our knowledge, there is no standing law that provides DCRA with the right to enter a private, owner occupied residence when it is not a blighted or vacant property, or there is not some violation of building or construction permitting. DCRA should not be provided this new statutory right and responsibility to gain entry to private, owner occupied housing.

There are currently mechanisms in DC through which aggrieved parties can seek redress for injuries believed to be stemming from a neighboring, independently owned property.⁷ If there are concerns that a bedbug infestation is stemming from an adjacent unit, and that adjacent unit is owner occupied, there is an already existing judicial

process through the District's Civil Courts which neighbors can use. DCRA should not be in the business of seeking entry to owner occupied housing; the agency should keep its focus on efforts to improve its woefully inadequate housing code inspection and enforcement of the rental housing stock in the District. We recommend that neighbors and tenants use the available nuisance provisions in the law to address issues with bedbugs and public health pests stemming from privately owned adjacent units.

Financial Assistance

CLC supports the Act's intent to provide financial support for low-income individuals complying with the Act. If an abatement fund is established as detailed in the legislation as written, we recommend allowing tenants to access the fund. As a housing attorney, I regularly become involved with low-income tenants because their landlords are not following the housing conditions law as written. If the landlord will not remediate within 30 days, then low-income tenants in the District should be able to avail themselves of the funds assistance if they undertake the eradication measures in a rental unit when their landlord did not.

CLC is concerned about whether an abatement fund will be fully funded and available to assist low-income homeowners or tenants with abatement.⁸ We strongly support inclusion of some mechanism to provide monetary assistance to low-income homeowners and landlords seeking to comply with the law, as well as low-income tenants who have no other options.

Thank you for your consideration of the Bedbug Control Act of 2019. I am happy to answer any questions you may have.

¹ See Pest Elimination in the Property Maintenance Code at 12G DCMR 309.5.

² See *Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C.Circ. 1970); 14 DCMR 800.1.

³ See 12G DCMR 309, 14 DCMR 805.

⁴ Environmental Protection Agency. *When Treatments Don't Work*. Retrieved from <https://www.epa.gov/bedbugs/when-treatments-dont-work>.

⁵ Centers for Disease Control and Prevention. *Bed Bug FAQ's*. (January 4, 2017). Retrieved from <https://www.cdc.gov/parasites/bedbugs/faqs.html>.

⁶ The housing crisis in DC continues to deepen for low income families and tenants. See: Claire Zippel. *DC's Housing Crisis Leaves Low-Income Families Without a Foundation*. Midcity DC News. Retrieved from: <http://www.capitalcommunitynews.com/content/dc%E2%80%99s-housing-crisis-leaves-low-income-families-without-foundation-1>. Also see: Will Vitka. *Housing crisis; DC area needs 320,000 new homes by 2030, group says*. WTOP. (September 12, 2019). Retrieved from <https://wtop.com/local/2019/09/housing-crisis-dc-area-needs-320000-new-homes-by-2030-group-says/>

⁷ There already exists a process to inspect private properties that place neighbors in imminent harm. Parties can utilize nuisance provisions in the law in order to address issues with property owners. See: DC Code §3131.01 and §42-3131.02.

⁸ As an example, the abatement fund provided through the Air Quality Amendment Act of 2014 remains unfunded.