



Testimony Before the District of Columbia Council

Committee of the Whole

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Performance Oversight Hearing: Department of Consumer and Regulatory Affairs

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Good afternoon Chairperson Mendelson and members of the Committee of the Whole. My name is Kathy Zeisel. I am a resident of the District and I am a Senior Supervising Attorney at Children's Law Center.¹ I am testifying today 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.

**Residents are Living in Unhealthy, Unsafe Housing
because Inspections are Not Effective**

In law we say, justice delayed is justice denied, this is even more so for repairs which are needed to fix health harming conditions that exist in the very place which a family lives. Especially during the pandemic when the home is the place which we ask DC residents to work, to educate to their children, to attend virtual doctor's appointments, and to stay in as much as possible all day every day. Yet, we have another year in which the Department of Consumer and Regulatory Affairs (DCRA) failed to obtain repairs or conduct effective enforcement even where DCRA found the violations in the unit through their supposedly streamlined process in the complaint based inspections.

DCRA provides us with two sets of different data about repairs made in the same fiscal year, via its dashboard, which DCRA touts as its new transparency initiative,ⁱⁱ and via its Oversight Responses.ⁱⁱⁱ Per DCRA's dashboard, in FY20, they conducted a total of 5,729 complaint based inspections, down from 7,586 in the prior year, and 7,423 proactive inspections. Of these, there were only 2510 Notices of Infraction issued, a number that seems low based on the number of inspections conducted and the units we visit where tenants call for inspections.

Of the FY2020 Notices of Infraction, only 756 resulted in repairs within the same year the violations were issued. There were a total of 1800 repairs reported, meaning that in addition to the 756 in the same fiscal year, DCRA was able to confirm 1044 repairs that extended beyond the same fiscal year, an incredibly long time for tenants to wait for their unit to meet the housing code. Although most of the repairs cited in FY2020 were apparently not made, DCRA collected only \$72,000 of the over \$10 million in fines issued on the Notices of Infraction.^{iv}

Based on their dashboard, on March 11, 2021, almost six months into FY21, they have conducted approximately 3500 complaint based inspections and 3600 proactive inspections. Per the dashboard are a total of **four** confirmed repairs in the same fiscal year (the Oversight answers report 213 repairs, which is still not a significant number), and 1093 total confirmed repairs. DCRA has issued 1676 Notices of Infractions with

over \$5.6 million in fines on them, but has not collected any money in fines yet this fiscal year.^v

These numbers are concerning because they indicate that a significant number of tenants never get their units brought up to the level of meeting the housing code after violations are found by DCRA. And, those that do often wait extended periods of time before those repairs are made. DCRA's failure to do enforcement, as shown by the paltry amount of fines collected as compared to those issued, means that landlords have little incentive to comply with the notices of infraction.

The inconsistencies in the numbers between the Oversight answers and the dashboard are concerning insofar as they highlight the ongoing data concerns with DCRA. It is disturbing that either their new transparency dashboard is inaccurate and unreliable or their answers at Oversight are, and in either cases the numbers show that DCRA is not ensuring that tenants live in safe and habitable housing.

This is all in contrast the successful key performance indicators (KPIs) they report in their oversight answers, that Percent of Notices of Infraction related customer inquiries that are resolved in one interaction with DCRA staff was 80% last year and 99.5% so far this year.^{vi} It is unclear what this KPI means, but it clearly does not mean actual repairs of the problematic conditions happened.

I am an attorney in Healthy Together, our medical legal partnership, where we place attorneys throughout the city at primary care pediatric clinics with Children's

National, Unity Health Care, and Mary's Center. Through these partnerships, we are referred families with health harming housing conditions, for instance where the mold and pest infestations are triggering exacerbations of a child's asthma or where the mice are in the child's bed or sewage is overflowing into the unit.

DCRA's abysmal dashboard statistics on repairs and enforcement are consistent with the experiences of our clients. Just a few weeks ago, we had a client who had to flee her burning apartment building with her children after her neighbor was pounding on her door to wake them in the middle of the night. DCRA had previously been to the building and cited it for non-working smoke detectors, but due to a lack of enforcement, the smoke detectors were never repaired and they were not working the night of the fire. It was only thanks to her neighbor that a tragedy was averted.

In another recent case, a client smelled gas in her unit, something she was familiar with after a gas leak in the same unit a few years ago. She called Washington Gas and DCRA. Washington Gas found elevated Carbon Monoxide and turned off the gas, and DCRA inspected and verbally reported to her and the property manager that they needed to make certain repairs, which would require permits, and also found other housing code violations in the unit. DCRA almost two weeks later, DCRA has not issued a written report nor overseen the repairs. The same day as the incident, the landlord attempted to make repairs without a permit. The client did not feel safe sleeping in the unit with her children until it had been cleared by Washington Gas or

DCRA, but did return for virtual school during the day. Her carbon monoxide detectors continued to go off, but the property manager told her it was an error. She began to feel sick and brought her children to the emergency room, where doctors found elevated carbon monoxide levels in the children, and a dangerous level in one child. DCRA was called again and we got involved to file a temporary restraining order. However, as of this time, the legal, permitted repairs have still not been completed.

In another case, the client was referred by IMPACT DC, the program that works with children who are in the emergency department for their asthma at Children's National, because her child's asthma was exacerbated by the conditions in their home. The primary issue in the case was an ongoing leak that led to a perpetually wet carpet and the destruction of the subflooring to the point that there is dirt with worms and plants growing through the carpet. DCRA has been to the unit, but the repairs have never been made and the conditions persist, causing asthma exacerbations for her daughter.

Customer Service is Still an Issue

Even basic customer service issues like contacting DCRA and utilizing the website have been an issue in the past year. Our staff and clients report that when they try to contact DCRA during normal business hours, it is difficult to get an inspection scheduled and can take a lot of back and forth. However, emergency inspections are even more problematic because staff, clients, and other community members report that

not all 311 operators know to connect callers with Homeland Security for emergency inspections. And, even when they do connect them, Homeland Security operators do not consistently know what to do and with some regularity say they are not the right place to call. This is a basic issue that has arisen for years and still needs to be addressed so that urgent inspections can occur.

An additional issue we want to bring to your attention is related to language access. Our attorneys report that non-English speaking clients are being issued reports that are only in English even where the inspector is aware that the tenant does not speak English. At a minimum, reports should be issued with information about how tenants can call and receive translation of the reports if a translated report is not provided to the tenant, though translated reports should be provided.

Delays in Issuing NOI's Harm Tenants

Even where DCRA does inspect, there are delays in issuing the Notice of Infraction that are harmful to the tenants. It is our understanding that there is an internal approval process for all Notices of Infraction, and that they are then mailed to tenants and served on landlords.^{vii} In our experience, this process can take one to two weeks, which can lead to a lot of confusion about next steps and the timeframe about when things to happen. This is especially problematic when a tenant is required to leave the unit by DCRA, but the landlord is not on notice of what the underlying issue is. The

tenant will receive a maximum of two weeks of hotel assistance from the Office of the Tenant Advocate, and if the landlord is not put on official notice until the end of that time, the Tenant often has no place to go but the homeless system at the end of the two weeks.

As I mentioned earlier in the case with the gas leak, DCRA has still not issued the report from March 5 or the follow up report from last week regarding the findings of their inspection. Perhaps if they had done so, there would be a clear path of what repairs need to be made or DCRA could have exerted some authority here to better protect this mother and her children.

In another case this year, we had a tenant whose unit was declared uninhabitable by DCRA because of the housing conditions. She was put into a hotel for two weeks paid for by the Office of the Tenant Advocate, but at nearly the end of the two weeks, DCRA had not served the landlord with the Notice of Infraction and so the landlord had no official notice of the violations to be repaired and the tenant had no place to live. DCRA simply cannot wait weeks to issue their reports to tenants and landlords.

Transparency and Online Access to Information is Still Problematic

Turning back to transparency for the public, even if tenants wanted to research on their own what violations had been issued or whether their landlord has a history of housing code violations, the SCOUT website (<https://scout.dcra.dc.gov/login>) that

DCRA has switched over to is significantly worse than the prior websites for the information we need to access. It is burdensome that it always requires a login, and then it contains less information than the prior iterations of the website. Specifically, although it will say that there is a housing code inspection for the property, it does not say which unit in a multiunit property had citations, nor does it say what the citations were for. It also does not say which citations were abated if there were some abated, but not others. DCRA, in its oversight answers, touts new tools available to users through its landlord violation tools and inspections and compliance dashboards.^{viii} This however is not user friendly, and requires extensive searching or deep knowledge of DCRA's website to locate these tools. Once on the dashboard, they are not intuitive to use and are difficult to navigate.

We recommend better integrating this information into the SCOUT website so that users can be better informed about what is going on with their units and with potential units they may want to rent as well as prominently placing links to these tools that do not require a login on the main DCRA webpage.^{ix} In addition, DCRA states that they will remove a record of the violations once they are repaired.^x This undermines one of the purported purposes for which they are there, namely to allow tenants to be educated about landlords from which they may wish to rent from. These violations should remain publicly accessible.

In its oversight answers, DCRA provides detailed responses to its plans with respect to the October 2019 Marsal and Alvarez report resulting from the Kennedy Street tragedy. While the proposed steps are certainly a positive direction, they come over a year after the report was issued and in another year after DCRA has again shown no signs of actually improving housing conditions in units in the past year. It is simply at a point where we cannot keep giving the agency endless chances to make proposals that sound good, but do not truly reform anything and lead to the same results as before.

During the summer of 2020, a team from DC worked together to envision a totally different and better Proactive Rental Inspections Program (PRI) through a twelve week multistate learning opportunity led by national experts.^{xi} That team included representatives from different legal services organizations, Georgetown, the Office of Attorney General, Chairman Mendelson's Office, public health professionals, and a housing provider representative. Unfortunately, although invited, DCRA declined to participate with us. We worked to think through some of the major issues that DC has with proactive inspections, namely that they are not effective in actually identifying the most problematic buildings or landlords, they do not appear to rely on relevant and high quality data to select properties, and there is no real enforcement of the PRI inspections either.

DCRA moved to utilizing an algorithm from Georgetown last year, but an algorithm is only as good as the data put into it and how the factors are weighted. DCRA does not appear to be considering the full picture needed to determine which properties should be evaluated. At a minimum, in addition to internal data around inspections and ownership, DCRA should be utilizing public health data, equity data, and tax data in any algorithm. We think that the Council should consider legislation around proactive inspections as part of its movement towards improving housing code inspections, and we would be happy to work with you on this.

DCRA proposes a plan for next year to improve housing inspections, but it is more of the same and there is no reason to believe it will lead to any substantive or meaningful changes.^{xiii} Rather than make bold changes in the proactive inspection program or how enforcement is conducted, DCRA is merely increasing its reliance on databases and resident inspectors. But, as we have seen in the past with DCRA, their databases are only as good as the data that goes into them, and DCRA consistently has unreliable data and refuses to use data from other sources that would inform their work. DCRA also proposes to expand the resident inspector program when it has not shown any particular success with that program, and instead would continue to flood the District with less qualified inspectors who are unable or unwilling to testify in court if true enforcement was actually needed in the cases.

It is clear that DCRA cannot and will not make the needed improvements to their housing code inspections and enforcement divisions in order to protect the health and safety of DC residents. We urge the Council to continue to move forward legislative improvements to housing inspections and the Housing Code. Specifically, even though we know it may be a hard budget year locally, we urge you to fully fund the Department of Buildings because we cannot ask people to sit at home in unhealthy housing for any longer. In addition, we call for the Council to fund B23-0132 - Residential Housing Environmental Safety Amendment Act of 2020, which requires DCRA to have licensed mold inspectors and which makes changes DC's lead paint law. The streamlining of mold inspection in the bill is essential to ensure that inspectors will address mold one of the major healthy housing complaints in DC and that landlords will actually be required to properly remediate mold rather than simply painting over it.

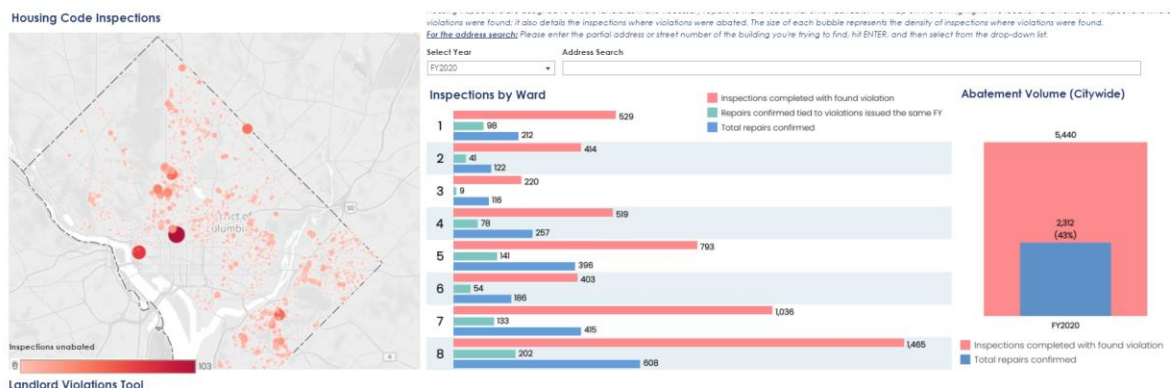
We also urge the Council to pass the Bedbug Control Act of 2021, which makes important updates to the statute around infestation, and to reintroduce and pass the Lead Hazards Prevention and Elimination Amendment Act, which will modernize our lead laws so that children are no longer the canary in the coal mine indicating when there is lead in the home and we can actually prevent lead exposure before it happens.

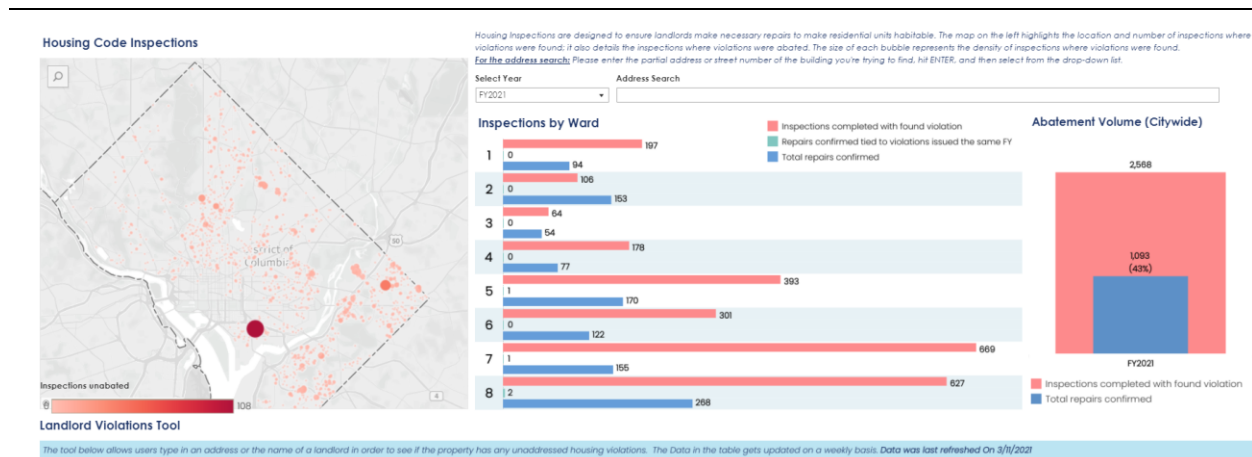
We come before this Council once again testifying that DCRA is not ensuring safe and healthy housing for the residents of the District and urge that action be taken to address this failure. I am happy to answer any questions you may have.

ⁱ Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With almost 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

ⁱⁱ DCRA FY20 Oversight Answers, p68.

ⁱⁱⁱ DCRA’s own data is inconsistent and it is unclear what we should rely on since the numbers on their dashboard on March 11, 2021 differ from the numbers reported as of March 1, 2021 in their oversight responses (the March 1 numbers report a higher number of abatement in the same fiscal year than the online dashboard over a week later). In the oversight answers, DCRA touts the dashboard as their new transparency initiative, so let us look at those numbers as of March 11, 2021. Screenshot from DCRA Dashboard:





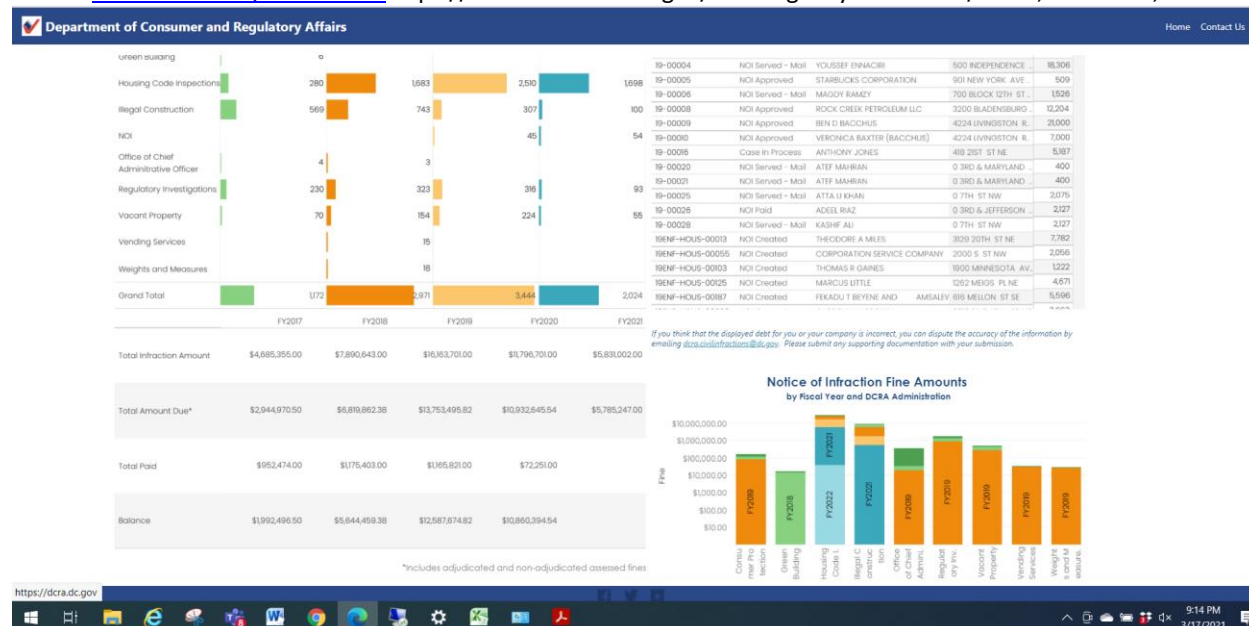
DCRA FY20 Oversight Responses, p79:

Housing Inspection Abatements (Complaint-based)

	FY 2019	FY 2020	FY 2021 (As of March 1)
1. Number of complaint-based housing inspections conducted	7,586	5,737	3,031
2. Number of inspections resulting in one or more violations	2,504	2,976	1,837
3. Number of inspections resulting in violations abated in the same fiscal year	515	739	213
4. Number of inspections with violations abated in a subsequent fiscal year	500	203	371
5. Average number of days between issuing a notice of violation or notice of infraction to a confirmed abatement	151	173	29

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iv From [DCRA Summary Dashboard](https://eservices.dcrd.dc.gov/DCRAAgencyDashboard/index) <https://eservices.dcrd.dc.gov/DCRAAgencyDashboard/index>, March 17, 2021.



v Id.

vi DCRA FY20 Oversight Responses, p75.

vii DCRA reports the following in its KPIs: Percent of Property Maintenance (Housing) Notices of Infraction (NOI) that are initiated within 2 business days following inspections where violations were observed, 90.02% in FY20 and 97.2% in FY21. It is unclear whether this means that the NOI has been sent to legal for review within two days or whether it has been issued. In our experience, it has not been issued within two days. DCRA FY20 Oversight Responses, p75.

viii DCRA FY20 Oversight Responses, p70.

ix If you go on DCRA's website and go to View Online Tools, and then to Agency Performance Dashboard, and then to Inspections and Compliance, you can search by landlord and see a list of all violations with the landlord violations tool or search by address. This is an unwieldy way to search for this information, but since it exists, should be able to be integrated into the SCOUT website. See <https://eservices.dcrd.dc.gov/DCRAAgencyDashboard/index>.

x DCRA FY20 Oversight Responses, p70.

xi The program was: *A Call to Action: Addressing Housing Instability and Quality*, and was led by Change Lab Solution, more information available at: <https://whatworkscities.medium.com/a-call-to-action-addressing-housing-instability-and-quality-aecfd2424626>.

xii Id., at p75-76.