



501 3rd Street, NW · 8th Floor
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
childrenslawcenter.org

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Committee of the Whole
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General Prospective Evaluation of Bill 23-91 and Evaluation of DCRA Business
Processes

Kathy Zeisel
Senior Supervising Attorney
Children's Law Center

Introduction

Good afternoon Chairman Mendelson, members of the Committee of the Whole, and staff. My name is Kathy Zeisel, and I am a Senior Supervising Attorney at Children's Law Center.¹ I am a resident of the District and 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. We appreciate this opportunity to testify regarding the Office of Inspector General Report on the Department of Buildings Establishment Act of 2018 (DOB Act).²

Children's Law Center is testifying yet again about our concerns about DCRA because we see DC resident daily whose children's health are impacted by the housing conditions in their home and who continue to report that even when DCRA comes to their home and finds problems, there is no enforcement and nothing changes for them. Too many landlords leave tenants living in dangerous or unhealthy housing as a business model or as a way to empty buildings so they can sell them more easily in our hot real estate market. An effective government system of inspection and enforcement is essential tool to protecting both DC residents and affordable housing.

The report issued by the Office of the Inspector General is disappointing. The failure of DCRA to have or provide sufficient data has left the OIG unable to properly

collect and assess the information they need to determine if a breakup is necessary. If we fail to move forward on this basis, does this not reward the agency for years of failing to keep and track data, for failing to serve the residents of DC, and for failing to hold itself accountable to even the most basic of metrics of ensuring safe and healthy housing? We say that the Council has the answers it needs, and instead should move forward with breaking up DCRA.

As we have previously testified, we support breaking up DCRA, but we hope the Council will go even further than the proposed legislation by creating either a standalone agency that would focus on tenant protection. If that is not possible, then the new DOB must have a strong and specifically legislated separate division within the Department of Buildings that will focus on protecting tenants by ensuring meaningful enforcement of the housing code and other DC laws. We believe such an agency would provide a stronger foundation for protecting rental housing, which is the cornerstone of affordable housing in DC. The Council should not continue to give DCRA more time and resources to try to fix what is broken in the agency—DCRA does not have the willpower or the ability to fix itself and we urge you to move forward this session with creating a new agency that can truly protect tenants in rental housing.³

DCRA Fails to Protect Tenants, and We Can Change That: The Major Problems and Solutions

DCRA has three broad categories of problems which make it ineffective in protecting tenants. First, DCRA lacks a culture of tenant protection. Even new measures undertaken in the past year have failed to make meaningful changes in the agency's practice or culture regarding housing inspections. To close the serious gap in our enforcement mechanism, DC needs an agency whose sole mission is to protect tenants, and which has an agency culture of carrying out that mission. Second, DCRA does not do effective or strategic proactive inspections or enforcement. To solve this, the new agency must have a targeted strategic enforcement model that is informed by high-quality data and the perspective of a public health division, both of which need to be supported by strong technology. Third, DCRA lacks the resources to be effective. If we want this new agency to be an improvement on DCRA's failed model, it must, at minimum, have funding for adequate inspectors, both complaint-based and proactive, and enforcement personnel, customer service, training, and technology.

The Problem: DCRA has no culture of protecting tenants through meaningful inspections or enforcement

DCRA's culture has long been broken.⁴ Children's Law Center has attended DCRA's meetings with advocates for the past nine years, raising the same issues again and again without impact.⁵ Despite years of public complaints,⁶ DCRA has repeatedly demonstrated that they are either unable or unwilling to reform their poor track record for housing code enforcement. DCRA also lacks a culture of tenant protection, as

evidenced by their institutional priorities, none of which relate to improving inspections or enforcement of housing code violations.⁷ As a result, savvy landlords flagrantly violate the housing code knowing they will face no consequence for doing so, and vulnerable families suffer. In other words, DCRA's enforcement of the housing code fails DC tenants at every step of the process.

There are myriad examples in the press of slumlords like Sanford Capital who capitalize on, and profit from, our broken enforcement system.⁸ Landlords are aware that DCRA is not going to do meaningful enforcement, and the new initiatives that in reaction to the pressures of the recent crises are merely band aids that do nothing to help tenants in a meaningful way. Most recently, we have concerns about the new systems of triaging complaints, resident inspectors, and shutting down buildings.

a. The New Practice of Triage Complaints is Problematic

The new system to triage complaints means that if a tenant calls in requesting an inspection, they may simply have a DCRA staff member call their landlord to ask them to make a repair and if the landlord says they will, the tenant does not get an inspection. This is concerning because tenants may not know how to spot all the life and safety violations and it may take an actual inspector coming out to see the problem. In addition, if a tenant is calling, there is already conflict between the tenant and landlord, and it is not hard to imagine a situation in which the self-reporting is inaccurate. It does

not increase trust between the agency and tenants to have this system of triage. Instead, tenants may simply not call in to DCRA, seeing it as waste of their time and critical life and safety violations will continue to go unreported and unaddressed.

b. We Should Increase Professionalization of Inspectors and Ensure Enforcement, not Move to Resident Inspectors

With respect to the resident inspector program that is being rolled out to address concerns about the lack of inspectors, we have serious concerns about this program on both a practical and philosophical basis. On the most fundamental level, to ensure that we have a system of housing inspection and enforcement that actually ensures safe and healthy housing, we should be moving towards a system where we are increasing the professionalization and training of inspectors and ensuring that enforcement is happening. The resident inspector program moves us away from that and towards a system of minimally trained people who are minimally paid per inspection and who are not required to come to court in order for enforcement actions regarding their inspections.

Our clients regularly express concerns about the quality of DCRA inspections, about whether they can trust the people coming into their home, and whether it is worth their time to take off work to stay home for the inspection. They have no option to choose whether or not they feel safe having a resident inspector entering their home,

they are not being told that these inspections are essentially unenforceable and that they will have to make themselves available to a real DCRA inspector if they want an enforceable inspection, and that does not even address the question of the quality of the inspections.

On a practical level, there seems to be disagreement about the exact role of the resident inspectors in the housing code enforcement system. When the program was originally announced, we were told that people would be able to order the inspectors on demand, but it is our understanding that they are being scheduled through the normal channels and largely during regular business hours when regular inspectors are available.

Additionally, the DCRA website represents that the inspectors will be trained to identify housing code issues, but during the November 18, 2019 Hearing on the Kennedy Street fire, the Director stated that the inspectors would not be trained on the housing code and that they would just do initial spotting of issues and then a DCRA inspector would go out.

c. Reported increase in shutting down buildings is problematic

We are hearing reports that since the Kennedy Street fire, DCRA inspectors are responding by shutting down more buildings for things like no heat or other violations.⁹ If this is the case, this is problematic because it does not solve the problem

for the tenant, it merely displaces the tenant. In some instances, it even allows the landlord to permanently displace the tenant without having to go through landlord tenant court and promotes gentrification. In other cases, the tenant is left without access to their belongings and is displaced with minimal assistance, perhaps hotel assistance for two weeks, but not transportation or food assistance, to get their job or their child's school, and the hope they can return at some point.

Instead, DCRA should use their enforcement power to actually demand repairs and use their abatement funds to make repairs and put a lien on the property. DCRA could also leverage the other abatement resources in the city, which has historically not occurred.¹⁰ Closing buildings and displacing tenants should be a last resort used extremely rarely.

Advocates' Proposed Structure of the New Agency: Tenant Protection Must be

Central Focus

Turning to the proposed DOB, in this testimony, we will detail three of the biggest overarching problems we see at DCRA, and provide our suggestions for strengthening the DOB Act to make sure it actually addresses those problems.¹¹ The cornerstone of our proposal is that the new agency or division would utilize public health and other available data to have a preventative, proactive approach to compliance and enforcement while increasing the professionalization of all housing

inspectors so that residents can be sure they are living in healthy and safe housing. This is an exciting opportunity to create an agency that truly protects our city's vulnerable tenants, and we look forward to working with the Council to make sure we get it right.

In addition to harming the health and wellbeing of DC's tenants, these failings are causing deterioration of DC's affordable housing stock. Unscrupulous landlords take advantage of this lax enforcement system, allowing conditions to become so unbearable for low-income tenants that they eventually abandon hope that the unit will be fixed and move, making room for a developer to flip the property or escape rent control. Given DC's housing affordability crisis, this unnecessary waste, due purely to government incompetence, is tragic.

The Solution: Create a separate Tenant Protection Agency outside the Department of Buildings.

We strongly believe DCRA's broken culture and lack of a focused mission are to blame for the agency's failings. We need an agency whose sole purpose is to protect our city's renters. For this reason, we and other tenant advocacy organizations are strongly recommending this Committee pull residential housing code enforcement from the Department of Buildings and create a separate tenant protection agency. This tenant protection agency would have a strong, unifying mission of protecting tenants and preserving the condition of affordable housing. An agency with such a mission will draw public servants with commitment to tenants' well-being and health. It would be a

responsive, user-friendly, and transparent agency serving as a 'one stop shop' for housing conditions issues and other tenant-related concerns.¹²

If the Council is not amenable to creating a separate agency, we recommend modifying the organizational structure this bill envisions by adding a Tenant Protection Division to the Department of Buildings. Attached are Figures 1-4, which are charts of the current proposed DOB structure, the Advocate's Proposed Tenant Protection Agency Structure, and the Advocate's Proposed Tenant Protection Division Structure. Though we believe a separate, quasi-independent tenant protection agency would be the most successful model, we believe our proposed organizational structure would go a long way toward ensuring successful and efficient housing code enforcement for DC's tenants.

The Problem: DCRA's Housing Inspections and Enforcement regime is neither strategic nor efficient

A. DCRA does not have the ability to gather meaningful data or analyze it

The abomination that was uncovered in the Sanford Capitol¹³ cases would never have been allowed to fester for so many years if DCRA had the capacity to be strategic in its inspections and enforcement. In order to be strategic, DCRA needs to be able to gather reliable data through high quality inspections, to input that data into a system that can track and aggregate data in a meaningful way, and then analyze that data.

An integral function of DCRA should be to collect accurate data that can be used to do thorough enforcement in individual cases, map hotspots of bad housing conditions, find slumlords and contribute to the public health system. Unfortunately, in meetings with advocates, in hearings, and in responses to oversight, DCRA repeatedly admits that it does not consistently track even the most basic data regarding its operations.¹⁴

An integral function of DCRA should be to collect accurate data that can be used to do proactive inspections and strategic enforcement. Unfortunately, DCRA is neither collecting nor inputting that kind of data into its systems. DCRA should use not only its own data, but also data from other agencies, including public health data around diseases impacted by environmental triggers, data from the lead registry, data based in research around which outdoor code violations are most closely tied with serious building problems that can impact health and safety, and other important data sources. That data should be used to identify properties for proactive inspections, so that we target resources where there are likely to be problems and we can have the most impact on public health and safety, and for strategic enforcement initiatives, such as identify slumlords. We can also use this type of data to prioritize how to use DCRA abatement funds to maximize their impact for health and safety and to leverage them with other public money available for abatement.¹⁵

It is also clear from our years of work with DCRA that even if they were getting good data to put into their system, the agency does not have the basic technology infrastructure or staff expertise needed to analyze that data. It is our understanding that there are better data platforms for this type of work, and we encourage the Council to provide funding to explore and implement better technology in any new agency.

B. The failure to have a public health lens means that DCRA is not focused on strategic enforcement that can positively impact the health of DC residents

DCRA inspectors should be increasingly professionalized, and they should be trained to recognize that a core part of their job is protecting the health and safety of tenants, not merely upholding the letter of the housing code. 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 increases healthcare costs, misses school, and his parents miss work. Nationally in 2013, children with asthma missed 13.8 school days.¹⁶ Asthma is also a leading contributor to missed sleep and illness in children

living in urban areas, which can correlate to lower school performance even when children are in school.¹⁷

Yet, despite the serious consequences to children and families, many of these issues are bifurcated between agencies which do little to coordinate or simplify families' ability to access inspections for these issues. For example, if a family wanted an inspection that covered mold, lead, and infestations, families would have to call at least three agencies (possibly four if they live in subsidized housing), only to find out our city does not conduct mold inspections, and that they'll have to wait for two separate agencies to conduct inspections for the other issues. We applaud the Chairman's legislation to require DCRA inspectors to become mold inspectors, and would go further to require licensure and training in other areas, including lead. Moreover, there is no public health lens being used in inspections and enforcement in the housing code context.¹⁸

The Solution: The agency must track and analyze data with the support of a Public Health Division

Children's Law Center, informed by our own work and work with our medical and public health partners, believes that it is critical that we address the public health issues by creating a Public Health Division. It is important to include a Public Health Division within the new agency to ensure that individual inspections, abatement, and the critical systemic work of the agency are informed by a public health perspective. We

know there is a direct link between population health and built environment, and a public health perspective infused at a high level into the agency would improve strategic and individual enforcement and outcomes.

The new agency should have some or all inspectors licensed in multiple areas, including housing code enforcement, lead inspection, mold inspection, asbestos inspection, and extermination. This is important not only to ensure that the agency understands the scope of the public health issues, but also for better access to these services for the community.

Second, as part of DC's Build Health community¹⁹, a unique grant that funds collaboration between Children's Law Center, Children's National Health System and DC Health to address housing conditions issues for children with asthma, it has become clear to us that DC is behind other cities in our ability to use inspection data to target public interventions.²⁰ This type of mapping, utilizing reliable underlying data, is important to be able to do public health and legal interventions in properties with particular conditions. To this end, we believe this bill should legislatively require highly detailed annual reporting requirements specific to housing code enforcement.²¹

Finally, there should be participation by relevant DC Agencies that touch rental housing, including DC Health, DCHCD, DOEE, OTA and OAG in both setting up the agency and in the ongoing work of the agency through formal partnerships and

staffing. Eventually, it is our hope that a Tenant Protection Agency could absorb some of these functions to streamline and increase the efficacy of these other programs

The Problem: DCRA's Housing Inspections and Enforcement Regime is Under-staffed and Under-resourced.

DCRA lacks the resources to do quality inspections, enforcement or abatement, but has declined year after year to request those resources. DC employs only 23 complaint based housing code inspectors,²² and, perhaps even more problematically, it is our understanding that DCRA employs only four contract inspectors for proactive inspections, which is supposed to inspect all of the properties in the city every 5 years, and which is supposed to be the prevention tool to find problem properties.²³

Solution: DC must Commit to Adequately Fund Housing Code Enforcement in the Replacement Agency

Whether we establish a Tenant Protection Division within the Department of Buildings or create a separate tenant protection agency, adequate funding will be necessary to create an entity that implements the following: strategic enforcement, transparency, efficient inspections with strong follow-through, data collection, and investment in IT to support all of these goals.

Furthermore, given the years of failure of this and prior mayors to effectively address these issues, we must legislatively mandate certain aspects of these functions, including by requiring a specific ratio of inspectors to residential housing units, and a

specific ratio of enforcement personnel to residential housing units, in line with the practices of comparable jurisdictions. That legislative mandate for staffing must come with sufficient funds to do that staffing. In addition to the additional inspectors within the agency, we also request funding for inspectors specifically detailed to the Housing Conditions Calendar and Landlord-Tenant Calendar.²⁴

Our proposal (at Att. 1) also substantially restructures enforcement to ensure that the Tenant Protection Division's inspections unit and the General Counsel's office have appropriate support, and that all are working in conjunction with the Strategic Enforcement Division. In order to ensure that re-inspections which find unabated violations result in enforcement, inspectors must have support from, and be integrated with, enforcement personnel.

Increased enforcement will allow the new agency to be revenue generating. We recommend that any revenues generated be designated for abatement rather than go to the General Fund (as happens currently with DCRA enforcement). This will help generate additional renewing funds for abatement of the worst, unhealthiest properties, aligning with our recommendation that the new agency should expand use of the nuisance abatement fund to quickly remediate violations which pose a substantial threat to the health and/or safety of tenants. Strategic use of this fund should be informed by the input of the public health division we have also proposed.

Conclusion

In conclusion, we look forward to continuing to work with you, Mr. Chairman, and the members of this Committee, toward maximizing this new Department's ability to truly enforce DC's residential housing code by incorporating these important specifics into the bill. We believe that while it is not the norm to provide such detail in legislation, in this instance it is necessary to ensure that the needed reforms actually happen.

Thank you for this opportunity to testify. We welcome any questions.

¹ 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 more than 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.

² B22-0669 – Department of Buildings Establishment Act of 2018, *introduced* Jan. 23, 2018. Available at <http://lims.dccouncil.us/Download/39619/B22-0669-Introduction.pdf>.

³ Some of my testimony regarding the proposed structure of the new agency is the same as what we provided last year at the hearing for the underlying bill. Testimony of Anne Cunningham and Kathy Zeisel, B22-669, Department of Buildings Establishment Act of 2018, April 18, 2018.

⁴ When Adrian Fenty became mayor in 2007, he pledged to turnaround what he called a poorly run agency. *Muriel Bowser making weeklong review of DC Department of Consumer and Regulatory Affairs*, Aug. 2016, *available at* https://www.bizjournals.com/washington/breaking_ground/2016/08/muriel-bowser-making-weeklong-review-of-d-c.html.

⁵ Most recently, CLC participated in working groups in the past year along with other advocates and landlords at DCRA. After spending months working with agency on various proposals, the working groups were discontinued without any significant feedback being accepted or any final work product being created from the groups.

⁶ See *Id.* A 2007 post article details why “The District has purchased a new six-bedroom house for \$1.5 million in an affluent upper Northwest Washington neighborhood, and will now pay even more to demolish the building after officials admitted that they allowed its construction by mistake.” *Oops: DC Must Raze Luxury Home* 1/10/2007, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/09/AR2007010901753.html>. See also, *Permit Expediter Accused of Paying Off DCRA Staffers with ‘Lunch Money,’* 8/11/2015, *available at* <https://www.washingtoncitypaper.com/news/loose-lips/blog/13135503/permit-expediter-accused-of-paying-off-dcra-staffers-with-lunch-money>.

⁷ Of the five “top priorities” DCRA lists in its FY2017 oversight question responses, only one relates to residential housing inspections and enforcement, and it is not a goal that meaningfully addresses our broad-reaching and systemic concerns related to DCRA’s long-time failure to enforce the housing code. Rather, it is a goal related to improving the transparency of Housing Inspection enforcement. While lack of transparency is certainly an ongoing problem at DCRA, we are distressed to learn that DCRA is not prioritizing any aspect of DCRA’s largely defunct enforcement mechanisms. See DCRA FY17 Oversight Question Responses, February 15, 2018 at 62-63, *available at*

http://dccouncil.us/files/user_uploads/budget_responses/DCRA_Oversight_Final_-_PACKET.pdf.

⁸ Advocates and tenants have known for years about the rampant conditions violations on Sanford Capital properties. Yet, it took the Mayor’s intervention for DCRA to inspect and issue fines. Even then, they did not conduct building-wide inspections. See, for example, “Sanford Capital Faces \$539,500 in Fines after DC Inspects Some of its Buildings,” April 3, 2017, *available at* https://www.washingtonpost.com/local/dc-politics/sanford-capital-faces-539500-in-fines-after-dc-inspects-its-buildings/2017/03/31/10237796-0f21-11e7-9d5a-a83e627dc120_story.html.

⁹ The Office of the Tenant Advocate verifies that in the last few months since the Kennedy Street they have had an increase in requests for hotel assistance from DCRA, both in number and frequency, involving different buildings being shut down by DCRA.

¹⁰ We would encourage DCRA and DOEE to develop a referral mechanism for the federal lead money coming into the District through DOEE (which was formerly mismanaged and underutilized through DHCD). If DCRA inspectors are trained as lead inspectors, they would be even better positioned to make referrals and ensure that good referrals are made to the program. We would also encourage DCRA inspectors to be trained about and make referrals to the weatherization program, the single family program, and all other sources of funding for abatement outside of DCRA.

¹¹ DCRA has many additional functional problems for which we do not provide solutions for here. However, we do advocate for addressing some of those problems legislatively. They include, for example, particulars around the timelines for inspection and enforcement, and requirements to inspect *all* rental units in DC (subsidized and unsubsidized housing).

¹² The director of this agency should be quasi-independent so they are not beholden to mayoral politics and competing interests. We also propose an Ombudsperson in the model of the Health Care Finance or Education Ombudspersons to help address tenant concerns and ensure that there is meaningful access to the agency by DC residents.

¹³ See, for example, Fenit Nirappil, *Tax Dollars Keep Flowing to Landlord DC is Suing over Housing Conditions*, February 26, 2017, available at https://www.washingtonpost.com/local/dc-politics/tax-dollars-keep-flowing-to-landlord-dc-is-suing-over-housing-conditions/2017/02/26/541bb0b2-b8af-11e6-959c-172c82123976_story.html?utm_term=.6efc88d2eec9.

¹⁴ The lack of data kept by DCRA was addressed by Chairman Mendelson numerous times during the roundtables previously, and was also raised in Alvarez and Marsal report that was the subject of the November 18, 2019 DC Council Committee of the Whole hearing.

¹⁵ DCRA does not appear to currently coordinate with any other agency to leverage public monies available for abatement. Based on the last available oversight answers, there is a widely variable number of abatements done year to year and it is not clear how DCRA decides when to expend these abatement funds. See DCRA FY17 Oversight Responses at page 59.

¹⁶ CDC, *Asthma-related Missed School Days among Children aged 5–17 Years*, available at: https://www.cdc.gov/asthma/asthma_stats/missing_days.htm.

¹⁷ Daniels, Boerger, Kopen & Mitchell, *Missed sleep and asthma morbidity in urban children*, *Annals of Allergy, Asthma and Immunology*, July 2012, available at [http://www.annallergy.org/article/S1081-1206\(12\)00389-4/pdf](http://www.annallergy.org/article/S1081-1206(12)00389-4/pdf).

¹⁸ DOEE has the DC Partnership for Healthy Homes, which does look at housing from a public health perspective, but there is no enforcement linked to these reports and they are not used to systemically address housing conditions at properties. <https://doee.dc.gov/service/dc-partnership-healthy-homes>

¹⁹ See <http://buildhealthchallenge.org/communities/2-healthy-together-medical-legal-partnership/>.

²⁰ Many other cities and counties have the capacity to map their housing code data, including Baltimore (http://www.baltimorehousing.org/code_enforcement), Cincinnati (<http://cagismaps.hamilton-co.org/cagisportal/online/cincinnati>), Boston (<https://data.boston.gov/>, <https://data.boston.gov/dataset/code-enforcement-building-and-property-violations>), Prince George's County (<https://data.princegeorgescountymd.gov/Urban-Planning/Prince-George-s-County-Housing-Code-Violations-Map/i9iw-juus/data>).

²¹ This would also be useful for agency oversight.

²² See also David Whitehead. *DC Has a Slumlord Problem and Not Enough Inspectors to Solve it*. May 25, 2017. Available at <https://ggwash.org/view/63547/dc-has-a-slumlord-problem-and-not-enough-inspectors-to-solve-it>.

²³ Per DCRA's oversight answers, proactive inspectors inspected only 626 units in FY17 of the almost 170,000 in the city. This number does not allow for any meaningful proactive compliance efforts. *See* DCRA FY17 Oversight Question Responses, Feb. 15, 2018 *at* 58, *available at* http://dccouncil.us/files/user_uploads/budget_responses/DCRA_Oversight_Final_-_PACKET.pdf.

²⁴ Although DCRA declines to do any enforcement based on her excellent reports, the DCRA inspector detailed to DC Superior Court's Housing Conditions Calendar is really the backbone of that court. Advocates believe that a similarly staffed inspector to Landlord-Tenant would aid in resolving serious housing code violations in that court as well.