

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To allow a tenant to bring a cause of action in the Landlord and Tenant Branch of the Superior Court of the District of Columbia to enforce the provisions of the District of Columbia Housing Code; to require inspection of residential properties by the Mayor to ensure habitability; and to require notice to tenants of DCRA/OAH enforcement proceedings and due process protections.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Omnibus Rental Housing Amendment Act of 2009”.

Sec. 2. Tenant Housing Code Enforcement

(a) The terms “tenant,” “housing provider,” “rental unit,” and “housing accommodation” shall have the same definitions, respectively, as those in section 103 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03).

(b) Any tenant who claims that the housing provider has failed to maintain the rental unit in compliance with the District of Columbia Housing Code, Title 14, D.C.M.R., Chapters 1 through 13, may institute an action in the Landlord and Tenant Branch of the D.C. Superior Court to obtain the relief authorized by this section.

(c) (1) The action shall be instituted by filing a verified complaint with the clerk of the court. The complaint shall allege:

- (A) The name of the tenant;
- (B) The name of the landlord;
- (C) The address of the premises;
- (D) The nature of the alleged violation of the Housing Code; and
- (E) The dates when rent is due under the rental agreement and the

amount due on such dates.

(2) The complaint shall also allege either:

(A) That at least twenty-one days prior to the date on which the complaint is filed, the tenant made a request for inspection to the Department of

1 Consumer and Regulatory Affairs, and that no inspection has occurred or been scheduled;
2 or;

3 (B) That the Department of Consumer and Regulatory Affairs has
4 issued a Notice of Violation concerning the premises and that at least seven days have
5 elapsed from the date provided in the Notice for the violation(s) to be corrected; or

6 (C) That at least thirty days prior to the date on which the
7 complaint is filed, the Department of Consumer and Regulatory Affairs has conducted an
8 inspection at the premises, but that the tenant has not received a copy of the inspection
9 results, despite having requested a copy of such results.

10 (3) The requirements of subsection (b) shall not apply where the
11 complaint alleges emergency violations of the Housing Code, including loss of heat, gas,
12 electricity, running water, hot water, sanitary facilities, major cooking appliances
13 provided by the landlord, or any other condition immediately dangerous to the health or
14 safety of the occupants.

15 (d)(1) Upon the filing of the complaint, the clerk shall promptly set the matter
16 down for a hearing to be held not more than twenty-one days after the filing of the
17 complaint, and shall cause a copy of the complaint and the notice of the action to be sent
18 separately by certified mail, return receipt requested, to each housing provider named in
19 the complaint.

20 (2) If proof of service is not returned to the clerk, the plaintiff shall cause
21 service to be made at least 7 days before the scheduled hearing date by a person 18 years
22 of age or older who is not a party to or otherwise interested in the suit, by personally
23 delivering to the defendant a copy of the complaint and the notice of the action, or, by
24 leaving such copy and notice at his last and usual place of abode, or, at the address to
25 which the rent is sent or delivered, or, if the respondent is a corporation, service may also
26 be made in the manner provided by law or by leaving a copy of the complaint and the
27 notice of the action with the person authorized by law to accept service of process for the
28 corporation, or in such other manner as the court may direct.

29 (e) The court may order interim or final relief including, but not limited to, the
30 following:

1 (1) A temporary restraining order, preliminary injunction, and/or
2 permanent injunction compelling the housing provider to comply with its duties under
3 District of Columbia law;

4 (2) a monetary judgment in favor of the tenant representing a retroactive
5 abatement of rent paid to the housing provider during the period that the premises failed
6 to comply with the Housing Code;

7 (3) the disbursement of the rent payments placed into the court registry, in
8 accordance with Section 7;

9 (4) a prospective abatement of rent until such time as the housing provider
10 remedies the violations of the Housing Code; and

11 (5) such other relief in law or equity as the court may deem proper.

12 (f)(1) On each rent due date on or after the date when the complaint is filed with
13 the clerk of the court, or within ten days thereafter, the tenant shall deposit with the clerk
14 of the court an amount equal to the last agreed-upon rent. If all or a portion of the tenant's
15 rent is being paid to the landlord by the D.C. Housing Authority, other District of
16 Columbia or federal agency, nonprofit housing provider, or similar entity, this
17 requirement shall be satisfied if the tenant deposits with the clerk an amount equal to
18 such tenant's portion of the last agreed-upon rent. Payment to the clerk shall, for all
19 purposes, be the equivalent of having made payment to the housing provider. No housing
20 provider may maintain an action against a tenant to recover possession for nonpayment of
21 rent if an amount equal to the rent due has been received by the clerk.

22 (2) The housing provider may, at any time, move for the termination of
23 payment into court and the clerk shall promptly schedule a hearing on such motion. If, at
24 such a hearing held prior to the trial on the merits, the court finds that the violations of
25 the Housing Code have been corrected, it may order the tenant to terminate payments into
26 the court and to resume paying the housing provider directly.

27 (3) Any trial on the merits in an action brought under this chapter shall
28 include an adjudication regarding the distribution of any money held in the court registry.
29 If the court finds that the tenant is entitled to an abatement of rent paid into the court
30 registry, due to violations of the Housing Code or for any other reason, it shall order that
31 such abated portion be released to the tenant and the remainder to the housing provider. If

1 the court finds that no violation existed in the rental unit or housing accommodation, it
2 shall order the full release of the rent to the housing provider.

3 (g) The court shall establish the fee for complaints filed pursuant to this chapter.
4 Such fee shall not exceed the amount charged for the filing of a complaint for possession
5 in the Landlord and Tenant Branch. The filing fee may be waived in accordance with
6 D.C. Code § 15-712.

7 (h) A copy of a report of any housing inspection conducted by any District of
8 Columbia agency, certified as a true copy by the custodian of the records of such agency,
9 shall be admissible in any proceeding brought under this chapter without further
10 authentication, and shall be prima facie evidence of the facts stated therein.

11 (i) Nothing in this chapter shall be construed to limit or restrict in any way any rights or
12 remedies which may be available to a tenant under any other law. That a tenant has not brought
13 an action under this chapter shall not be construed, in any other action or proceeding, as an
14 admission by the tenant that the premises are in compliance with the Housing Code.

15 Sec. 3. Inspection of buildings.

16 (a) D.C. Official Code § 6-901 is amended to read as follows:

17 “(a) The Mayor shall examine the habitability and sanitary condition of all buildings in
18 the District of Columbia, except those that are under the exclusive jurisdiction of the United
19 States.

20 “(b) The Mayor may between the hours of 8:00 a.m. and 5:00 p.m. peaceably enter any
21 and all lands and buildings in said District for the purpose of inspecting the same.

22 “(c) All residential rental properties subject to the provisions of this Code will be subject
23 to regular inspection by the Mayor.

24 “(1) Owners of all residential rental properties subject to inspection as set forth in
25 (c) above shall pay a service per unit per year, as established by the Mayor by rule. The fee will
26 be used to finance the cost of inspection and enforcement by the Mayor. Should the owner fail
27 to pay the required fee, the Mayor may recover it, plus accrued interest, utilizing any remedies
28 provided by law including nuisance abatement or municipal tax lien procedures established by
29 District of Columbia law.

30 “(2) The frequency with which a residential rental property is inspected over a
31 two-year period shall be determined by the Mayor based on its condition, however, each

1 residential rental property shall be inspected at least once every two years. Inspections may also
2 be done based on a request by a tenant.

3 “(3) If, upon inspection, the Mayor discovers uninhabitable conditions or
4 violations of the District of Columbia Housing Code the Mayor shall cause a notice of violation
5 and order to repair to be served upon the owner of the premises. The Mayor shall re-inspect the
6 property after the time specified in the notice and order has passed to determine whether the
7 violation has been corrected. If it has not been corrected, then the Mayor may take enforcement
8 action as deemed appropriate including but not limited to imposition of fines or using the
9 Mayor’s authority to correct as set forth in §42-3131.01, et. seq.

10 “(d) The Mayor may authorize and direct the performance of the duties imposed on him
11 by this chapter by such officers, agents, employees, contractors, employees of contractors, and
12 other persons as may be designated, detailed, employed or appointed by the Mayor to carry out
13 the purposes of this chapter.

14 “(e) As used in this section, the terms “uninhabitable” or uninhabitability” mean the
15 condition of being in an unlivable condition due to deterioration and infestation, improper
16 maintenance, decaying structures, insufficient light or ventilation, inadequate plumbing,
17 defective electrical system, or general filthy conditions that may cause health and safety concerns
18 for the public, or that is a fire hazard or nuisance (as described in §42-3131.01).

19 (b) D.C. Official Code § 6-903 shall be amended by designatig the existing text as
20 paragraph (a) and adding a new paragraph (b) to read as follows:

21 “(b) If the building is a historic landmark or is located in a historic district, as defined in §
22 6-1102(5), and that said building is unsafe the mayor shall not order or cause the building or
23 structure, or portion of thereof, to be removed or taken down, unless the mayor determines, in
24 consultation with the State Historic Preservation Officer, as defined in § 6-1102(12), that:

25 “(1) There is an extreme and immediate threat to public safety resulting from
26 unsafe structural conditions; and

27 “(2) The unsafe condition cannot be abated by shoring, stabilizing, or securing the
28 building or structure.”.

29 Sec. 4. Required notice of DCRA/OAH enforcement proceedings.

30 (a) D.C. Official Code § 2-1802.05 is amended to read as follows:

31 “In any case alleging violations of the District of Columbia Housing Code (14 D.C.M.R.,
32 chapters 1-12), all notices, orders, or other papers required to be served on the respondent shall

1 also be served by first-class mail on each rental unit that is a subject of the action. If the action
2 alleges violations of this subtitle in more than one rental unit, or alleges violations of this subtitle
3 in the common areas of any housing accommodation, then all such notices, orders, or other
4 papers shall also be posted for a reasonable time in one or more locations within the building or
5 buildings in which the violation exists. The locations for posting the notification shall be
6 reasonably selected to give notice to all tenants affected.”.

7 (b) Section 102 of Chapter 1 of Title 14 of the District of Columbia Municipal
8 Regulations is amended by adding a new paragraph 102.9 to read as follows:

9 “102.9 (a) Notice of any action to enforce any provision of this chapter, whether civil or
10 criminal, shall be served by first-class mail on each affected rental unit. Such notice shall
11 include the nature and forum of the action; the basis for the action; and the date, time, and place
12 of any scheduled hearing. All future pleadings or notices in said enforcement action shall be
13 served on the tenant of each affected rental unit in the same manner required for service on
14 parties to the action.

15 “(b) If the action alleges violations of this subtitle in more than one rental
16 unit, or alleges violations of this subtitle in the common areas of any housing accommodation,
17 then all notices described in subsection (a) shall also be posted for a reasonable time in one or
18 more locations within the building or buildings in which the violation exists. The locations for
19 posting the notification shall be reasonably selected to give notice to all tenants affected.”.

20 Sec. 5. Authority to correct realty violations; repair fund:

21 (a) Section 1502 of Chapter 15 of Title 14 is amended as follows:

22 (1) Paragraph 1502.1 is amended to read as follows:

23 “1502.1 The Director may consider the following factors in determining whether the
24 Department should cause correction of a violation:

25 “(a) The best interests of tenants in being provided with safe and sanitary
26 conditions, including consideration of the tenants’ circumstances such as age, health, disability,
27 and children;

28 “(b) The threat of any violation to the life, health, or safety of a tenant or
29 occupant;

30 “(c) The number of times the owner has received notice of the violation and
31 efforts, if any, the owner has made to rectify the violation;

1 “(d) The threatened or contemplated risk to the continued occupancy of a housing
2 accommodation due to violation(s), including condemnation proceedings or placarding;

3 “(e) The risk that a federally subsidized housing accommodation may lose federal
4 funding due to the violation(s);

5 “(f) The affordability of rental units and the potential loss of affordable housing
6 for the District if the Director does not correct the violation(s);

7 “(g) The physical condition of the property, including whether there are any major
8 structural problems; and

9 “(h) The amount of funds needed to make the correction in relation to market
10 value of the property.”.

11 (b) A new paragraph 1502.2 is added to read as follows:

12 “1502.2 The Director shall cause a violation to be corrected if:

13 “(a) The violation is located in an occupied housing accommodation and threatens
14 the life, health, or safety of a tenant or occupant;

15 “(b) The owner has received two or more notices regarding significant violations
16 in an occupied housing accommodation and has failed or refused to adequately repair the
17 violations;

18 “(c) A housing accommodation is threatened with condemnation or placarding
19 due to the existence of the violation(s); and

20 “(d) A federally subsidized housing accommodation is at risk for loss of federal
21 subsidy due to the existence of the violation(s).

22 (b) Chapter 15 of Title 14 is amended by adding a new section 1504 to read as follows:

23 “14-1504. Application for Correction of Violation

24 “Any tenant or occupant may submit a written request to the Director for the Department
25 to correct a violation. Upon receipt of the request, the Director must promptly investigate the
26 request, including reviewing previous notices of the violation issued to the owner and, if
27 warranted, having the building or unit inspected for existence of the violation. If the Director
28 elects not to correct the violation, the Director must make affirmative findings as to why the
29 correction is not warranted pursuant to this Chapter.”.

30 (c) Section 3003 of Chapter 30 of Title 10 is amended by designating existing text of
31 paragraph 3003.2 as paragraph 3003.03 and inserting a new paragraph 3003.2 to read as follows:

1 “3003.2 Each tenant of a building for which the Board has issued a notice to show cause
2 as to why such building or part of building should not be condemned, shall have the right to
3 present to the Board in person, through counsel, or through other representatives, testimony or
4 documentary evidence regarding his or her tenancy, the conditions of the premises, the owner’s
5 compliance or lack thereof with D.C. Code § 6-920, and all other pertinent facts. Each tenant
6 shall have the right to conduct examination and cross-examination and submit rebuttal evidence
7 that may be required for a full and true disclosure of the facts.”.

8 (d) Section 3005 of Chapter 30 of Title 10 is amended as follows:

9 (1) Paragraph 3005.2 is amended by inserting the phrase “and any tenants of a
10 building for which the Board has issued a notice to show cause as to why such building or part of
11 building should not be condemned” after the phrase “an owner” and before the phrase “at least
12 five (5) days notice”.

13 (2) Paragraph 3005.5 is amended by inserting the phrase “and any tenants of a
14 building for which the Board has issued a notice to show cause as to why such building or part of
15 building should not be condemned” after the phrase “The owner” and before the phrase “shall be
16 entitled”.

17 (e) Section 3007 of Chapter 30 of Title 10 is amended as follows:

18 (1) Paragraph 3007.4 is amended by inserting the phrase “and § 3003.3” after the
19 phrase “subject to § 3003.2”.

20 Sec. 6. Fiscal impact statement.

21 The Council adopts the fiscal impact statement in the committee report as the fiscal
22 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
23 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

24 Sec. 7. Effective date.

25 This act shall take effect following approval by the Mayor (or in the event of veto by the
26 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
27 provided in 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973
28 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia
29 Register.