



Joint Testimony by John Blake, Staff Attorney, Tzedek DC and the Jewish Community Relations Council of Greater Washington to the Committee on Housing and Executive Administration in Support of the “Eviction Record Sealing Authority Amendment Act of 2021” B24-0096, and the “Fair Tenant Screening Act of 2021” B24-0106 (May 20, 2021).

Committee Chair Bonds and Members of the Committee on Housing and Executive Administration: Good Afternoon, I am John Blake, a staff attorney with Tzedek DC, a non-profit legal services group headquartered at the UDC David A. Clarke School of Law. I am a proud Firebird and started my work on behalf of District residents with low incomes in the UDC Housing Clinic in 2016. I’m testifying today on behalf of Tzedek DC, where our mission is to safeguard the legal rights and financial health of DC residents facing debt-related legal crises. The majority of Tzedek DC’s clients are women, and nearly all are from DC’s communities of color. I’m testifying today on behalf of Tzedek DC and our partners at the Jewish Community Relations Council of Greater Washington.¹

Thank you for the opportunity to testify today on the proposed bills. We support the goals of both pieces of legislation. The eviction record sealing bill would permit DC residents to limit the harms from an eviction or from a lawsuit from their former landlords by ensuring automatic record sealing if a landlord did not prevail in their eviction suit, and by resetting the slate by sealing any other record after a three-year period. This bill would also permit record sealing sooner by motion to the court for a number of grounds supported by common sense and fairness including: if the landlord violated the DC Human Rights Act; if the tenant’s eviction was directly related to an experience of intimate partner violence, sexual assault, or stalking; or by a stipulation in settlement by the parties. Tzedek DC supports the efforts of the sponsors of this bill, as well as our sister organizations working to protect vulnerable consumers from being effectively blacklisted from the rental housing market.

The Fair Tenant Screening Act of 2021 would ensure that District consumers have protections from a system that is not adequately regulated by the Fair Credit Reporting Act. B24-0106 would ensure that the decisions being made about whether to rent to a tenant are based in accurate information that actually addresses whether a prospective tenant is likely to be able to pay their rent. Until now, specialty credit reports that include outdated records, inaccurate records, and sometimes even records that violate of District law², are used to decide whether a housing provider will rent to a District resident. Rental screening reports are a type of specialty consumer

¹ Tzedek DC is submitting this testimony jointly with our Strategic Partner the Jewish Community Relations Council of Greater Washington, (JCRC), which serves as the public affairs and community relations arm of the Jewish Federation of Greater Washington, representing over 100 organizations and synagogues throughout DC, Maryland, and Virginia. The JCRC focuses on government relations, Israel advocacy, inter-group relations, and social justice.

² Tenant screening reports regularly include inquiries into a prospective tenant’s criminal background before a housing provider has made a provisional offer of housing, in violation of the Fair Criminal Record Screening Amendment Act of 2016. *See* D.C. Code § 42-3541.02 (b)(1).



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report. They include data from public records that are often not updated, as the specialty credit reporting agencies who produce these records will compile data from data scrapes that only capture the records as they exist at the time the search is completed. This can lead to records that report that a court case was filed, but no information about the final disposition. This also often leads to records that were sealed showing on these specialty reports because the rental screening company only captured the record at the time before the record was sealed. Finally, these specialty reports often only include limited information, showing the fact of a case but not the case outcome. In each of these situations, the rental screening report is based on limited and often inaccurate information about a perspective tenant.³

As our colleague from MIT shared in his testimony, preliminary findings in a recent study of housing provider decision making⁴ supports what tenants and their advocates already know. That most housing providers are making judgments about whether to rent to a perspective tenant based on recommendations made from rental screening companies based on flawed information. The Fair Tenant Screening Act would ensure that these decisions are being made based on criteria provided to tenants in advance and would limit denials for grounds that are unreasonable, or which violate the District's policy goals.

Tzedek DC represents and advocates for vulnerable consumers in the District, and these bills will have a direct impact on our clients' ability to continue to live in the District. Our team members routinely help District residents with lower income whose applications for rental housing is denied based on recommendations by rental screening providers. We also regularly advise and represents District residents who have negative credit reports and low credit scores. These reports often show what we already know, that despite being forced to taking on debt to survive, District residents with low incomes struggle to pay bills that are not essential to their basic needs. The existence of these debts however are not good indicators of who will pay their rent, as tenants often prioritize paying their rent over other payment obligations when money gets tight.

As a recent example from a Ward 7 resident, Tzedek DC represented Jill⁵, who experienced the very barriers that the Eviction Record Sealing Act was designed to address. A single mother, Jill has struggled to keep up with DC's expensive rental housing market and has three negative rental housing records. Jill has been evicted once by a default judgment. Jill also settled a housing case where she was able to retain possession of her apartment, and another case was dismissed before the initial hearing. In 2018, Jill came to Tzedek DC to help her settle her rent arrearage in the case that ended in a default judgment, and we were able to settle her debt including an agreement by the former housing provider to remove the negative tradeline from her

³ See, e.g., Lauren Kirchner and Mathew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES, May 28, 2020.

⁴ The study has not yet been published as of the time of this hearing.

⁵ A pseudonym was used to protect our client's privacy.



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consumer reports. But in 2020, Jill came back to us and reported to us that despite having settled her debt and consumer reporting issue, she was still being denied rental housing in the District because of her negative rental housing record. Thanks to the temporary eviction record sealing protections passed by the Council in response to the Pandemic, most of Jill’s negative housing records have been sealed. Under the proposed Bill, consumers like Jill would be given a chance to move on from cases that resolved favorably for the housing providers several years ago.⁶ Another recent client, Mary⁷, a ward seven resident was just denied the security clearance she needed for a job because the screening company compiled a report that included an inaccurate housing record. The report incorrectly asserts how much she owes the former housing provider and categorizes the housing case as a debt collection case. Mary will have to address this record before she can find a new rental or a new job.

Currently, seven other jurisdictions (CA⁸, IL⁹, MN¹⁰, NV¹¹, OR¹², VA¹³, WA¹⁴) have state laws that either require automatic sealing of eviction records if the tenant prevails, or at least permit sealing by motion. California, Minnesota, Oregon, and Nevada also permit record sealing by stipulation of the parties in settlement or for other grounds by motion to the court.¹⁵ The District should join these jurisdictions in ensuring that DC Consumers have the ability to move on from housing court records.

Tzedek DC routinely practices under the Fair Credit Reporting Act (“FCRA”), and our experience may highlight the limitations of the FCRA to protect District consumers from the harms the Eviction Record Sealing Authority Amendment Act and the Fair Tenant Screening Act are designed to address. The FCRA provides a series of protections for consumers relating to the conduct of Consumer Reporting Agencies (“CRAs”) that bear on the protections that Bills B24-0096 and B24-0106 have the potential to provide. *See generally* 15 U.S.C. 1681 *et. seq.* Specifically, the FCRA governs all national consumer reporting agencies, including specialty CRAs that report a consumer’s tenant history, eviction case history and criminal history to a housing provider seeking to make a decision about renting to that consumer.

Consumers are entitled to a free copy of any consumer report used in an adverse action against them.¹⁶ Denial of housing, requiring a higher security deposit amount, or any other adverse

⁶ Jill’s most recent negative housing record is more than 3 years old, and her oldest is over ten years old.

⁷ A pseudonym was used to protect our client’s privacy.

⁸ Cal. Civ. Proc. Code § 1161.2.

⁹ 735 ILL. Comp. Stat. 5/9-121(b).

¹⁰ Minn. Stat. § 484.014.

¹¹ NRS § 40.2545.

¹² ORS § 105.163 (1).

¹³ Virginia’s eviction record sealing law, VA Code § 8.01-130.01, goes into effect on January 1, 2022.

¹⁴ RCW § 59.18.367.

¹⁵ Princeton University Eviction Lab, *Covid-19 Housing Policy Scorecard*, (April 20, 2020)

<https://evictionlab.org/covid-policy-scorecard/>.

¹⁶ 15 U.S.C. §1681j(b).



action related to the decision to rent is covered under the Fair Credit Reporting Act. Consumers are entitled to accuracy in consumer reporting under the FCRA.¹⁷ Consumers have the ability to dispute inaccurate information on their consumer reports, and to file suit if consumer reporting agencies do not meet obligations under the FCRA. However, this relief is insufficient to provide the protections addressed in these bills. First, if the tenant successfully resolved an eviction case, the fact of the eviction case is still reported, is accurate, and is not a mistake that can be cleared, but negatively impacts the landlord's decision of whether or not to accept the prospective tenant. Second if the tenant-consumer is actually able to clear the mistake in the report, this process generally takes so long that the apartment is lost, because the housing provider in a high demand market is unlikely to delay a rental decision. Disputing consumer reporting is a cumbersome process, and often takes months or even years to achieve the desired effect. Third, without counsel, consumers often lack the means to exercise rights under the FCRA to obtain relief from inaccurate reporting beyond the initial dispute process.

The FCRA requires negative reporting of records to expire from a consumer report after a statutorily defined period of time. Court records can remain on a report for only seven years.² Money judgments are permitted to stay on consumer reports for as long as the judgement is enforceable. This typically means 12 years in the District, with the ability to renew for another 12 years before the first 12 years expires.¹⁸ The majority of records for landlord-tenant cases do not include a money judgment.

We also support the recommendation of our colleagues to amend the Eviction Record Sealing Authority Amendment Act to provide for sealing of eviction housing cases immediately upon filing. Such an approach would address the issues specialty consumer reporting agencies and data scrapers present by ensuring the information is not available until a determination as to the merits of the filing is made in the court. California¹⁹ and Nevada²⁰ provide examples of such an approach.

When the public health emergency ends, and the various temporary legislative protections cease, our client populations will still have debt and credit reporting issues that need to be addressed before they are able to fully recover from the economic hardships caused by the pandemic. Robust tenant protections are needed to fill in the gap in protections left by the FCRA. Being able to access a copy of your rental screening report and request corrections of inaccurate entries will not ensure that tenants are not denied housing based on inaccurate and incomplete records. The Fair Tenant Screening Act addresses this by limiting what can be used to make a decision on whether to rent.

¹⁷ 15 U.S.C. §1681e(b).

¹⁸ D.C. Code § 15-101.

¹⁹ *Supra* at note 8.

²⁰ *Supra* at note 11.



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The passage of the Eviction Record Sealing bill will mean that DC residents will be provided the opportunity to reenter the rental market after catastrophic financial events, like loss of work, major illness, intimate partner violence, crashes of the economy, and the Covid-19 Pandemic.

The passage of the Fair Tenant Screening Bill will mean that DC Residents will know what criteria they are being evaluated under when applying to rent an apartment, and they will be protected from denials based on inaccurate and incomplete information, or for reasons that have no bearing on their ability to pay the rent.

We thank you for taking up this important issue and urge you to pass both the Eviction Record Sealing Authority Amendment Act of 2021 and the Fair Tenant Screening Act of 2021.