DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MEMORANDUM

March 12, 2012

TO: Nancy Floreen, Chair
Planning, Housing and Economic Development Committee

FROM: Richard Y. Nelson, Jr., Director
Department of Housing and Community Affairs

SUBJECT: Montgomery County Tenants Work Group Report

On behalf of the County Executive, I am pleased to respond to each of the recommendations of the Montgomery County Tenants Work Group (TWG) in the order in which they are presented in the TWG Report.

1. **Recommendation:** The voluntary rent survey that forms the basis of the Annual Report should be replaced with a mandatory, verifiable and valid annual report.

   **Response:** The County Executive supports making the response to the Annual Rental Facility Report mandatory for all rental facilities of 12 or more units that are licensed by Montgomery County. Even though the current response rate for such properties is 95%, he is not opposed to making reporting mandatory. However, the Annual Rental Facility Report also includes information from rental facilities over which DHCA does not have licensing authority. The response rate in these jurisdictions (Rockville, Gaithersburg and Takoma Park) is approximately 90%.

2. **Recommendation:** The revised Annual Rental Facility Report should be easily accessible on the Internet.

   **Response:** The Annual Rental Facility Report is posted on the DHCA Departmental webpage and is readily accessible to the public.

3. **Recommendation:** The revised Annual Rental Facility Report should provide information by zip code, with online access to sort by various criteria. The report should also identify regions of the county, such as the Silver Spring Central Business District (CBD), Long Branch and the City of Rockville. The rent comparisons should also be grouped by unit size within each location.
Response: The report now provides information by zip code, unit size, and identifies groupings and regions of the county as recommended. The ability to sort might be provided in the future.

4. Recommendation: All County responses to calls regarding rent increases should be standardized and all calls received on this subject should be recorded.

Response: The Office of Landlord-Tenant Affairs ("OLTA") and MC311 provide a standardized answer to inquiries regarding rent increases. The implementation of the MC311 System ensures that a record of all such calls is maintained.

5. Recommendation: Rent increase notices should state clearly who tenants may contact (with phone, address, website, and email information) if they deem the rent increase to be excessive.

Response: County law requires that landlords inform tenants that they have the right to contact DHCA if they believe their increase is excessive. Tenants will be given MC 311 as the number to call for complaints regarding excessive rent increases. Action will be taken to ensure that all landlords are made aware of the MC311 requirement.

6. Recommendation: The formula for calculating the rent guidelines should be reviewed and potentially revised to provide a better standard for determining fair rental adjustments.

Response: DHCA and the Apartment and Office Buildings Association have attempted to identify a different formula to address some expressed concerns. However, an alternative formula for calculation has not been identified. The Executive will consider an alternative formula suggested by any interested group.

7. Recommendation: The required 60-day notice that landlords must give tenants regarding rent increases should be extended to 90 days.

Response: The County Executive agrees with this recommendation and will support such an amendment to Chapter 29.

8. Recommendation: To maintain reasonable and predictable rent increases, a rent stabilization law for Montgomery County should be enacted. This law should include provisions to provide a fair rate of return for property owners and reasonable rent adjustments for tenants. In addition, it should also include the following:
   • A preamble describing why the law is being enacted and describing the conditions that make the rent stabilization necessary;
   • Specific language that identifies which types of units are covered; the legislation should be as comprehensive as possible. Mandatory registration for all rental units covered by rent stabilization;
   • Identification of the agency to be charged with the administration and enforcement of rent stabilization measures, such as a Rent Board or Office of Rent Administration;
- The amount of permissible annual rent increases;
- Allowance for renters to contribute reasonable additional payments beyond the cost of rent to cover the cost of unit improvement. These contributions should be time-limited, limited in quantity, and should not be added to the base rent;
- Non-waiverable clauses so that tenants and landlords cannot “opt out” of the legislation;
- Strong enforcement provisions; and
- No vacancy decontrol.

Response: The County Executive does not support this recommendation.

9. Recommendation: Montgomery County should pass legislation limiting or banning rent surcharges for month-to-month tenants. To increase predictability for landlords regarding unit occupancy, month-to-month tenants under this law should be required to give at least two month’s notice before vacating a unit and be fully liable for rent obligations during this period.

Response: The majority of landlords do not impose a surcharge on month-to-month tenancies. However, when imposed they can be substantial. Therefore, the Executive supports legislation that would prohibit rent surcharges for month to month tenancies after the expiration of the initial lease term. A two month notice is already required for vacating units in multi-family rental facilities. The Executive supports extending this notice requirement to all tenancies.

10. Recommendation: We recommend the passage of a just-cause eviction law in Montgomery County. Just-cause eviction laws, also known as “good-cause” eviction laws, balance the interests of landlord choice and tenant need for predictability by requiring landlords to articulate a specific reason for the termination of a tenancy. Absent a valid reason as enumerated in a local statute, the tenancy may continue. These reasons may include:
   - Tenant is delinquent in rent payments;
   - Tenant engages in criminal activity on the property;
   - Tenant causes substantial damage to the unit; and/or
   - Owner seeks to permanently remove the unit from the rental market and/or seeks to use the unit for the lodging or care of an immediate family member. Just-cause eviction laws are currently enforced in the following jurisdictions, among others: Washington, DC, New York City, Los Angeles, Seattle, Chicago, San Francisco, and the states of New Jersey and New Hampshire.

Response: The County Executive does not feel there is a need for this legislation.

11. Recommendation: To protect tenants’ ability to lodge housing code complaints and to organize tenants’ associations free from retaliation by landlords, the TWG urges the passage of retaliatory eviction legislation by Montgomery County. This type of legislation would contain the following elements:
• A list of protected tenant activities, including: making a good faith complaint to a
governmental authority regarding code violations or illegal landlord activity; steps taken
by a tenant to assert rights as a tenant under law and/or under lease and participating in
and/or organizing a tenant’s association;
• A list of specified penalties for a finding of retaliation by a landlord;
• Establishment of retaliatory eviction as the basis for a civil suit, in which the
aforementioned rebuttable presumption would not apply; and,
• A requirement that landlords specifically state why a tenancy is not being renewed when
the non-renewal comes after a month-to-month tenant has engaged in a protected activity.

Response: The County Executive does not support this recommendation since adequate
protections against retaliatory eviction already exist in both State and County law. The State
retaliatory eviction clause was amended effective October 1, 2011, giving tenants most, if not
all of these rights.

12. Recommendation: Recently passed federal legislation (Helping Families Save Their Homes
Act) adequately protects tenants living in foreclosed properties, but legislation should be
enacted at the local level to ensure that these protections extend beyond the end of 2012,
when the federal statute is set to expire.

Response: No action is needed regarding this recommendation since this law has been
extended and does not expire until December 31, 2014.

13. Recommendation: The TWG recommends that County law standardize a reasonable
process for subletting, including criteria for an adequate substitute tenant. These criteria
should be included in the standard lease.

Response: The County Executive agrees with this recommendation and will propose
specific guidelines for subletting. An amendment to Chapter 29, Landlord-Tenant Relations,
Montgomery County Code, will be required to implement such a guideline.

14. Recommendation: Condominium conversions: A majority of the tenants (51 percent) must
vote to approve a condo conversion.

Response: The County Executive does not support this recommendation. Chapter 11A of
the County Code and Title 11 of the State Real Property Article provide substantial
protections for tenants facing conversion of a rental facility to condominium status.

15. Recommendation: Tenants must be given clear information about the condo conversion
process and law. The handbook should:
• Clearly outline options available to tenants;
Memorandum to Nancy Floreen  
March 12, 2012  
Page 5

- Include resources that can provide guidance for tenant organizations that choose to exercise the option to buy the building. Identified resource organizations need to be experienced and skilled in this area. A tenant advocacy organization (see Issue IV, section a for TWG recommendation) should be the resource clearinghouse for information.
- Include information about moving assistance (if any exists) and apartment search help;
- List resources to help with financial counseling if they want to consider purchasing a condo unit.
- The condo conversion handbook should be required to be distributed to tenants at the same time that a Notice of Intent to Convert to Condominiums (NICC) is issued.

**Response:** The County Executive supports this recommendation that additional information be provided in the Condominium Conversion Handbook. However, the Executive does not support the recommendation that information concerning tenants’ rights, etc. in the event of a conversion be exclusively disseminated by a tenant advocacy organization. DHCA staff should retain its responsibility to disseminate such information. Finally, it should be noted that, in the event of a conversion, tenants have a right to purchase their individual unit, not the entire rental facility.

16. **Recommendation:** Lease language should be clear about the use of the security deposit and the interest paid. The sample lease includes language regarding security deposits but it is not easily understandable and should be clarified.

**Response:** The language in the model lease promulgated by DHCA substantially mirrors State law. It is clear and understandable.

17. **Recommendation:** The law should be modified so that a tenant has a less cumbersome alternative to certified mail in order to request to be present at the move-out inspection.

**Response:** The County Executive supports this recommendation. Implementation will require amending state landlord-tenant law.

18. **Recommendation:** Buildings should be inspected every year. Buildings that have no substantial violations should be inspected every three (3) years. Buildings with repeated violations should be inspected every year. Every three (3) years, inspections of those buildings should include 100% of the units.

**Response:** A blanket requirement to inspect all buildings every year is not programmatically or fiscally practical. Buildings that are less than ten years old and/or buildings that have high rents do not need to be inspected as often as older and more moderately priced rentals. The current inspection procedure of 10% of units and common areas is sufficient to ensure code compliance for such properties. Properties that are older are already inspected on a basis more frequent than that required by statute. No evidence has been provided that the current administrative process is not working. Therefore, the Executive does not support the change that TWG is proposing.
Current code inspection procedures do take into account the necessity and reality of inspecting, on a more frequent basis, properties that have a history of violations. Such more frequent inspections are standard operating procedure.

19. Recommendation: Owners of buildings with repeat violations should pay for the increased inspection schedule.

Response: This is an approach that warrants consideration and the Executive has directed DHCA to further review the issue.

20. Recommendation: Tenants should be notified in advance of upcoming inspections so that they may submit requests anonymously for certain areas or units to be inspected. Landlords should not be told if there were anonymous requests for inspections.

Response: Tenants are notified of inspections via a postcard in both English and Spanish. A tenant can remain anonymous regarding a request for an inspection of his or her particular unit as part of an overall inspection of the rental facility.

21. Recommendation: Tenants should have the right to grant access to an inspector to enter a unit if the tenant is not home. Tenants should be given reasonable accommodation to be present when the inspection will occur.

Response: Chapter 26, Housing Maintenance Standards, requires that a landlord, after reasonable notice to a tenant, grant access to an apartment for inspection by housing code staff. It is the landlord’s responsibility to provide proper notice to tenants that an inspection of the property has been scheduled. If a tenant requests to be present when an inspection occurs, these arrangements are currently being made by housing code staff.

22. Recommendation: The Landlord-Tenant Handbook should be clearer about when and how code enforcement staff can be contacted. It should also make clear that the caller may remain anonymous.

Response: DHCA will revisit the language in the Handbook to ensure that it is clear as to how tenants can contact Code Enforcement and that they may remain anonymous when making a complaint.

23. Recommendation: Code enforcement staff should have the flexibility to conduct inspections evenings or weekends without a specified emergency. Sometimes, some of the possible violations are more apparent evenings or weekends. An after-hours phone number should be available for emergencies.

Response: Code inspections are, upon request, scheduled outside of normal business hours.
24. **Recommendation:** DHCA should develop a new procedure to allow tenants to make repairs and deduct the cost from the next month’s rent in the case that landlords do not make necessary repairs for a code violation after a specified amount of time. The tenant must submit this proposal to DHCA to ensure that they are entitled to “repair and deduct”.

**Response:** The current State rent escrow procedure coupled with action by code enforcement to ensure that rental units are in compliance with Chapter 26 are adequate to address legitimate concerns of tenants in this area. The Executive does not support this recommendation.

25. **Recommendation:** All information sources—including the website, the Landlord-Tenant Handbook, and telephone conversations—need to clarify that landlords and tenants may not be required to file a formal complaint in order to get help with resolving an issue.

**Response:** The County Executive supports this recommendation. This information has been added to the draft of the revised Handbook.

26. **Recommendation:** Within practicable limits, exceptions should be allowed to the standard practice of sending copies of complaints from tenants to the landlord. OLTA staff should offer this option to callers with the disclaimer that some issues may not be able to be addressed without identifying the tenant or unit number.

**Response:** This is current DHCA staff practice.

27. **Recommendation:** As part of the County’s new MC311 phone and online information and service request system, all complaints should be given an identification number so that the caller can follow up and complaints can be tracked.

**Response:** All MC311 contacts are given a unique identification number (Service Request No.) so that the caller can follow-up on his/her inquiry.

28. **Recommendation:** Records should be kept of all calls, including those resolved before a formal complaint is filed.

**Response:** All transactions are now recorded in the MC311 system, including walk-in customers for OLTA staff.

29. **Recommendation:** The Handbook should include an area for a communication log to track contact with management.

**Response:** The Handbook contains two “Note Sections” for the recording of such information.
30. **Recommendation:** It should be explicitly stated on the website and other documents detailing the work of the Landlord-Tenant Commission that members of the Commission must recuse themselves from any case where they may have a conflict of interest.

**Response:** Commissioners do recuse themselves from such cases. This information will be added to the DHCA Website.

31. **Recommendation:** A standard lease should be required and written in plain language. Addenda may be added, as needed. If addenda are included, then tenants have two business days after signing to back out of the lease. That information should be included in the standard lease.

**Response:** In general, the County Executive supports this recommendation and approval by the County of all addenda to leases. However, the County Executive does not support a blanket two day right of rescission.

32. **Recommendation:** The standard lease should include a preamble with major tenant and landlord rights and obligations clearly described.

**Response:** The County Executive supports this recommendation. DHCA staff will incorporate such a preamble in the model lease.

33. **Recommendation:** Any supplemental fees should be clearly enumerated in the lease.

**Response:** No need for any action. In order for fees to be legally enforceable, they must be enumerated in the lease.

34. **Recommendation:** Tenants should have 30 days after signing a lease to change from a one-year to a two-year lease.

**Response:** The County Executive does not support this recommendation. Current law requires a landlord to offer a two-year lease option when signing the lease.

35. **Recommendation:** A two-year lease should be offered at every lease renewal.

**Response:** The County Executive supports this recommendation.

36. **Recommendation:** The availability of DHCA’s “Wear and Tear” Handbook should be referenced in the lease.

**Response:** DHCA staff will incorporate such a reference in the model lease.
37. **Recommendation:** The Landlord-Tenant Handbook should be given out to each new tenant. A modest increase to the licensing fee could be used to fund printing costs.

   **Response:** The Handbook is readily available on-line. Landlords will be encouraged to make copies available for tenants and/or provide information as to availability.

38. **Recommendation:** The Handbook should clarify appropriate uses of fees by landlords.

   **Response:** The County Executive supports this recommendation. DHCA will make appropriate changes to the handbook to further clarify the nature of fees that are permissible under both state and county landlord-tenant laws.

39. **Recommendation:** Copies of the model lease and other documents should be made available in the most commonly spoken languages in the County on the DHCA website and for distribution throughout the County.

   **Response:** The model lease and other landlord-tenant information are available in English and Spanish.

40. **Recommendation:** The license that is displayed should include a working telephone contact number. That number should also be included in the lease. The Landlord-Tenant Handbook and website should provide guidance on how to identify the property owner/responsible party.

   **Response:** The County Executive supports this recommendation. DHCA staff will take appropriate action to require the recommended license information and to add a section to the handbook regarding how to identify the owner of the rental property.

41. **Recommendation:** The Landlord-Tenant Handbook and DHCA’s website should clarify procedures regarding repairs.

   **Response:** DHCA staff will review language and make clarifications where necessary.

42. **Recommendation:** The Landlord-Tenant webpage should be referenced on the Office of Consumer Protection website.

   **Response:** The Landlord-Tenant webpage is now referenced on the Office of Consumer Protection website.

43. **Recommendation:** The Landlord-Tenant Handbook should include public and private resources for renters.

   **Response:** The Handbook currently includes resources for renters. This information will be reviewed to determine if additional resources should be included in the revised Handbook.
44. **Recommendation**: The Landlord-Tenant Handbook and other resources lists should be translated and made available in the most commonly spoken languages in the County.

**Response**: The Handbook and other landlord-tenant resources are currently available in English and Spanish. Additional translation capabilities are available in the County for those requiring assistance in other languages.

45. **Recommendation**: MC311 Service-Information for tenants and landlords should be integrated into the County’s planned central MC311 system.

**Response**: Such integration has been accomplished.

46. **Recommendation**: Copies of the Landlord-Tenant Handbook should be made available through the County libraries, housing agencies, Health and Human Services offices, and other County agencies that have significant public contact.

**Response**: Copies of the new edition of the Handbook will be available to these agencies.

47. **Recommendation**: Information on County websites should be reviewed to be more user-friendly. For example, the “Rent Increases-Tips for Tenants” on DHCA’s website should outline options available and refer tenants to the (revised) Annual Rental Facility report to identify comparable units.

**Response**: DHCA website will be reviewed by staff and appropriate changes will be made.

48. **Recommendation**: Outreach-County housing agencies should engage in sustained outreach efforts, in collaboration with community-based organizations to educate tenants about their rights and applicable County laws.

The Office of Landlord-Tenant Affairs should work with each County Regional Services Center to conduct at least one scheduled and publicized renters’ meeting per year.

Staff from housing agencies and community-based group should collaborate on programming such as “housing information fairs” or booths at various existing community events, to ensure that residents have access to critical housing information and resources.

Efforts may include creating informational public access television programming, through free or low-cost resources such as Access Montgomery, regular programs or dedicated space for housing information at the County libraries, radio programs, and pod casts. Any programming could also be uploaded onto various County websites.

County agencies and community-based groups should collaborate on programming such as “housing information fairs” or booths at various existing community events, to ensure that residents have access to critical housing information and resources.
Specific outreach and education efforts should target the frontline staff at nonprofit and government agencies with high levels of public contact who might not be familiar with housing programs and rights.

Response: DHCA staff is currently engaged in such outreach efforts. Based upon availability of staff resources, additional outreach will be undertaken.

49. Recommendation: Montgomery County should vigorously promote equal access for tenants who are blind, deaf, or have limited language or technology access.

The County should convene a housing language access task force comprised of relevant stakeholders (i.e., managers from agencies serving renters and landlords, nonprofit staff and County residents) to:
- Identify concerns;
- Collaborate on innovative initiatives to ensure equal access, and
- Create short and long-term goals for the County in language access.
- Data should be collected regarding the languages spoken by callers and visitors as well as interpretation and translation requests; and,
- County housing agencies should include a standard line item for translation and interpretation in all budget requests from federal funding sources (including Community Development Block Grants and other HUD funding streams).

Response: The County Executive supports and aggressively promotes equal access by all to County resources. The Executive is comfortable that current Executive Branch efforts in this regard are adequate.

50. Recommendation: The County should provide leadership in forming a Tenant Advocacy (TA) structure funded by a landlord-tenant fee.

The Tenant Advocacy structure should exist independently from County government.

The mission of the TA organization should include:
- Work and coordinate with government agencies to ensure that tenants have access to relevant information about their rights, and to support renters trying to understand their rights and responsibilities;
- Provide a strong advocacy voice for renters;
- Promote constructive dialogue between landlords and tenants;
- Support and facilitate the development of tenant organizations in rental housing; and,
- Support sustained outreach to renters throughout the County.

Response: Since the issuance of the TWG report, the Montgomery County Renters' Alliance has been formed and is receiving funding from a community grant.
In addition, as evident from some jurisdictions in the area and around the nation, there are various roles that existing government agencies can play to ensure that tenants have access to information and can exercise their rights within the County:
- Dedicated County staff members who can facilitate information-sharing with community-based agencies and other stakeholders would create a critical complement to any non-governmental tenant advocacy structure that is created.

**Response:** Currently, DHCA staff are successfully engaged in this activity.

- Landlord-Tenant Resource Center – the TWG recommends the creation of some kind of a landlord-tenant resource center in Montgomery County District Court. This could be a useful role for the County to coordinate with private bar associations. A similar resource was created for the D.C. housing court to provide free advice and information to tenants and landlords who do not have lawyers.

**Response:** The County Executive supports this recommendation. Since the issuance of the TWG report, the District Court has instituted free legal services for civil cases and there is an attorney on duty at a call center daily to answer questions regarding civil cases at the District Court.

- The Office of Landlord/Tenant Affairs – the TWG Recommends that the Office of Landlord/Tenant Affairs is restructured (and possibly renamed), and that its role is very clearly defined, perhaps in a way similar to the Office of the Tenant Advocate in D.C. The changes in this office should not affect the ability of tenants to access any other remedies or assistance. In addition, this new version of OLTA could expand existing DHCA grants to community-based organizations that provide legal services and housing counseling to tenants and special populations, such as seniors, the disabled, domestic violence survivors, and immigrants.

**Response:** A major role and function of OLTA is to conciliate disputes between tenants and landlords. This function requires fair and impartial approach to each case which would be undermined by defining the office as Tenant Advocate. This notwithstanding, the office is trying to insure that it is viewed as a valuable resource for tenants and can be very helpful to them.

- The County should support the convening of existing non-profit and informal groups that currently work on tenant advocacy issues in the county to promote tenant coordination and collaboration. This group can also research best practices regarding improving relationships between landlords and tenants.

**Response:** The County Executive supports this recommendation. While DHCA staff are currently engaged in such efforts, additional efforts can have a positive impact.