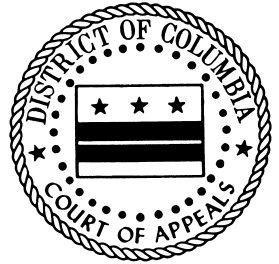


No. 23-CV-271



DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court
Received 04/22/2024 01:46 PM
Resubmitted 04/22/2024 02:21 PM
Filed 04/22/2024 02:21 PM

POTOMAC PLACE ASSOCIATES, LLC,

Appellant,

v.

WALTER MENDEZ, *ET AL.*,

Appellees.

On Appeal from Final Order of the Superior Court of the District of Columbia

Case No. 2019-LTB-0022079 (The Honorable Maurice A. Ross)

Redacted Brief of Appellee Walter Mendez

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Rule 28(a)(2)(A) Statement

The Parties to the case are Appellant Potomac Place Associates, LLC and Appellees Walter Aparicio Mendez and Fernando Castillo. Potomac Place Associates was represented by Joshua M. Greenberg and Spencer Ritchie in both the lower court proceedings and on appeal. Appellee Walter Mendez was represented by Ramona Quillet in both the lower court proceedings and on appeal. Appellee Fernando Castillo was pro se in both the lower court proceedings and on appeal.

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No. 23-CV-2711

DISTRICT OF COLUMBIA COURT OF APPEALS

POTOMAC PLACE ASSOCIATES, LLC,

Appellant,

v.

WALTER MENDEZ, *ET AL.*,

Appellees.

On Appeal from Final Order of the Superior Court of the District of Columbia

Case No. 2019-LTB-0022079 (The Honorable Maurice A. Ross)

Redacted Brief of Appellee Walter Mendez

QUESTIONS PRESENTED

1. Did the Housing Provider Serve a Legally Enforceable Notice to Vacate to Walter Aparicio Mendez?

STATEMENT OF FACTS AND OF THE CASE

A. Statutory Background: Rental Housing Act of 1985 and Rental Conversion and Sale Act of 1980

The outcome of this case rests on the Rental Housing Act's ("RHA") eviction protections and how they interact with the Rental Conversion and Sale Act of 1980 ("CSA").¹ Both statutes were implemented in reaction to the "housing crisis in the District of Columbia." D.C. Code § 42-3501.01(9); D.C. Code § 42-3401.01(a)(1). Likewise, the shared purposes of both statutes are the protection of affordable housing and prevention of the displacement of tenants. D.C. Code § 42-3501.02(4)-(5); D.C. Code § 42-3401.02(1)-(3). To accomplish these goals, the RHA created the rent stabilization regime and barred the eviction of lawful tenant with only ten specific exceptions. While the CSA placed tenant safeguards on the conversion of rental units into condominium units and further limited the RHA's grounds for eviction of low-income, protected tenants.

Under the provisions of the Rental Housing Act of 1985, all evictions in DC must state one of the enumerated grounds for eviction. In summary, the ten grounds for eviction are:

- (1) Non-payment of rent. D.C. Code § 42-3505.01(a)

¹ Codified at D.C. Code § 42-3501.01, *et seq.*, and D.C. Code § 42-3401.01, *et seq.*, respectively.

- (2) Violation of a lease obligation. D.C. Code § 42-3505.01(b)
- (3) Illegal act committed within unit or housing accommodation. D.C. Code § 42-3505.01(c)
- (4) Owner's personal use and occupancy. D.C. Code § 42-3505.01(d)
- (5) Contract purchaser's personal use and occupancy. D.C. Code § 42-3505.01(e)
- (6) Alteration or renovations that cannot be safely or reasonably done while unit is occupied. D.C. Code § 42-3505.01(f)
- (7) Demolition of housing accommodation. D.C. Code § 42-3505.01(g)
- (8) Substantial rehabilitation. D.C. Code § 42-3505.01(h)
- (9) Discontinuing use as rental housing. D.C. Code §42-3505.01(i)
- (10) Conversion to Condominium or Cooperative. D.C. Code §42-3505.01(j) and D.C. Code §42-3402.06(c).

In the present case, housing provider relies on the condominium conversion provision, “[i]n any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 42-3402.06(c).” D.C. Code § 42-3505.01(j). The Rental Housing Act directs the housing provider to D.C. Code § 42-3402.06(c), which reads, “Notice to vacate. -- An owner shall not serve a notice to vacate until at least 90

days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase.”

The Notice of Intent to Convert is found in D.C. Code § 42-1904.08(b). It reads in relevant part, “[i]n the case of a conversion condominium: (1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved.” D.C. Code § 42-1904.08(b).

Although the CSA sets forth this requirement to buy or vacate, it prevents displacement of vulnerable tenants in two ways: (1) creating a framework that requires a tenant election to approve the proposed condominium conversion, and (2) identifying a category of “protected tenants” who have a right to remain indefinitely as renters subject to rent control under CSA Section 208.

At the time of the conversion election at 800 4th Street, SW, in 2005, Section 208 read in its entirety:

Elderly Tenancy.

(a) *Eviction Limited.* – Notwithstanding any other provision of this subchapter, the Condominium Act, or the Rental Housing Act, an owner of a rental unit converted under the provisions of this chapter shall not evict or

send notice to vacate to an elderly tenant with an annual household income, as determined by the Mayor, of less than \$40,000 per year unless:

- (1) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;
- (2) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation; or
- (3) the tenant fails to pay rent.

(b) *Rent Level.* – Any owner of a converted unit shall not charge an elderly tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual rent increases on that basis authorized under the Rental Housing Act.

(c) *Definition.* – For the purposes of this subchapter, the term “elderly tenant” means a head of household who is 62 years of age or older. The number of elderly tenants qualifying under this section is that number on the day the owner requests a tenant election for purposes of conversion.

D.C. Code § 42-3402.08 (2001).

In 2006, the Council amended CSA Section 208 in two material ways, (1) expanded the relevant heads of households in Section 208 to include low-income tenants with a disability and (2) added a fourth grounds for eviction, “[f]or the purposes of a single, scheduled tenant election under § 42-3402.03, the tenant waives, in writing, his or her right to remain a tenant.” D.C. Code § 42-3402.08. However, at the time of the 2005 conversion election, a unit with an elderly low-income head of household could not waive their right to remain a tenant and could not participate in the condominium conversion election as a qualified voter. D.C. Code § 42-3402.03(d) (2001).

B. Factual and Procedural Background

1. Pre-Conversion. Teresa Aparicio and her son Walter Aparicio Mendez were joint lessees at 800 4th Street, SW, Apartment N720, Washington, D.C. JA0089.
2. 2005 Condominium Conversion Election. On or about November 28, 2005, there was a successful condominium conversion election (“the conversion election”) at 800 4th Street, SW, Washington, D.C. JA0107. The Aparicio-Mendez family selected Teresa Aparicio to be the head of household for the purposes of the conversion election. *Id.* at 108. Ms. Aparicio was certified as being a qualified statutory protected tenant because she was sixty-two years old or older and the household income was below the statutory threshold. *Id.* Neither she nor her son participated in the condominium conversion election. *Id.* at 0107-0116.

The property’s conversion to condominiums was completed and registered with the District on May 10, 2006. Appellant’s Brief p. 8. At the time of the conversion, neither Ms. Mendez nor her son were served with a 120-Day Notice of Intent to Convert. Appellant’s Brief p. 8 and p. 14. After the election, Teresa Aparicio and her son remained in Apartment N720 as renters subject to rent stabilization. Appellant’s Brief p. 8; JA0013.

3. 2019 Death of Teresa Aparicio. Teresa Aparicio died on January 23, 2019, approximately fourteen years after the conversion election and thirteen years after the conversion was completed. JA0106.
4. Tenant Mendez's Request for Reasonable Accommodation and Notice to Vacate. Tenant Mendez is indigent and has a disability. Tenant Mendez's November 1, 2019 Motion to Proceed *In Forma Pauperis*; JA0003 Docket entry recording the November 1, 2019 oral court order granting Tenant Mendez's Motion to proceed *In Forma Pauperis*. Tenant Mendez alleges that he made a request for reasonable accommodation to have Fernando Castillo added to the lease as a live-in aide.² Answer p. 2. After he made this request, Housing Provider sent Tenant Mendez a 120-Day Notice of Intent to Convert on April 17, 2019. JA0027. Tenant Mendez did not purchase the unit, and on July 16, 2019, housing provider sent Tenant Mendez a 30-Day Notice to Quit. JA0021.
5. Lower Court Proceedings. On October 3, 2019, Housing provider filed a Complaint for Possession based on the July 17, 2019 30-Day Notice to Quit. JA0002. Tenant Mendez filed his answer raising the factual retaliation defense on November 1, 2019. JA0003. The Housing Provider

² Tenant Mendez's full explanation of the retaliation is set forth in his discovery responses, specifically Interrogatory 5 on page 7. His discovery responses were filed with the court on February 28, 2020, and are a part of the lower court record.

filed its first failed Motion for Summary Judgment on August 3, 2021. JA0007. It was fully briefed by the parties and summarily denied by the Honorable Judge Saddler on January 17, 2022. JA0008.

The case was transferred to the Honorable Judge Ross on December 31, 2021. JA 0007. The parties refiled their briefs by consent. JA0008-9. After full briefing and oral argument, Judge Ross denied housing provider's Opposed Motion for Summary Judgment on September 2, 2022.

Tenant Mendez was given leave to file a Motion for Summary Judgment out of time. On March 9, 2023, after full briefing by the parties Judge Ross granted Tenant Mendez's Motion for Summary Judgment and issued a final order dismissing the case "for failure to give proper notice." JA0010-11; JA0086-88.

SUMMARY OF THE ARGUMENT

The housing provider failed to serve Walter Aparicio Mendez with a valid notice to vacate under the Rental Housing Act of 1985 and the Rental Conversion and Sale Act of 1980.³ Evictions of residential tenants in the District of Columbia are governed by the Rental Housing Act of 1985.⁴ All evictions require the housing provider to serve the tenant with a written notice to vacate which states at least one of the enumerated grounds for eviction. Without a valid written notice to vacate a housing provider's complaint for possession cannot succeed, and the case must be dismissed.

The death of Tenant Mendez's mother and co-leaseholder Teresa Aparicio triggered the housing provider to issue a notice to vacate in 2019. As death of a co-tenant is not a recognized grounds for eviction, the housing provider cited the property's almost fifteen-year-old condominium conversion as the basis for the eviction. Complaint; D.C. Code 42-3505.01(j).

Specifically, the housing provider sent Tenant Mendez a 120-Day Notice of Intent to Convert followed by a 30-Day Notice to Vacate in 2019. However, there

³ Codified at D.C. Code § 42-3501.01, *et seq.*, and D.C. Code § 42-3401.01, *et seq.*, respectively.

⁴ The Rental Housing Act's eviction provisions are codified at D.C. Code § 42-3505.01.

was no impending conversion to prompt the issuance of a 120-Day Notice of Intent to Convert; the property had already been converted to a condominium regime in 2006. Appellant's Brief p. 8. The Court cannot conclude (1) that death of a co-leaseholder is a statutorily supported basis for eviction under the Rental Housing Act and the Conversion and Sale Act or (2) that, after a completed condominium conversion, a housing provider can indefinitely delay a 120-Day Notice of Intent to Convert to spring on surviving tenants upon the death of the head of household.

For the above reasons, the housing provider could not serve a legally valid 120-Day Notice of Intent to Convert on April 17, 2019 or the 30-Day Notice to Quit on July 16, 2019. The Trial Court denied housing provider's motion for summary judgment, granted Tenant Mendez's motion for summary judgment, and "ordered the Plaintiff's complaint...is **DISMISSED** for failure to give proper notice." (emphasis in original). This Court should affirm on the same basis.

STANDARD OF REVIEW

Interpretation of statutes presents a question of law that this Court considers *de novo*. See *Cherry v. District of Columbia*, 164 A.3d 922, 925 (D.C. 2017). This court also reviews a grant of summary judgment *de novo*, applying the same standard as the trial court in considering the motion for summary judgment. See *District of Columbia v. District of Columbia Pub. Serv. Comm'n*, 963 A.2d 1144, 1155 (D.C. 2009). A party is entitled to summary judgment if, when the facts are viewed “in the light most favorable to the non-moving party ... there [are] no genuine issue[s] of material fact and [] the moving party is entitled to judgment as a matter of law.” Super. Ct. Civ. R. 56 (c); *Hosp. Temps Corp. v. District of Columbia*, 926 A.2d 131, 134 (D.C. 2007).

ARGUMENT

I. The Death of a Co-Leaseholder is Not a Legally Recognized Grounds for Eviction

The death of Teresa Aparicio triggered the current action. Appellant’s Brief p. 11-12 (“When Ms. Aparicio passed away...Potomac Place served Mr. Mendez...with a 120-Day Notice to Intent to Convert and a 30-Day Notice to

Vacate). However, there is no provision in the Rental Housing Act of 1985⁵ or the Rental Conversion and Sale Act of 1980⁶ that permits the eviction of a lawful tenant due to the death of a co-lessee. A comprehensive list of legally recognized grounds for eviction of a residential tenant in the District of Columbia is enumerated in D.C. Code § 42-3505.01. The statute begins, “[e]xcept as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent...No tenant shall be evicted from a rental unit for any reason unless the tenant has been served with a written notice which meets the requirements of this section.” D.C. Code § 42-3505.01 (a)(1).

The list of acceptable notices to vacate cover everything from violation of a lease obligation to demolition of the unit, but there is no mention of the death of a co-tenant. The relevant canon of statutory construction is *expressio unius est exclusio alterius*, meaning “when a legislature makes express mention of one thing, the exclusion of others is implied, because there is an inference that all omissions should be understood as exclusions.” *McCray v. McGee*, 504 A.2d 1128, 1130

⁵ The Rental Housing Act’s eviction provisions are codified at D.C. Code § 42-3505.01. Key portions of the Rental Housing Act are reproduced in the Rule 28(f) Statutory Addendum.

⁶ The Rental Conversion and Sale Act of 1980 is codified at D.C. Code § 42-3401, *et seq.* Key portions of the 2001 and current Conversion and Sale Act are reproduced in the Rule 28(f) Statutory Addendum.

(D.C. 1986) (internal quotation and citations omitted). The housing provider could not provide a legally enforceable notice to vacate to Tenant Mendez on the basis of Ms. Aparicio's death.

II. Co-Leaseholder Teresa Aparicio Was a Protected Tenant and Could Not Be Forced to Buy or Vacate under D.C. Code § 42-3505.01(j).

In this case, at the time of the election, Teresa Aparicio and her son Walter Aparicio Mendez were co-lessees on a joint and several lease. JA0089. Teresa Aparicio was the head of household and was certified as being low-income elderly. JA0108. All parties agree that Teresa Aparicio was a statutorily protected tenant under CSA Section 208. Appellant's Brief p. 8. She could not be evicted for any reasons listed in the Rental Housing Act except the three identified in Section 208. D.C. Code § 42-3402.08(a) (2001). The parties agree that while she was alive those protections applied to the entire household. Appellant's Brief at Appellant's Brief p. 11. The parties disagree about the effect of her death on these statutory protections against eviction as they apply to Tenant Mendez.

A. The Requirement to Buy or Vacate under D.C. Code § 42-3505.01(j) is Triggered by Conversion to Condominium Not Death of Head of Household.

Where other tenants must buy or vacate during a condominium conversion pursuant to DC Code § 42-3505.01(j), housing providers are prohibited from sending protected tenants a notice to vacate on those grounds. Instead, the Council

listed the only three reasons why the housing provider could “evict or send notice to vacate” to a protected tenant after a successful conversion election: (1) violation of a lease obligation; (2) performance of an illegal act on the property; or (3) failure to pay rent. DC Code § 42-3402.08(a)(2001). None of those three reasons are present in this case. Missing from that all-inclusive list is a change to household composition affecting eligibility criteria. Also, missing from that list are the 120-Day Notice of Intent to Convert and the 30-Day Notice to Quit for failure to purchase after the death of the head of household.

The housing provider presumes that the buy or vacate option of DC Code § 42-3505.01(j) is available in perpetuity and can be invoked upon the death of the elderly, low-income head of household. JA0076. However, that reading is not supported by either statute. For example, D.C. Code § 42-3505.01(j) reads, “where the housing provider seeks...to convert the rental unit or housing accommodation to a condominium or cooperative,” implying that the conversion is imminent. Likewise, D.C. Code § 42-3402.06(c) references the “notice of *intention* to convert” (emphasis added). Further, the Notice of Intent to Convert ties the timing of the notice to the application for registration of conversion – which pre-dates the actual conversion. D.C. Code § 42-1904.08(b) (“notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved.”). In the present case, the

property was registered as a condominium effective May 10, 2006, and the 120-Day Notice of Intent to Convert was initially given to eligible tenants on May 23, 2006. Appellant’s Brief p. 8; *Redman v. Potomac Place Assoc. LLC*, 972 A.2d 316, 317 (D.C. 2009). The 120-Day Notice of Intent to Convert served on Defendant Mendez in 2019 is untimely for a conversion that happened in 2006, and there has been no second condominium conversion or re-conversion that would trigger a new notice of *intent* to convert.

B. A Joint and Several Tenancy Is Not Severed by a Condominium Conversion.

Teresa Aparicio and her son, Tenant Mendez were “jointly and severally, lessee” according to their 2004 lease agreement. JA0089. Under the terms of the lease, they had an identical, undivided interest in their rental unit. To evict one of them, the housing provider would necessarily have to evict the other. Nothing in the CSA or conversion process voided the lease or severed the co-tenancy into two separate leaseholds. Moreover, the 2004 Aparicio Mendez Lease Agreement even specifies that it only automatically terminates upon the death of both tenants: “Walter Mendez and Teresa Aparicio (jointly and severally, ‘Lessee’)” and “Lease shall automatically terminate upon Lessee’s death.” JA0089 Lease preamble; JA0090 Lease para. 6.

Accordingly, the tenancy has survived Ms. Aparicio’s passing, under the same terms and conditions as existed prior to her death. If Teresa Aparicio became a

protected tenant with a guaranteed life tenancy, her co-lessee is entitled to the same. If Tenant Mendez was protected against eviction due to condominium conversion before her death then he remains protected now.

C. Continued Household Eligibility Is Not Required by Statute

The protections of Section 208 only require the Rental Conversion and Sale Division (“CASD”), the regulatory body that oversees CSA compliance and enforcement, to make an initial determination of eligibility at the time of the conversion election. Appellant’s Brief p. 4. CASD does not take a household census at the time of the conversion and has no records of non-head of household members names, ages, or disability status. Furthermore, Section 208 has no provision requiring tenant recertification of eligibility after the conversion election.⁷

As housing provider explains, “once the tenant election for conversion occurs and is certified by the Mayor, the owner’s and the tenants’ expectations are fixed.” Pl. Mot. for Summ. J. p. 10. Housing provider acknowledges that the time of the conversion election is the critical moment for determining tenants’ eligibility and argues that tenants cannot gain a protected status that they did not possess at the time of the conversion election. Appellants Brief p. 13.

⁷ Compared to continuing recertification requirements for housing affordability programs like the Housing Choice Voucher Program, Low-income Housing Tax Program, Affordable Dwelling Units, etc.

The inverse is also true: tenants who qualify as protected tenants at the time of the conversion election cannot lose their protection based on a change in circumstance that occurs after the conversion election. For example, a tenant who is low-income elderly at the time of the election and becomes a protected tenant would remain protected from eviction due to conversion even if they subsequently inherited millions or won the Powerball jackpot. Likewise, under the current version of the statute, a tenant who has a disability at the time of the election and becomes a statutorily protected tenant would remain protected from eviction due to conversion even if they subsequently were healed of their disability.

Likewise, the death of an elderly co-leaseholder should not remove the protected tenant status from a household. The death of an elderly tenant is a logical outcome that could not be ignored or overlooked when the Council was crafting legislation for households with an elderly head of household. In other words, the omission of the head of household's death as a legally recognized basis for eviction was a deliberate choice and not a "failure to anticipate (or reluctance to list) every far-flung hypothetical that could arise under a legal regime". *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 427 (D.C. 2009).

In this case, at the time of the election, Teresa Aparicio and her son were protected tenants. The death of Tenant Mendez's mother – fourteen years after the conversion election and thirteen years after the condominium conversion – cannot

strip him of that protection and convert him from a lawful tenant to an unprotected tenant at sufferance.

Any other interpretation would create a new housing provider “right to audit” that is not mentioned in the statute or legislative history and would require CASD to create the necessary procedures and forms to both capture the entire household composition at the time of the conversion election and to monitor the household’s status indefinitely.

III. The Protection Against Eviction by Reason of Conversion Extended to Teresa Aparicio’s Son and Co-Leaseholder under the 2001 version of the CSA.

Housing Provider insists that the relevant version of CSA Section 208 was the one in effect at the time of the conversion election. Appellant’s Brief p. 11. Housing provider argues that the protection belongs solely to the low-income elderly head of household and is terminated by the death of the head of household. *Id.* This narrow interpretation is not required by the plain language of the text and is in direct opposition to the statute’s stated purpose and findings.

A. The Conversion and Sale Act Should Be Interpreted Liberally Like the Rental Housing Act.

This court discussed the proper interpretation of the Rental Housing Act’s eviction protections in *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165 (1985). In *Valentine*, the court held that even though the new owner of the

property never accepted the tenant’s rent, the owner was still a landlord within the meaning of the act and could only evict the tenant for reasons specified in the Rental Housing Act. *Id.* at 1170. As this court explained in that case, the Rental Housing Act “evinces an intent to protect from evictions persons who *have been renting* apartments and who continue to pay the rent.” (emphasis in original) *Id.* The court explained in the context of the Rental Housing Act “terms like ‘landlord,’ ‘tenant,’ and ‘rental unit’ are not to be understood solely according to the technical precepts of real property law,” stating “[t]hese definitions cannot be read in isolation from the rest of the statute.” *Id.* at 1169-70. The court explained “the eviction restrictions of [the Rental Housing Act] are only part of a comprehensive legislative scheme to protect the rights of tenants and therefore *must be construed liberally.*” (emphasis added) *Id.* at 1168.

Valentine references a previous version of the Rental Housing Act, which has only expanded over time. The findings and purpose of the current version of the RHA mirror those of the CSA. Both statutes include in the “Findings” that there is a “housing crisis in the District of Columbia.” D.C. Code § 42-3501.01(9); D.C. Code § 42-3401.01(a)(1) (2001); and D.C. Code § 42-3401.01(a)(1). Likewise, the shared purposes of both statutes are the protection of affordable housing and prevention of the displacement of tenants. D.C. Code § 42-3501.02(4) and (5); D.C. Code § 42-3401.02(1)-(3) (2001); and D.C. Code § 42-3401.02(1)-(3). Given

the shared intent, the two statutes should be interpreted similarly. *See Valentine*, 490 A.2d at FN 5, (referring to the CSA, “[t]he purposes of this chapter favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent possible under the law.”).

In addition to *Valentine*, there is substantial precedent requiring the court consider the entirety of the Conversion and Sales Act when attempting to understand the true meaning of the specific language restricting evictions under CSA Section 208 and apply an interpretation that is in line with the Act’s stated purpose and intention. The U.S. Supreme Court recognizes that it is a “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *United States v. Deal*, 508 U.S. 129, 132 (1993) (superseded by statute). Likewise, this court explained that “[r]eading statutory terms out of context is not a favored method of statutory interpretation.... Instead, statutory interpretation is a holistic endeavor, and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter.” *Eaglin v. District of Columbia*, 123 A.3d 953, 956 (D.C. 2015) (internal quotations and citations omitted).

When read as “part of a comprehensive legislative scheme to protect the rights of tenants” and “toward the end of strengthening the legal rights of tenants...to the maximum extent possible under the law,”, it follows that CSA Section 208 should be read to encompass the low-income elderly head of household’s co-tenants like Tenant Mendez. *Valentine*, 490 A.2d at 1168; FN5.

B. The Definitions and Operation of CSA Section 208 Are Based on the Entire Household Not Just the Individual Tenant.

At the time of the conversion election CSA Section 208 read in its entirety:

Elderly Tenancy.

(a) *Eviction Limited.* – Notwithstanding any other provision of this subchapter, the Condominium Act, or the Rental Housing Act, an owner of a rental unit converted under the provisions of this chapter shall not evict or send notice to vacate to an elderly tenant with an annual household income, as determined by the Mayor, of less than \$40,000 per year unless:

- (1) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;
- (2) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation; or
- (3) the tenant fails to pay rent.

(b) *Rent Level.* – Any owner of a converted unit shall not charge an elderly tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual rent increases on that basis authorized under the Rental Housing Act.

(c) *Definition.* – For the purposes of this subchapter, the term “elderly tenant” means a head of household who is 62 years of age or older. The

number of elderly tenants qualifying under this section is that number on the day the owner requests a tenant election for purposes of conversion.

D.C. Code § 42-3402.08 (2001).

Housing Provider's argument hinges on the premise that Section 208's use of singular descriptor "elderly tenant" in D.C. Code 42-3402.08(a)(2001). However, a closer reading of the statute finds that interpretation overly literal. The term "elderly tenant" is defined as "a head of household who is 62 years of age or older." If the language is read in the context of the larger CSA, it's clear that the prohibition on eviction operates on a household level like the rest of the statute.

For example, the definitions section of the Conversion and Sale Act plainly states that "the singular term 'tenant' includes the plural." D.C. Code § 42-3401.03(17) (2001). Likewise, for an elderly tenant to be considered low-income "the household combined annual income" had to be below the threshold, not just the income of the elderly tenant. D.C. Code § 42-3401.03(12) (2001); § 42-3402.08(a) (2001).

The most compelling illustration of the household unit of measurement is exemplified by the conversion election process. Tenant elections under the CSA require units containing more than one tenant to designate a head of household to be the "qualified voter" who will participate in the election on behalf of all co-

tenants. *See* D.C. Code § 42-3401.03(9) (2001)⁸; D.C. Code § 42-3401.03(10) (2001)⁹; D.C. Code § 42-3402.03(d) (2001)¹⁰. The CSA does not allow multiple tenants from the same unit to vote independently in the tenant election. CSA D.C. Code § 42-3402.03(d) (2001).

Under the CSA, qualified voters could show their support of or opposition to the conversion by voting. After the election results were finalized and the conversion approved, the tenants in units with a qualified voter head of household were provided the opportunity to purchase their unit. Co-tenants with a low-income elderly head of household were expressly disqualified from being “qualified voters.” D.C. Code § 42-3402.03(d) (2001). Furthermore, because the low-income elderly heads of household were guaranteed a life tenancy, co-tenants were not given the opportunity to purchase at the same time and on the same terms as households with qualified voter heads of household. According to housing provider’s reasoning, a co-tenant of a low-income elderly head of household would share these restrictions on participation but would not share the right to a lifetime

⁸ In part the definition of head of household reads, “the members of the household who maintain the affected rental unit as their principal place of residences...may designate one (1) of themselves as the head of household.”

⁹ “‘Household’ means all of the persons living in a rental unit.”

¹⁰ “Qualified Voter. A head of household residing in each rental until of the housing accommodation is qualified to vote unless no member of the household has resided in the accommodation for at least ninety (90) days before the election, or unless a member of the household is an employee of the owner, or is a head of household whose continued right to remain a tenant is required by this act...”

tenancy. As Judge Ross noted at the September 2, 2022 hearing, Tenant Mendez “has never had an opportunity to exercise his rights under the lease and the Conversion Act.” JA0072.

C. Housing Provider’s Narrow Interpretation of the Statute is “inhuman and inconsistent with the general statutory intent of our city council.”

Accepting housing provider’s pinched reading of Section 208 would lead to absurd results that are contrary to the express purpose of the statute. A court may refuse to adhere strictly to the plain wording of a statute in order “to effectuate the legislative purpose,” *Mulky v. United States*, 451 A.2d 855, 857 (D.C.1982), as determined by a reading of the legislative history or by an examination of the statute as a whole. *Floyd E. Davis Mortgage Corp. v. District of Columbia*, 455 A.2d 910, 911 (D.C.1983) (per curiam) (“a statute is to be construed in the context of the entire legislative scheme”); *Dyer v. D.C. Dep’t of Hous. and Cmty. Dev.*, 452 A.2d 968, 969–70 (D.C. 1982) (“[t]he use of legislative history as an aid in interpretation is proper when the literal words of the statute would bring about a result completely at variance with the purpose of the Act”); *District of Columbia v. Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968) (“the ‘plain meaning’ doctrine has always been subservient to a truly discernible legislative purpose however discerned, by equitable construction or recourse to legislative history”); *Peoples Drug Stores, Inc.*, 470 A.2d 751, 754 (D.C. 1983)(*en banc*). Indeed, the D.C. Court

of Appeals has admonished to “not make a fetish out of plain meaning nor ... make a fortress out of the dictionary.” *Corbin v. United States*, 120 A.3d 588, 597 (D.C. 2015) (internal quotation mark omitted).

Limiting the eviction protections to just the head of household, leaves vulnerable low-income tenants at extreme risk of eviction. For instance, under the strictest reading of the statute, two married low-income, elderly co-leaseholders would need to accurately predict which spouse would outlive the other to prevent the eviction of the surviving spouse upon the death of the head of household. At the September 2, 2022 hearing Judge Ross imagined even more devastating possibilities. JA0070-71. He asked if the D.C. Council really would have intended to allow the eviction of grieving widow with minor children if the elderly head of household dies the day after the conversion election. *Id.* As Judge Ross concluded, a rigid interpretation of the statute is “inhuman and inconsistent with the intent of our city council.” JA0078. Put another way, “[w]hen interpreting a statute, this court reads provisions of the law in the light of the statute as a whole so as to avoid construction that would result in an obvious injustice.” *District of Columbia v. Place*, 892 A.2d 1108, 1113 (D.C. 2006) (internal quotation marks and ellipses omitted). Therefore, these narrow interpretations must be discarded, and the Court should take a broader, holistic view of the CSA and Section 208 to apply the

protection against evictions to the whole household and not restrict it to just the head of household.

IV. Tenant Mendez is a Protected Tenant under the Current Version of CSA Section 208.

The court need not reach the retroactivity question if it agrees that the Section 208 protections against eviction apply to a co-leaseholder of a low-income, elderly head of household. If the court finds that only the head of household is protected from eviction due to conversion then the court should apply the law as it existed at the date of the April 17, 2019 120-Day Notice of Intent to Convert. By the time of the issuance of the 2019 notice, the CSA had expanded its purpose to, “prevent lower income elderly tenants and tenants with disabilities from being involuntarily displaced when their rental housing is converted.” D.C. Code § 42-3401.02(3) and Section 208 had been amended to add tenants with a disability to the group of tenants eligible for protection from eviction. The housing provider’s Notice concedes as much, “[i]f you registered as 62 years of age or older *and/or disabled* on or before November 22, 2005, the date of the election for conversion to a condominium...” JA0028 (emphasis added).

Housing provider’s retroactivity argument is a distraction. The only case housing provider relies on to support this position is the superficially similar case of *Redman v. Potomac Place Associates*, which supports a finding in favor of Tenant Mendez. Both *Redman* and the present case concern the condominium

conversion of 800 4th Street, SW, and both cases involve a tenant with a disability, but that is where the similarities end. A close reading of *Redman* makes the differences apparent. At the time of the conversion election, Ms. Redman was not a qualified voter, head of household and participated in the election because she was not a low-income elderly head of household. *Id.* at 319. On May 23, 2006, the housing provider served Ms. Redman with a 120-Day Notice of Intent to Convert that stated if she did not intend to purchase her unit then she must vacate by September 30, 2006. *Id.* at 317. Ms. Redman did not purchase her unit and did not vacate by the September 30, 2006 deadline. *Id.* The housing provider initiated eviction proceedings against Ms. Redman on October 5, 2006. *Id.* Before a decision was made in that case, the Council expanded the Conversion and Sale Act protections against evictions to include tenants with disabilities effective November 16, 2006. *Id.* Ms. Redman then raised her disability status as a defense in her eviction case. *Id.* The court found that Ms. Redman was no longer a lawful tenant at the time of the amendment's passage and that she had become the equivalent of a common law tenant at sufferance after the Notice of Intent to Convert deadline passed on September 30, 2006. *Id.* at 320. In *Redman*, the court reasoned that "the Council did not intend the amendment to apply when events had progressed as far as they had in Ms. Redman's case." *Id.* at 319. The specific facts

and the timeline in *Redman* are critical to the court's holding that Ms. Redman could be evicted.

In the present case, Tenant Mendez does not share the same posture as Ms. Redman and, under the reasoning in *Redman*, should be protected from eviction. He was not the head of household at the time of the conversion election and did not participate in the election. Instead as a co-lessee of a low-income elderly head of household, he was legally barred from participating in the conversion election. D.C. Code § 42-3502.03(d)(2001). Unlike Ms. Redman, Tenant Mendez was not served a 120-Day Notice of Intent to Convert on May 23, 2006 and remained a lawful tenant in the unit after the conversion to condominiums in 2006. Appellant's Brief p. 8 ("Since Ms. Aparicio was a protected low-income elderly tenant, Potomac Place did not and could not at the time issue a 120-Day Notice of Intent to Convert for the Apartment.").

The court in *Redman* stated that "the statute protects from eviction low-income disabled tenants who at the time the amendment came into effect were also lawful tenants." *Redman*, 972 A.2d at 319. Tenant Mendez was a lawful tenant at the time the 2006 amendment went into effect and received the 120-Day Notice to Convert on April 17, 2019, thirteen years after the 2006 expansion became effective. Under the reasoning in *Redman*, the 2006 CSA Section 208 definition of a protected tenant should be applied not the pre-expansion definition.

V. The Housing Provider's Argument Would Require Remand for Resolution of Material Facts.

The court cannot grant summary judgment because the facts regarding Tenant Mendez's disability are material to the disposition of the case and have not been determined in the lower court or stipulated to by the parties. Although housing provider indirectly refers to Tenant Mendez's disability, it remains unclear whether housing provider admits that Tenant Mendez is a low-income tenant with a disability within the current definition of the Conversion and Sale Act. Appellant's Brief p. 20-23.

If the court applies CSA Section 208 as it currently exists then Tenant Mendez is a protected tenant, and the housing provider could not serve Tenant Mendez with either a valid 120-Day Notice of Intent to Convert or a 30-Day Notice to Quit for failure to purchase the unit. Under this interpretation of the statute, a determination of whether defendant Mendez was a tenant with a disability at the time of the conversion election is required.

Furthermore, Tenant Mendez raised a retaliation defense in the original proceedings. Answer p. 2. Retaliation is a question of fact to be determined by the jury. *De Szunyogh v. William C. Smith Co.*, 604 A.2d 1, 4 (D.C. 1992). Tenant Mendez's retaliation defense was never addressed in the lower court proceedings because Judge Ross granted Tenant Mendez's Motion for Summary Judgment. Even if this court adopts housing providers erroneous reading of the Rental

Housing Act and the Conversion and Sale Act, the court must remand to the trial court for adjudication of the retaliation defense.

CONCLUSION

For all these reasons, this Court should affirm the D.C. Superior Court's March 9, 2023 Final Order dismissing the case in favor of Tenant Mendez.

Respectfully submitted,


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RULE 28(f) STATUTORY ADDENDUM

2001 Statutes

D.C. Code 42-3401.01 (2001):

(a) The Council of the District of Columbia finds that:

(1) There is a continuing housing crisis in the District of Columbia.

(2) There is a severe shortage of rental housing available to the citizens of the District of Columbia. The percentage of all rental housing units within the District of Columbia which are vacant, habitable, and available for occupancy is less than 5% which is generally considered an indication of a serious shortage of rental housing units. The vacancy rate is substantially lower among units which can be afforded by lower income tenants as evidenced by serious overcrowding in private units and waiting lists for public housing in excess of 5,000 households.

(3) Conversion of rental units to condominiums or cooperatives depletes the rental housing stock. Since 1977, more than 8,000 rental units in the District of Columbia have been converted to condominiums or cooperatives, more than 9,000 additional units have not yet been converted but have been declared eligible to do so and applications for 6,000 more units are pending. The 8,000 units which have been converted represent 4.5% of the District of Columbia's 1977 rental stock, and the 15,000 units subject to conversion represent an additional 8.3%. These trends have been thoroughly investigated and documented by two legislative study commissions: The D.C. Legislative Commission on Housing and the Emergency Commission on Condominium and Cooperative Conversion. The latter Commission reported policy proposals, many of which are contained in this chapter.

(4) Lower income tenants, particularly elderly tenants, are the most adversely affected by conversions since the after conversion costs are usually beyond their ability to pay, which results in forced displacement, serious overcrowding, disproportionately high housing costs, and the loss of additional affordable rental housing stock. The threat of conversion has caused widespread fear and uncertainty among many tenants, particularly lower income and elderly tenants.

(5) The District of Columbia housing assistance plan shows that 43,521 renter households and 14,215 homeowner households are in need of housing assistance in the District.

(6) Very few rental units are being constructed or vacant units being made available for rental occupancy. More units are being converted to other uses or demolished than are being made available for rent.

(7) Experience with conversions since passage of the Condominium Act of 1976 and the Condominium and Cooperative Stabilization Act of 1979 (D.C. Law 3-53) has demonstrated that the previous conversion controls have not been sufficiently effective in preserving rental housing, particularly for those who cannot afford homeownership. Based on that experience and the conclusions of the legislative study commissions, tenants who are most directly affected by the conversion should be provided with sufficient accurate information about the relative advantages and disadvantages to conversion of rental housing and should have a voice in the decision whether or not their rental housing should be converted. These controls are necessary to more effectively assure that housing will be preserved at a cost which can be afforded by current tenants who would otherwise be involuntarily displaced and forced into overcrowded or otherwise substandard housing conditions.

(8) These additional conversion controls are required to preserve the public peace, health, safety, and general welfare.

(b) In enacting the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since the passage of this chapter.

(2) The chapter, as amended by the Rental Conversion and Sale Act of 1980 Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Conversion and Sale Act Amendment Act of 1981 (D.C. Law 4-27), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter, with additional amendments to address minor problems which have been identified since its passage, should be extended for 5 more years.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(c) In enacting the Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since passage of this chapter.

(2) The chapter, as amended by the Rental Housing Act of 1985 (D.C. Law 6-10), the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983 (D.C. Law 5-38), the Rental Conversion and Sale Act Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter should be extended until September 6, 1995, and thereafter by subsection (d)(4) of this section.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(d) In enacting the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995, the Council of the District of Columbia finds that:

(1) The District of Columbia continues to face an ongoing housing crisis and will continue to face such a crisis for the foreseeable future. The well publicized and well documented District budget crisis has meant that the limited ability of the District government to meaningfully address the housing crisis has been further eroded.

(2) The Rental Housing Conversion and Sale Act of 1980, as amended (“this chapter”), has generally been successful in meeting its stated purposes and needs to be continued in effect in light of the ongoing housing and budget crises.

(3) A number of assumptions upon which this chapter was based have changed in light of the almost 15 years of experience since this chapter first went into effect. In continuing this chapter, the Council intends the amendments reflected in this extension to address these changes.

(4) This chapter should be continued into the future so long as the underlying housing crisis continues as declared annually by the Mayor pursuant to [§ 42-3405.12](#).

(5) This extension is required to preserve the public peace, health, safety, and general welfare.

D.C. 3401.02 (2001):

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;

(2) To preserve rental housing which can be afforded by lower income tenants in the District;

(3) To prevent lower income elderly tenants from being involuntarily displaced when their rental housing is converted;

(4) To provide incentives to owners, who convert their rental housing, to enable lower income non-elderly tenants to continue living in their current units at costs they can afford;

(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;

(6) To encourage the formation of tenant organizations;

(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and

(7) To authorize necessary actions consistent with the findings and purposes of this chapter.

D.C. Code 42-3401.03 (2001):

As used in this chapter, the term:

(1) “Condominium” has the same meaning as in [§ 42-1901.02\(4\)](#).

(2) “Condominium Act” means the Condominium Act of 1976 ([§ 42-1901.01 et seq.](#)).

(3) “Condominium conversion” is the issuance of notice of filing pursuant to [§ 42-1904.06\(a\)](#).

(4) “Conversion” shall include cooperative conversions and condominium conversions as defined in this chapter.

(5) “Cooperative” means a cooperative legally incorporated pursuant to the District of Columbia Cooperative Association Act ([§ 29-901 et seq.](#)) or a cooperative corporation incorporated in another jurisdiction for the primary purpose of owning and operating real property in which its members reside.

(6) “Cooperative Act” means the District of Columbia Cooperative Association Act ([§ 29-901 et seq.](#)).

(7) “Cooperative conversion” is the filing of articles of incorporation pursuant to the Cooperative Act, or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order.

(8) “District” means the District of Columbia government.

(9) “Head of household” means a tenant who maintains the affected rental unit as the tenant's principal place of residence, is a resident and domiciliary of the District of Columbia, and contributes more than one-half of the cost of maintaining the rental unit. If no member of a household contributes more than one-half of the cost of maintaining the rental unit, the members of the household who maintain the affected rental unit as their principal place of residence are residents and domiciliaries of the District of Columbia, and contribute to the cost of maintaining the rental unit, may designate one of themselves as the head of household. An

individual may be considered a head of household for the purposes of this chapter without regard to whether the individual would qualify as a head of household for the purpose of any other law.

(10) “Household” means all persons living in a rental unit.

(11) “Housing accommodation” or “accommodation” means a structure in the District of Columbia containing 1 or more rental units and the appurtenant land. The term does not include a hotel, motel, or other structure used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy if the owner or other person or entity entitled to receive rents is subject to the sales tax imposed by [§ 47-2001\(n\)\(1\)\(C\)](#) and the occupant of the rental unit has been in occupancy for less than 15 days.

(12) “Low-income” means a household with a combined annual income, in a manner to be determined by the Mayor, which may include federal income tax returns where applicable, totaling less than the following percentages of the lower income guidelines established pursuant to § 8 of the United States Housing Act of 1937 ([42 U.S.C. § 1437f](#)) for a family of 4 for the Washington Standard Metropolitan Statistical Area (SMSA), as the median is determined by the United States Department of Housing and Urban Development and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes by local or regional government agencies:

one-person household.....	50%
two-person household.....	60%
three-person household or a 1 or 2 person household containing a person who is 62 years of age or older or who is handicapped.....	90%
four-person household.....	100%
five-person household.....	110%
more than 5 person household.....	120%

(13) “Mayor” means the Mayor of the District of Columbia or the designated representative of the Mayor.

(14) “Owner” means an individual, corporation, association, joint venture, business entity and its respective agents, who hold title to the housing accommodation unit or cooperative share.

(15) “Rental Housing Act” means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; [§ 42-3501.01 et seq.](#)), or any successor rent control act.

(16) “Rental unit” or “unit” means only that part of a housing accommodation which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, suite of rooms, and single-family home or duplex, and the appurtenant land to such rental unit.

(17) “Tenant” means a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or benefits of a rental unit within a housing accommodation. The singular term “tenant” includes the plural.

(18) “Tenant organization” means an organization that represents at least a majority of the heads of household in the housing accommodation excluding those households in which no member has resided in the housing accommodation for at least 90 days and those households in which any member has been an employee of the owner during the preceding 120 days.

D.C. Code 42-3402.03(d) (2001):

Qualified voter. – A head of household residing in each rental unit of the housing accommodation is qualified to vote unless no member of the household has resided in the accommodation for at least 90 days before the election, or unless a member of the household is or has been an employee of the owner within 120 days prior to the date of application for eligibility, or unless he or she is a head of household whose continued right to remain a tenant is required by this chapter. The Mayor shall determine the eligibility of voters prior to the election and shall devise such forms and procedures as may be necessary to verify eligibility under this subsection.

D.C. Code 42-3402.08 (2001):

Elderly Tenancy.

(a) *Eviction Limited.* – Notwithstanding any other provision of this subchapter, the Condominium Act, or the Rental Housing Act, an owner of a rental unit converted under the provisions of this chapter shall not evict or send notice to vacate to an elderly tenant with an annual household income, as determined by the Mayor, of less than \$40,000 per year unless:

(1) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;

(2) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation; or

(3) the tenant fails to pay rent.

(b) *Rent Level.* – Any owner of a converted unit shall not charge an elderly tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual rent increases on that basis authorized under the Rental Housing Act.

(c) *Definition.* – For the purposes of this subchapter, the term “elderly tenant” means a head of household who is 62 years of age or older. The number of elderly tenants qualifying under this section is that number on the day the owner requests a tenant election for purposes of conversion.

Current Statutes

D.C. Code 42-1904.08(b):

In the case of a conversion condominium: (1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease;

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to

lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

D.C. Code 42-3402.06(c):

Notice to vacate. -- An owner shall not serve a notice to vacate until at least 90 days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase.

D.C. Code 42-3402.08:

(a) *Eviction limited.* --

(1) For the purposes of this subsection, the term “qualifying income” means a total annual household income, as determined by the Mayor, no greater than 95% of the area median income, as defined in [§ 42-2801\(1\)](#).

(2) Notwithstanding any other provision of this subchapter, Chapter 19 of this title, or Chapter 35 of this title, an owner of a rental unit in a housing accommodation converted under the provisions of this subchapter shall not evict or send notice to vacate to an elderly tenant or tenant with a disability if the combined annual household income for his or her unit, as determined by the Mayor, does not exceed the qualifying income, unless:

(A) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;

(B) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation;

(C) The tenant fails to pay rent; or

(D)(i) For the purposes of a single, scheduled tenant election under [§ 42-3402.03](#), the tenant waives, in writing, his or her right to remain a tenant.

(ii) The waiver shall state that it was made voluntarily, without coercion as set forth in [§ 42-3402.03\(h\)](#), and with full knowledge of the ramifications of a waiver of the right to remain a tenant.

(iii) The waiver under sub-subparagraph (i) of this subparagraph shall apply only to the single, scheduled tenant election for which it was given.

(b) *Rent level.* -- Any owner of a converted unit shall not charge an elderly tenant or tenant with a disability rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual increases on that basis authorized under the Rental Housing Act.

(c) *Qualification.* --

(1) A tenant shall qualify under this subchapter if, on the day a tenant election is held for the purposes of conversion, the tenant:

(A) Is entitled to the possession, occupancy, or the benefits of the tenant's rental unit; and

(B) Is an elderly tenant or a tenant with a disability.

(2) In making a determination that a tenant qualifies as a tenant with a disability under this subchapter, the Mayor:

(A) Shall limit the inquiry to the minimum information and documentation necessary to establish that the tenant meets the definition of a tenant with a disability and shall not inquire further into the nature or severity of the disability;

(B) Shall not require the tenant to provide a description of the disability when making an eligibility determination; provided, that the Mayor may require that a physician or other licensed healthcare professional verify that a tenant meets the definition of a tenant with a disability; and

(C) Shall not require the tenant to provide eligibility documentation in fewer than 30 days.

(3) The Mayor shall maintain records of the information compiled under this subsection and shall not disclose information about the disability of a tenant unless the disclosure is required by law.

(4) In requesting information under this subsection, the Mayor:

(A) Shall not include a qualified voter's name on any publicly available list of eligible voters;

(B) Shall inform tenants that their names will be absent from publicly available lists of eligible voters; and

(C) Shall not disclose information provided about a tenant's disability unless the disclosure is required by law.

(5) The Mayor may provide a list of eligible voters upon request and may make a list of eligible voters available at the site of the tenant election.

(6) The Mayor shall develop all forms and procedures as may be necessary to verify eligibility under this subsection.

D.C. Code 42-3501.01:

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
- (4) To protect the existing supply of rental housing from conversion to other uses; and
- (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

D.C. Code 42-3501.02:

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;

(4) To protect the existing supply of rental housing from conversion to other uses;
and

(5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

D.C. Code 42-3505.01(j):

In any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to [§ 42-3402.06\(c\)](#).

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Brief to be delivered electronically, through this Court's e-filing system on April 22, 2024 to all counsel registered for electronic filing with the District Court of Appeals and was further serve by first-class mail, postage prepaid, on Fernando Castillo, 800 4th Street, SW, Unit N720, Washington, D.C. 20024.

/s/ Ramona Quillet
Ramona Quillet