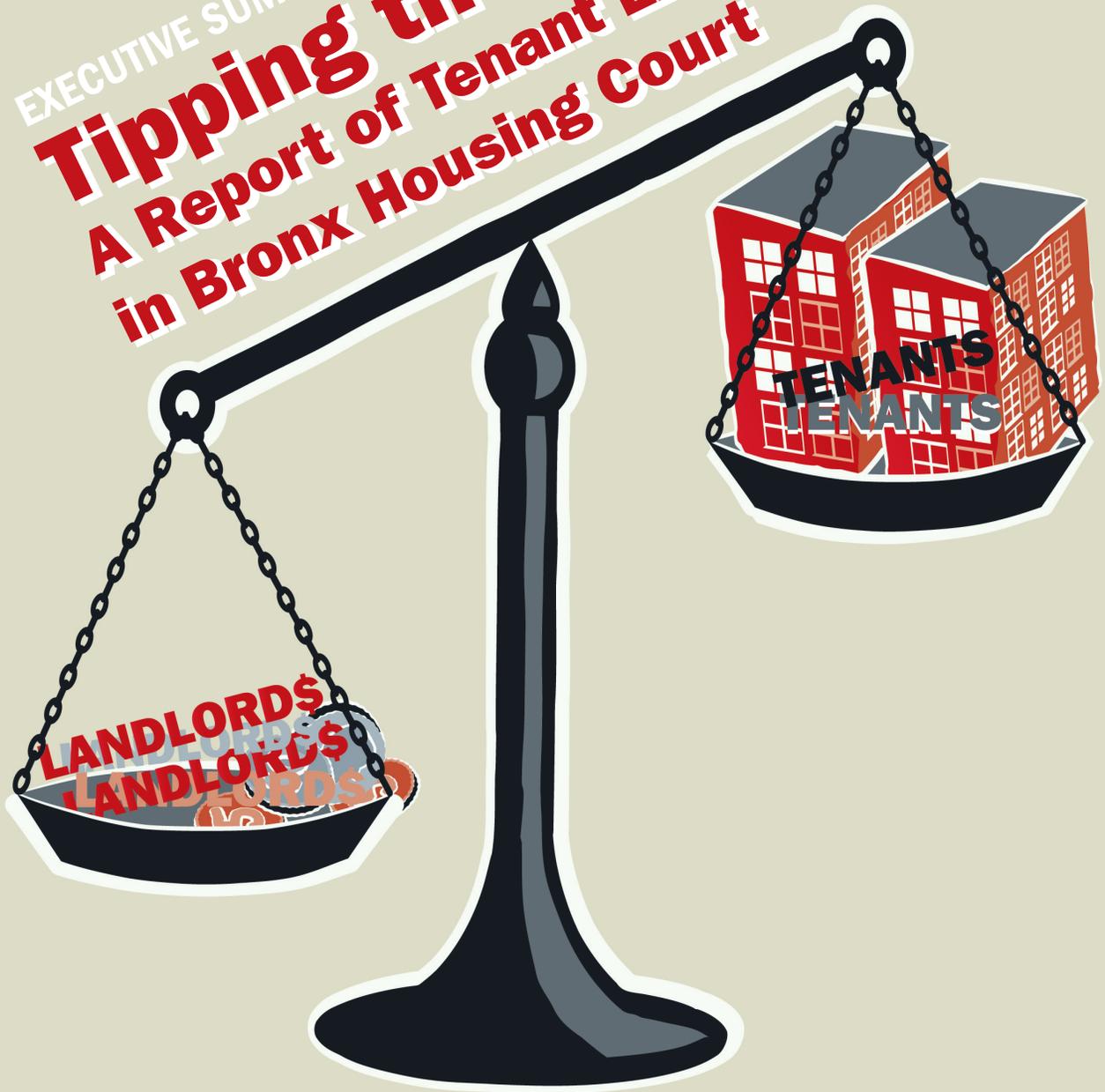


EXECUTIVE SUMMARY | March 2013

Tipping the Scales!

A Report of Tenant Experiences in Bronx Housing Court



A Report by New Settlement Apartments' Community Action for Safe Apartments (CASA)
and the Community Development Project (CDP) at the Urban Justice Center



EXECUTIVE SUMMARY

Every day, about 2,000 tenants go through Bronx Housing Court.¹ Most are low-income people of color who have limited resources and cannot afford a lawyer to help them navigate the confusing court system.² The operation of Housing Court has been described as an “eviction mill,” a system created “to work in a landlord’s favor.”³ As a result of this imbalanced system, thousands of tenants are evicted; in 2012, approximately 11,000 households were evicted in the Bronx.⁴ Children have to change schools, jobs are at risk, belongings are lost and communities are uprooted.

Members of New Settlement’s Community Action for Safe Apartments (CASA), many of whom have been in Housing Court, decided that this is a system they simply cannot accept and began to take action. To identify concrete issues tenants face in Housing Court and necessary policy changes, CASA launched a research project in partnership with the Community Development Project (CDP) at the Urban Justice Center, collecting 1,055 surveys, conducting 15 judge observations and holding three focus groups with 25 participants.

Research Findings

Finding 1: Housing Court is confusing and difficult to navigate for most tenants.

Many tenants are unsure where to go or what to do in court. This is particularly true the first time a tenant is in Housing Court, but usually persists throughout the court process.

“You go in there and first of all you don’t even know where you go or what, or who you’re gonna see or anything at all.” – Focus Group Participant #8

- » 1 in every 4 tenants did not know where in the court building they needed to go;
- » 32% of tenants did not know that they needed their calendar number (this is the number the court uses to track a case) before going into the courtroom;
- » 1 in every 4 tenants did not know that they needed to check in with the court clerk.

Finding 2: The vast majority of tenants in the Bronx do not have legal representation in Housing Court to help them navigate the system.

The confusing nature of court favors any litigant with a lawyer, which most landlords can afford and most tenants cannot.

“I didn’t have money or the resources to hire a lawyer.” – Focus Group Participant #10

- » 83% of tenants reported that they did not have legal representation (unrepresented tenants are referred to as pro se tenants).

Finding 3: Pro se (unrepresented) tenants are at a huge disadvantage in Housing Court.

In general, studies show that tenants with legal representation are more likely to have favorable stipulations, win at trial and are less likely to default.⁵ However, pro se tenants’ lack of legal knowledge and understanding about the court process is especially disadvantageous in unmonitored hallway negotiations with landlord attorneys.

“I think hallway deals are horrible because tenants don’t understand what they’re signing. They [the landlord attorneys] get them to sign it, and then once they sign it, they realize what they have signed.”
– Focus Group Participant #5

- » 1 in every 4 tenants reported that no one explained the stipulation to them (a stipulation is a legal, binding agreement with a landlord’s lawyer);
- » 3 in every 4 tenants did not help write the stipulation.

Finding 4: Judges have the ability to do more to even the playing field for tenants.

Judges play an integral role in a tenant’s experience of Housing Court. Judges are by far the most prominent players in Housing Court, and many tenants have a clear understanding of a judge’s role. However, most tenants don’t talk to a judge or court attorney until after they have signed a stipulation, when information about their rights as tenants comes too late.

“We went from the one[judge] that does everything to the one [judge] that did nothing. Every court is handled differently and the outcomes and results can be impacted by that. It’s hit-or-miss depending on the judge.” – Focus Group Participant #11

- » 41% of tenants never spoke to a judge about their case;
- » About half of tenants reported that courtroom staff, including judges, did NOT explain the rules or court procedures to them;
- » Over half of tenants were pressured by the landlord’s lawyer to make an agreement before speaking to a judge.

Selected Policy Recommendations

Our research and findings suggest that Housing Court does not currently operate as a place where tenants can access justice, but rather as a place where tenants are brought to court and evicted at a disturbing and unprecedented rate. The data show that current court protocols and policies are insufficient to level the playing field for these unrepresented tenants in Housing Court. The following are recommendations that can and should be implemented by the Office of Court Administration (OCA) and the New York State and City Legislatures to shift the balance of power away from landlords in order to create an impartial and fair court system.

1. Increase Resources for Tenant Representation. The Gideon ruling gave citizens a right to a court-appointed attorney in criminal cases, but this right does not exist in civil cases like those in Housing Court.⁶ As many studies show, legal representation has an overwhelmingly positive impact on tenants’ cases, lowering eviction rates from approximately 51% of unrepresented tenants to 22% of those with legal representation.⁷ Therefore, the New York State Legislature should:

- » **Pass legislation giving all tenants the right to a court-appointed attorney** if they cannot afford one themselves. These additional lawyers could be funded by fines paid by landlords or through the Department of Homeless Services Homelessness Prevention Program or even through “social impact bonds” from banks. Additionally, one analysis estimates that New York State could actually save \$67 million in shelter costs by providing an attorney to low-income tenants facing eviction.⁸ This prediction was confirmed by a South Bronx pilot program in which 1,300 families were given legal assistance.⁹ The program cost the City \$450,000 but saved more than \$700,000 in shelter costs.¹⁰ Despite start-up costs, this initiative would actually save public monies.

2. **Require court attorneys to be present at the beginning of negotiations between tenants and landlord attorneys.** The court attorney should meet with the tenant and landlord attorney to go over the issues and the framework of the discussion. Only after this initial meeting may the tenant and the landlord attorney begin to negotiate and draft a stipulation. Then both parties must return to complete and vet the stipulation with the court attorney. Dealings between court attorneys and unrepresented tenants should be on record.
3. **Require judges to fully allocute stipulations before they are signed** or so-ordered in a manner that meets the requirements of RPAPL 746 and Advisory Notice AN-1 (LT-10).¹¹ Judges should be required to ask standardized and comprehensive questions regarding the terms of the stipulation to make sure the tenant fully understands the stipulation and its consequences. In order to determine whether pro se litigants understand the terms and consequences in the stipulations, judges should ask the pro se litigant to explain the terms and conditions in their own words, rather than merely asking yes or no questions.
4. **Require all court personnel to wear clear and visible court IDs** so tenants can easily identify who works for the court and who does not. This will help clear up the confusion many tenants have about whether landlord attorneys are employed by the court.
5. **Improve the quality of language access for non-English speakers.**
 - » **Translate every court document and sign** (including the new materials suggested in this report) into Spanish and French.
6. **Improve information given to tenants about the court process and their rights.**
 - » **Create a short information sheet** for tenants on the judicial process and what to expect in Housing Court. This information sheet should be translated into Spanish and French. OCA and court clerks should distribute this information sheet to tenants at key points in the Housing Court process, specifically when tenants submit answers, when tenants are in line waiting to get into Housing Court, at the clerks' counters and at the information desk.
 - » **Improve content and number of information posters.** Current Housing Court posters don't have enough content, nor is the content easy to understand. Current information posters are not posted at easily visible and accessible locations, thus making it difficult for tenants to locate them. These posters should be on every floor and in places where tenants can easily find them as they walk through court.
 - » **Create and post a large sign** with a list of tenants' rights and resources at the court entrance and next to the directory on every floor.
7. **Increase information resources for tenants.**
 - » **Create a well-staffed and well-resourced center with computers.** Currently, there are a few computers in the hallway for tenants to use; however, they are antiquated machines in a crowded space. These computers should have internet access so tenants can access databases maintained by the Department of Buildings, the Department of Housing Preservation and Development, and the Department of Finance to do research about their landlord and their building. Tenants could use these computers to do their own research, but court personnel should be available to answer tenants' questions, provide referrals and help tenants find the information they need.

- » **Play an informational video on repeat in each courtroom.** Housing Court has already created a video that explains tenants' basic rights and court procedures, but it hasn't played in Housing Court in years. The video should be updated and alternate between spoken English with Spanish subtitles and spoken Spanish with English subtitles. The video should play when the courtroom opens, and the court clerk should announce that the video is beginning.
- » **Set up a help desk on the first floor to provide resources about court to tenants.** Housing Court Answers has long provided excellent advocacy services in Housing Court; however, the role of looking up index numbers, directing people where to go and providing basic information should not rest solely on the shoulders of a nonprofit. Housing Court should be providing this type of information to litigants. Court personnel should be trained to staff the information desk, not to give advice but to direct tenants where they need to go. Information desk staff should be, at a minimum, bilingual in Spanish and English.

8. Provide childcare. In the past, Bronx Housing Court provided free childcare, but this service was eliminated in 2011 due to budget cuts.¹² Free childcare services ensure that litigants are able to focus on their case, which is critical given the high-stakes nature of the Housing Court process. This funding needs to be restored immediately.

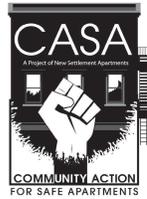
9. Pass legislation to create a Repair Enforcement Board. Currently, the Housing Maintenance Code is the only health and safety code that uses a judicial model, which makes it difficult to effectively enforce the Housing Code. Therefore, the City Council should transform this system into an administrative model, with power to assess fines given to the Repair Enforcement Board. This simple change will not only increase the quality of life for many tenants, but also decrease congestion in Housing Court and increase fine revenue for the City.

ENDNOTES

- ¹ Tracy, Ryan. "From the Bustle of Bronx Housing Court, Deals Emerge." *The Bronx Ink*. February 17, 2010. <http://bronxink.org/2010/02/17/4125-from-the-bustle-of-bronx-housing-court-deals-emerge/>
Also Unified Court System, New York. "Award Recipients Text. 2007." Accessed February 2013. <http://www.nycourts.gov/ip/qualityservice/qsaward/2007/12%20JD.shtml>
- ² Krenichyn, Kira and Nicole Schaefer-McDaniel, *Results From Three Surveys in New York City Housing Courts*. (Center for Human Environments, Graduate Center of the City University of New York. 2007) <http://www.policyarchive.org/handle/10207/bitstreams/8683.pdf> Note: the sample here focused on tenants that were being taken to court by their landlord and not all housing court cases (though most tenants are taken to court by their landlord).
- ³ Engler, Russell. "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed." 37 *Fordham Urb. L.J.* 37 (February, 2010): 77.
- ⁴ Housing Court Answers. "Evictions Marshalls Documents." Accessed February 2013. <http://www.cwtfhc.org/for-researchers/eviction-marshal>.
- ⁵ Carroll Seron et al., "The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Result of a Randomized Experiment" 35 *Law & Soc'y Rev.* 419 (2001). Rebecca L. Sandefur, *Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes*, (unpublished manuscript), (March 26, 2008). Engler, Russell. "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed." 37 *Fordham Urb. L.J.* 37 (February, 2010): 49.
- ⁶ Engler, Russell. "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed." 37 *Fordham Urb. L.J.* 37.(February, 2010).
- ⁷ Harvey Gee, "From Hallway Corridor to Homelessness: Tenants Lack Right to Counsel in New York." 17 *Geo. J. on Poverty L. & Pol'y* 87, 93 (Winter, 2010).
- ⁸ Community Training and Resource Center and City-Wide Task Force on Housing Court, Inc. *Housing Court, Evictions and Homelessness: The Costs and Benefits of Establishing a Right to Counsel*. (June 1993).
- ⁹ Seedco, Inc. Housing Help Program: Homelessness Prevention Pilot Final Report. (June 2010). <http://seedco.org/wp-content/uploads/2011/11/Housing-Help-Program.pdf>
- ¹⁰ Id.
- ¹¹ Fisher, Judge Fern. "Allocutions of Stipulations in Landlord and Tenant Cases." *The Civil Court of New York. AN-1 LT-10*. April 6, 2007. <http://www.nycourts.gov/courts/nyc/SSI/directives/AN/allocutions.pdf>
- ¹² NYS Unified Court System. "New York City Civil Court, Housing Part, Court Hours." Accessed February 2013. <http://www.nycourts.gov/courts/nyc/housing/courthours.shtml>

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