

I. Introduction and Background

Housing Court, as it is commonly referred to, was established in 1972 as a special “part” of the New York City Civil Court that was intended to provide tenants the ability to sue for repairs and claim their right to “safe, decent, and habitable housing.”¹ Within a short span of years of its creation, landlords soon weaponized Housing Court and turned it into a rent collection agency that churned out evictions. Today, it is widespread knowledge, from court officials to tenant advocates, that Housing Court has long been inadequately funded and resourced, has excelled as one of the primary mechanisms for landlords to wield their power over tenants without legal representation, and ultimately has served landlord interests over justice for tenants. Last year, the New York Times released a three-part expose that reaffirmed Housing Court’s status as an eviction machine that has incentivized and created a business model for landlords to exploit and displace tenants on trivial grounds and through filing frivolous cases.²

In 2012, Bronx residents launched the beginnings of a powerful grassroots campaign to reform Housing Courts across New York City in response to the disproportionate power landlords wielded in court and the growing eviction crisis. That same year 2,000 individuals, mostly low-income people of color, walked through the revolving doors of Bronx Housing Court every day and in total, almost 11,000 Bronx families were evicted and displaced from their homes.³

By March of 2013, CASA-New Settlement and the Community Development Project at the Urban Justice Center released a report, *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*, which launched the Justice in Housing Court Campaign. Community members strategized and identified two main campaign priorities. The first was that the Office of Court Administration (OCA) had to be held accountable to make Housing Court less hostile to tenants, in order to prevent evictions. As the New York State agency primarily responsible for overseeing all courts, OCA has tremendous power and responsibility over their own policies and practices. The second priority was to pass city-wide legislation that would give tenants in eviction cases the right to legal representation.

Shortly after the initial *Tipping the Scales* report, OCA executive level Judges met with CASA-New Settlement and other tenant advocates in November 2013. At the meeting, tenant leaders led the agenda and made demands to the Judges, which resulted in several concrete agreements from OCA. These new policies were to be implemented over the course of the following several months, and included: requiring all court staff to wear visible identification, incorporating bi-lingual slideshow presentations about tenants’ rights on a monitor in every courtroom, requiring judges to fully allocute stipulations, and requiring judges to give an overview of court processes when they first take the bench at 9:45am. To date, these policies have been implemented inconsistently as we have documented and witnessed through various court observations over the years. OCA’s role and responsibility in following commitments have left our members deeply unsatisfied.

The Bronx Housing Court Working Group, a coalition of tenant organizations, legal services organizations, and tenant advocates, with the support of multiple Bronx elected officials, formed in 2015 and has been actively pushing forward the policy recommendations outlined in *Tipping the Scales* at a local level. Since the new policy reforms were originally agreed to in November of 2013, OCA has been deliberately slow to implement and has made minimal progress on the rest of the policy recommendations (see *Tipping the Scales*) we have demanded at numerous meetings spanning from November 2015 - February 2019. Simply put, our demands have not changed and OCA has failed to implement the majority of our recommendations.

Due to the critical organizing efforts of a tenant-led movement spearheaded by the Right to Counsel NYC Coalition, in July 2017 New York City became the first city in the nation's history to pass legislation that would give low-income tenants the right to legal representation in eviction cases (Right to Counsel). Right to Counsel (RTC) is a tremendous opportunity for OCA to not only create a new system and structure in which all tenants, represented and unrepresented, are able to access justice but also to create a court system that is welcoming, doesn't punish and criminalize poverty, and is accessible to all regardless of age, disability or preferred language.

II. An Opportunity to Transform Housing Court

Chief Judge Janet DiFiore, appointed in 2016 by Governor Cuomo, confirmed Housing Court's problematic history from its inception as she delivered her yearly address on February 2018 and declared, "The courts are among the busiest, most overburdened courts in the nation."⁴ We believe that in response to Right to Counsel, the Chief Judge appointed a Special Commission on the Future of Housing Courts that released a report on February 2018 that published a host of OCA's own recommendations aimed at improving housing courts.⁵ Most notably absent from and not invited to the Special Commission were the actual tenant advocates and community members that led the campaign for Right to Counsel and have led the efforts to reform Housing Courts.

We certainly don't agree with many of the recommendations outlined in OCA's vision at improving housing court in their report. OCA has taken steps forward to address their own recommendations in the Special Commission report and have been able to implement several procedural changes, a second calendar call, and have begun to build cubicles intended at creating greater privacy for when tenants conference with their attorneys. However, these policies mostly address internal court processes and legal procedures that create a more hospitable environment for the attorneys and staff that work in the court, but fail to make Housing Courts a less hostile and confusing place for low-income tenants of color to navigate. The heart of our community solutions is to ease the painful and frightening experience tenants face in housing court when they are fighting to save their homes and not be displaced.

If OCA can spend millions in renovations and Housing Court location changes, then OCA can certainly invest to ensure they are in compliance with language access, provide increased tenant rights' materials, have visible court signs and directories, staff an information desk, provide childcare, and lift the ban on food. All of the latter recommendations are our communities' solutions to transform the current dehumanizing and chaotic experience that is Housing Court. We are still waiting for the people directly impacted by Housing Court to be heard.

III. Bronx Court Watch: Background and Findings

Right to Counsel (RTC) has been a powerful victory for low-income tenants in New York City, and the successful implementation of this groundbreaking program is critical both to ending evictions in NYC and to serve as a nationwide model. We knew that in creating a new civil right, landlords would adapt their problematic behavior and respond with new tactics. In the Fall of 2018, as a local initiative from the Right to Counsel NYC Coalition in coordination with Northwest Bronx Community and Clergy Coalition, CASA-New Settlement, and Housing Court Answers, we conducted a court watch program. The court watch took place over the series of weekly surveys and observations in Bronx Housing Court that focused on the two court rooms dedicated to Right to Counsel cases on the third floor.

This was necessary because in response to RTC, landlord attorneys were starting to arrive early in court and discourage tenants from accessing their right to an attorney. Before RTC, landlord attorneys had little incentive to arrive before court began. Post RTC, landlord attorneys had an increased incentive to corner tenants before court began and before they had a chance to talk to a RTC attorney with the goal being able to coerce the tenant to sign a stipulation, or agreement, that benefitted the landlord. The goal of these observations was to both monitor and document landlord and landlord attorney behavior and practices before court began at 9:45am, interrupt any potential damaging and egregious behavior displayed by landlord attorneys towards tenants, and ensure that tenants understand their rights and were able to be connected to a RTC attorney and a local grassroots tenant organizing group.

Data and Findings from the Bronx Court Watch Surveys and Observations

The collection of surveys and observations were conducted by dedicated community member volunteers, organizational staff, and other allies on a weekly basis from October - December 2018. Court Watch volunteers approached tenants in housing court and asked them several questions about their experiences and documented their observations about landlord attorney behavior. In total, we obtained a total of 115 surveys and made 34 observations outside the two court rooms dedicated to RTC and in the hallway on the 3rd floor at Bronx Housing Court.

Survey Results

- Nearly 90% of tenants surveyed live in one of the three RTC zip codes: 10457, 10467, and 10468
- Based on the answers from the 115 surveys and responses from tenants surveyed, we found the following:
 - 52% of tenants living in RTC eligible zip codes didn't know about RTC until they first arrived to court.
 - Most tenants surveyed learned about RTC through religious leader or court personnel.
 - Over 75% of tenants reported having issues with repairs in their buildings.
 - Over 30% of respondents reported feeling harassed.
 - Over 90% didn't belong to a tenant association.
 - over 80% didn't belong to a tenant organizing group but more than 60% of participants surveyed were interested in joining a tenant organizing group.

Observation Results

Observations took place mostly between 8:30-9:30am and were focused on documenting whether the landlord attorneys were arriving earlier than 9:30am, when the courtrooms open. Court watch volunteers also documented examples of landlord attorneys using inappropriate language (defined as racist, sexist, demeaning) or bullying. Court watch volunteers were also asked to write down any behavior observed of landlord attorneys in which they pressured tenants to settle without a tenant attorney.

From our 34 observations in the hallways on the third floor of Housing Court, we found that:

- Tenants are waiting in hallways at 8:30am.
- More than half (55%) of 34 documented observations reported that 1-5 landlords and/or their landlord attorneys were in hallways at 8:30am with the numbers increasing over time.
- The majority of tenant attorneys (76%) arrived at 9:00am or later creating a greater opportunity for a tenant to speak to a landlord attorney first rather than to a tenant attorney if the tenant arrives early.
- Observers also reported specific incidents in which they reported witnessing:
 - Tenants speaking to landlord attorneys without realizing who they represented and landlord attorneys not identifying themselves properly to the tenant.
 - A landlord attorney getting upset and walking away because the tenant refused to sign the stipulation.
 - Multiple observations reported witnessing the landlords' attorney displaying rude or dismissive behavior towards the tenant.

Conclusions from the Bronx Court Watch

From the surveys collected, more than half of tenants eligible for RTC had no awareness of their right to an attorney prior to their first court date. This means they didn't know about RTC when they were served the notice of petition or when they answered the notice in housing court. It means they spent weeks fearing eviction, not knowing their rights or options or that they would be defended in housing court. It also is an indicator that for every tenant who showed up to housing court to fight their case, countless chose not to, and never knew that if they had, they'd have a right to an attorney. The lack of public awareness about RTC sets tenants up for failure.

Tenants who self-evict, or voluntarily leave their homes, out of the fear of facing court alone, often have legitimate defenses, such as never being served notice properly by the landlord or live with lack of repairs, in bad conditions, or do not receive basic services. Some tenants who don't show up to court, may pay money they don't owe or settle outside of court, never availing themselves of their right to an attorney or their defenses. Tenants that do answer the petition and go to court on their date may choose to settle early, or sign a stipulation, with their landlord's attorney in order to hurry back home to take care of their children, not lose their employment, or take care of a loved one. This overall lack of awareness of RTC means it is not functioning as the powerful tool intended to prevent displacement that was the stated purpose of the tenant movement and NYC legislature.

IV. Our Recommendations and Vision

RTC Related Recommendations:

All of these problems are completely preventable. In addition to the city's responsibility to engage in a robust public awareness and outreach campaign outside the court, and to pass and support Intro 1529 which would support community groups to do outreach and education, OCA has an obligation and responsibility to do everything in their power to ensure that tenants know about RTC and can access their right to an attorney at every stage inside the court.

Below, we outline a series of policy recommendations based on our Bronx Court Watch that will enable RTC to be a successful tool and realize its full potential for tenants. **We demand that OCA take immediate and urgent action to adopt all of these policy recommendations.**

- OCA should issue a rule stating that until the judge takes the bench, no communication between opposing parties should take place where either party is unrepresented.
- OCA court staff should make announcements about RTC in the hallways.
- OCA should prioritize fair trials by ensuring all tenants have access to RTC attorney and unrepresented tenants have their cases heard by a judge. We demand that OCA

not use any court appointed mediators as outlined in their Special Commission report. This practice denies tenants true justice.

- OCA court staff should regularly monitor the conduct of landlord attorney behavior in the hallways and ensure they are following the court rules, including having court officers ensure that landlord attorneys aren't speaking with unrepresented tenants.
- The supervising judge should periodically walk and monitor the hallways to observe and enforce court rules, regularly from 8:30am-10am.
- OCA should require that tenant attorneys wear consistent badges to identify themselves as tenant attorneys.
- Court clerks and court officers should give tenants "tenant Weingarten"⁶ cards when they first check in.
- The court calendar should list who has RTC.
- Require a much stronger review process of stipulations by both court attorneys and judges to prevent unfair stipulation agreements.
 - For pro se litigants, judges should use the full discretion of their power to level the playing field.
 - For RTC eligible tenants, judges and court attorneys should take numerous steps to ensure and encourage the tenants consult with an RTC attorney.

General OCA Housing Court Recommendations:

For almost 6 long years, we have been advocating for broader reforms to Housing Court. These recommendations have been widely made available to OCA from the launch of our original report, *Tipping the Scales*, dating back to March 2013, and throughout our subsequent meetings with them over the years. To date, we have seen no real progress and are genuinely embittered at the lack of will to act. Reforming the courts cannot be left to RTC alone---the court must make changes that ensure that all tenants can navigate housing court with the humanity and dignity they deserve.

We demand OCA take immediate and urgent action to adopt all of the *Tipping the Scales* policy recommendations outlined below:

- Ensure expedited security line process for people with disabilities, the elderly, medical conditions both visible and not visible, and families with children.
- Provide free childcare.
- Lift the ban on food and provide an adequate eating space.
- Install public signs with a comprehensive list of tenants' rights and resources at the court entrance directory in multiple languages to comply with Language Access.
- Fully translate all tenant-related court documents and forms into community languages in compliance with state and city language access requirements.
- Ensure all current court language access practices are in compliance with the NY Governor's Executive Order.
- Fully implement standardized presentations and overview of the court process by judges in every courtroom

- Provide working bilingual slideshow presentations explaining tenant rights about the court process in every courtroom
- All court staff wear visible identification at all times

We are calling for the New York State Legislature, and or appropriate governing body, to pass legislation and/or amendments to ensure trials are heard fairly and judges are held accountable:

- Pass state legislation that mandates a set of requirements that Housing Court judges must comply with when allocating stipulations to pro se litigants
- Require OCA to create and formalize a transparent and effective complaint process

V. Conclusion

Significant progress has been made by the tenant movement over the last few years. We have seen Right to Counsel realized in 2017, the historic passage of the Housing Stability and Tenant Protection Act in June of this year, in addition to the passage of other significant city-level legislation aimed at addressing displacement, such as the Certificate of No Harassment pilot program, and construction harassment and Department of Buildings reform. In response to this legislative progress and exacerbating housing and homelessness crisis, we've also seen some increased investment by the City to prevent displacement. The numerous legislative reforms we've seen, speak to the successes of the tenant movement in bringing together communities across New York State and achieving change. Now, we are organizing to end the exploitation of a complicit justice system that empowers landlords to further displace low-income communities of color.

Yet, our members know all too well that changing legislation will not change the realities on the ground without a strong implementation process and a political will to enforce new laws by the state. While RTC is a revolutionary right for New York tenants facing eviction, it will be meaningless to families who cannot access it due to language needs, lack of education on the court system or their rights, or because the court can't meet their needs for childcare. If the state agency solely responsible for overseeing justice in Housing Courts does not have an immediate and proactive response to the impediments to RTC, they will find themselves directly contributing to the denial of justice to tenants, to the needless displacement of families and the destabilization of neighborhoods. OCA must rise to the challenge posed by the legislative progress led by the tenant movement and reform their grossly outdated Housing Court structure, policies that empower landlords, and processes to adapt and fit the new realities of today's housing and homelessness crisis. Through the relentless organizing work of our Coalition and community members, we have provided a clear path for OCA and Governor Cuomo to take responsibility and protect New York's most vibrant asset in its' people.

VI. Acknowledgements

We would like to thank the numerous Bronx tenant leaders and allies that helped collect the surveys, participated in the Bronx Court Watch, and attended various campaign meetings that led to the publication of this report. We would also like to thank the following organizations for their commitment and support to transform Housing Courts:

CASA-New Settlement

Flatbush Tenant Coalition

Housing Court Answers

Legal Services NYC

Northwest Bronx Community and Clergy Coalition

Right to Counsel NYC Coalition

VII. About the Authors

Justice in Housing Court Coalition

The Justice in Housing Court Coalition is comprised of tenant-based community organizations, legal services providers, and tenants advocates across the city dedicated to transforming housing court from an eviction machine into a system that grants all tenants the right to counsel, the right to access true justice inclusive of all regardless of ability, race, sex, age, gender identity, medical history, etc. and the right to live in a safe, dignified, and habitable home. Coordinating members include: CASA-New Settlement, Flatbush Tenant Coalition, and Northwest Bronx Community and Clergy Coalition.

VIII. Endnotes:

1. Galowitz, Paula, “The Housing Court’s Role in Maintaining Affordable Housing,” in *Housing and Community Development in New York City: Facing the Future*. State University of New York Press. (Micahel H Schill ed., 1999).
2. Barker, Kim et al., “Unsheltered: The Eviction Machine Churning Through New York City,” *The New York Times*. May 20, 2018.
<https://www.nytimes.com/interactive/2018/05/20/nyregion/affordable-housing-nyc.html>
3. New Settlement Apartments’ Community Action for Safe Apartments & The Community Development Project at the Urban Justice Center. *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*. (March, 2013).
https://newsettlement.org/wp-content/uploads/2018/01/CDP.WEB_.doc_Report_CASA-TippingScales-full_201303.pdf
4. Ramey, Corinne, “N.Y. Chief Judge Outlines Improvements to City’s Housing Courts,” *The Wall Street Journal*. February 6, 2018. <https://www.wsj.com/articles/n-y-chief-judge-outlines-improvements-to-citys-housing-courts-1517951781> <https://www.wsj.com/articles/n-y-chief-judge-outlines-improvements-to-citys-housing-courts-1517951781>
5. DiFiore, Janet & Lawrence K. Marks, *2018 Annual Report*. (New York State Unified Court Systems: 2018. <http://www.nycourts.gov/publications/housingreport2018.pdf>
6. Weingarten cards are derived from a landmark 1975 Supreme Court ruling that upheld union worker rights. Weingarten cards may be presented to a manager by a union worker that requests an investigative meeting may not take place until the union worker is accompanied by their proper union representative. A tenant’s weingarten card would inform tenants that they may have the right to an attorney and that they don’t have to speak to a landlord attorney without first speaking to a tenant attorney. It’s also a card that tenants can give to landlord attorneys, demanding they stop speaking to them without their lawyer present.