

Provision of Counsel for Indigent Tenants in New York City

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1 Issue Statement

The overwhelming majority of low-income tenants facing eviction in New York City are unable to afford or obtain legal representation in Housing Court. Described as “confusing even to lawyers” by the New York Court of Appeals [1], the complexities of housing laws and regulations and the expedited nature of summary court proceedings make navigating the Housing Court system near impossible for the layperson. Given that 97.6 percent of landlords are represented in Housing Court matters compared to a meager 11.9 percent of tenants [2], the notion of procedural fairness and due process of law is severely called into question. Against the backdrop of a shortage in affordable housing and increasing rates of eviction cases, homelessness, and spending on temporary shelters each year, we find it morally and financially imperative that the New York City Council take immediate action to address the inability of indigent tenants to obtain counsel in Housing Court proceedings.

2 Background

History of the Right to Counsel in New York. The movement for a right to counsel for indigent tenants facing eviction is not new to New York City. In 1989, Theodore Donaldson and other individual petitioners filed a class action lawsuit against the city and State of New York, seeking a declaration of a right to counsel for indigent tenants in Housing Court. However, the case was dismissed on procedural grounds, with the Civil Court ruling that “any remedy sought in this case which involves compensating counsel at public expense makes this proceeding non-justiciable” [3]. In other words, the matter of providing counsel for indigent tenants using taxpayer dollars was determined to not fall in the jurisdiction of the judiciary but rather that of the legislative branch of government. With this year marking the 25th anniversary of *Donaldson vs. State of New York*, there is no better time than now for the City Council to reexamine this issue - especially in light of new problems facing New York City.

Rising Rates of Homelessness & Costs to Taxpayers. As our city comes to grips with an affordable housing crisis, the number of evictions taking place in New York City each year has been rising over the course of the last decade. In 2006, city marshals evicted about 23,800 residential tenants. In 2012, this number rose to a staggering 28,700 evictions [4]. Displacing low-income tenants into a shrinking housing market with little to no affordable housing options often means pushing them into homelessness [5]. Research shows that about one in three homeless families enter the shelter system after an eviction experience [6]. With levels of homelessness and spending on temporary shelters reaching historic highs [7] for New

York City at over \$800 million in 2013, the city must address upstream determinants - such as the provision of counsel to low-income tenants - to reign in the number of homeless and reduce unnecessary expenditures made on the taxpayer's dime.

Social Inequality. Each year, about 160,000 new eviction cases are calendared in the New York City Housing Court [8]. Recent studies have shown that 67 percent of the potential evictees had annual incomes of less than \$25,000 and 61 percent lived with young children [8]. That these eviction figures comprise largely of low-income, minority populations with children severely calls into question the state of equity in New York City and the responsibility of elected government officials to protect the most vulnerable among us. Swift legislative action must be taken to keep the "tale of two cities" from perpetuating.

Procedural Injustice. In 1963, the landmark case *Gideon vs. Wainwright* established the right to counsel for indigent defendants in criminal cases on the grounds that fair trial was nigh impossible without legal representation [9]. However, this right was denied extension to civil court matters in subsequent cases on the grounds that the provision of counsel would not have made a difference [10]. This may not hold true for Housing Court matters. Given the increasing complexities of housing laws that regulate rent levels, housing quality, and government subsidies, extra prudence must be taken to guarantee that fundamental fairness and due process of law is observed. Unfortunately, several studies have demonstrated that the outcomes of many eviction proceedings are often determined by whether tenants have someone on their side who is literate in the law [11]. And when most landlords are represented by counsel in Housing Court while most tenants are forced to represent themselves due to financial barriers in obtaining counsel, the balancing scale tips towards unfairness and compromises the ability of the judiciary to deliver justice.

Increasing Risk of Wrongful Eviction Cases. As a tenant, there is much more riding on the line in an eviction case. The landlord views rental space as a business opportunity, a means of increasing his or her bottom line. The tenant views rental space as a home, a shelter from the extremes of the environment, and a foundation on which to plan life activities. For landlords, eviction often means the chance to raise rent to market levels. For low-income tenants, eviction often means homelessness. When incentives are aligned, this relationship can be mutually beneficial. However, given the slow economic recovery after the Great Recession, the stagnant housing supply, and the increasing demand for affordable housing in New York City, the incentive to evict tenants paying below market rates has become extremely high and, in some cases, has resulted in landlord retaliation [12]. Without legal representation to help the tenant navigate through the complex web of procedural requirements of Housing Court proceedings, the possibility of the tenant losing a wrongful eviction case rises significantly.

3 Options

Against this backdrop, four options are available to the New York City legislature to address this apparent justice gap:

1. Pass legislation to appropriate city funds to provide full representation for low-income tenants facing eviction in Housing Court proceedings.
2. Pass legislation to appropriate city funds to provide limited assistance for low-income tenants facing eviction in Housing Court proceedings.

3. Pass a resolution to enlist the support of civil society, legal aid organizations, and academic institutions to provide *pro bono* services to low-income tenants facing eviction in Housing Court proceedings.
4. Take no action.

4 Recommendation

On the justifications of effectiveness and equity, we fully endorse the option to pass legislation to appropriate city funds to provide full representation for indigent tenants facing eviction in Housing Court proceedings. Taking no action on this matter in light of rising eviction and homeless numbers and of prolonged instances of procedural and social injustices would be a heinous neglect of our duty as elected representatives of the people of New York City. Moreover, relying upon civil society to provide counsel for low-income evictees using only private donations is simply not an economically feasible option given the sheer number of eviction hearings each year. With housing-related issues comprising over a quarter of constituent concerns citywide [13], it is imperative that we - the New York City Council - act immediately.

5 Rationale

Effectiveness of Full Representation. Providing lawyers to indigent tenants facing eviction would help curtail wrongful evictions and prevent families from needlessly being thrown onto the streets. A recent randomized controlled study in Quincy, Massachusetts showed that “two-thirds of tenants who received full representation were able to stay in their homes, compared with one-third of those who lacked representation” [14]. In the same study, the case for full representation over limited assistance to tenants was demonstrated as tenants who received limited assistance showed no significant difference in outcomes compared to those who received no assistance [14]. These results are further substantiated by data from randomized experiments conducted in New York City’s Housing Court [15] and reports from the court-appointed Special Master Panel, which found that “legal services can prevent evictions at every stage in the eviction process” [16]. Furthermore, tenants with full representation who were ultimately evicted were able to leave on their own terms [14]. Full representation for low-income tenants in Housing Court can therefore be an effective measure in curbing the destabilizing consequences of eviction, including potential homelessness.

Cost-Effectiveness of Providing Counsel. The initial cost of providing counsel to indigent tenants would save money in the long-run by decreasing the amount of homelessness resulting from evictions, thereby reducing unnecessary expenditures on shelter programs. Cost-benefit analysis from studies have shown that the provision of counsel to indigent tenants facing eviction would ultimately yield a net savings for New York City [2]. While it is true that there are other ways to reduce homelessness, efforts made to prevent needless evictions would preserve rental subsidies and public housing spaces for those who truly needed it [17].

Appeal to Equity & Justice. The failure to provide counsel for indigent tenants facing eviction endangers equality of opportunity. For example, research has consistently shown that residential instability hinders school success [18]. Evicted families are often driven to less safe neighborhoods because landlords see them as a liability [5] Evictees experience more “material hardship and higher levels of depression than peers who avoided

eviction” [19]. Moreover, eviction has been identified as a risk factor for suicide [20]. Since evictions disproportionately burden low-income people of color, inaction will only serve to further marginalize this vulnerable population. If we do not address this disparity in representation, we should be held personally responsible for dividing this city in two.

Civil Society Stretched Thin. While it would be ideal if civil society could take up the mantle and provide *pro bono* services to indigent tenants facing evictions, the sheer number of eviction hearings each year makes that task near impossible without government support. For instance, non-profit organizations who already provide such services - such as the Legal Aid Society - are largely dependent on private donations and have expressed concerns over the instability of funding sources each year [21]. In the case of housing practices, such organizations are often forced to “triage” legal aid services to the elderly and disabled. Appropriating city funds for full representation for indigent tenants facing eviction and funneling them through civil society organizations that are already doing the groundwork will enable them to provide legal services at full capacity.

6 Concluding Remarks

We - the New York City Council - have the opportunity to bend the arc of history for tenant’s rights towards justice. Even though the legislature does not hold the power to extend the right to counsel for indigent tenants facing eviction, we do have the power to pass legislation that would spare thousands of families the grueling fate of homelessness and the instability of finding safe, affordable housing in a city where precious few exist.

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