



A Policy Response for the Twenty-First Century

TENANT RECORDS AND EVICTIONS

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EXECUTIVE SUMMARY



Adi Talwar, "Lining Up for Bronx Housing Court." *City Limits*.

This report will address residential tenant evictions in New York City, their prevalence, and the deep and long-term impact that an eviction can have on a single tenant and his or her family. This report will discuss current and upcoming social services, legal aid, and tenant support programming that is being utilized to address the eviction problem for low-income and housing insecure New Yorkers. Finally, this report will address the eviction problem through the lens of tenant screening reports and record keeping in Housing Court, which are unreliable, inaccurate, and place tenants at a disadvantage for securing future housing. Finally, this report will offer several policy solutions: hold Housing Court responsible for the depth and reliability of content of the daily court schedule prior to handing over their information to tenant screening agencies, institute a reasonable tracking system containing specific demographic information of Housing Court litigants, offer Portable Screening Reports as an alternative to Tenant Screening Agencies, provide screening reports to all prospective tenants during the rental application process, and expunge housing court record if the tenant won the case.

INTRODUCTION

The prevalence of evictions in New York City is a far-reaching yet under-researched public policy concern. More than 200,000 residential eviction petitions are filed annually in New York City. Most petitions are for non-payment of rent.¹ After having gone through the Housing Court process, the City Marshals' office completes about 25,000 evictions each year, which is about one for every five eviction warrants issued by Housing Court judges.²

The populations most impacted by evictions tend to reside in low-income communities, such as the South Bronx or Brownsville. In fact, over two-thirds of all residential evictions occur in the Bronx and Brooklyn. These communities are impacted by statutory vacancy allowances, tenants with housing vouchers being overcharged rent, and families with children being targeted for eviction. The overwhelming majority of tenants in Housing Court lack legal representation, making the nuances and complications of the court process that much more difficult to navigate on their own. In fact, according to a 2016 survey completed by the Human Resources Administration, over 75 percent of all households that sought anti-eviction legal services had children under the age of 18.³ However, through a combination of legislative and non-profit efforts, the eviction problem is being addressed in New York City. Legislation introduced by Mayor de Blasio will soon ensure that tenants facing eviction will have a right to free legal counsel and representation in court.

Protections for tenants needs to be taken one step further regarding Housing Court record keeping, Tenant Screening Bureaus, and access to tenant data. These records are not well maintained, tend to be inaccurate, and may provide irrelevant or misleading data to potential landlords regarding the eviction status of a prospective tenant. Tenants face discrimination, and therefore the cycle of housing insecurity is

¹"NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 20, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf.

² Chester Hartman and David Robinson, "Evictions, the Hidden Housing Problem," *Housing Policy Debate* 14, no. 4 (2003): 463

³"NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 35, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

perpetuated. There is a clear need for policy changes that address these outdated methods of tenant screening.

DEFINING EVICTION

The eviction process begins once a landlord decides to pursue the tenant's removal from the property and termination of the lease. Typically, the tenant has done something to violate the terms of the lease. Below is a list of typical reasons for eviction:

- Nonpayment of rent
- Lease violations
- Damaging the premises
- Using the unit for illegal purposes
- Denying the landlord reasonable access to the property
- Refusing to renew a lease⁴

The landlord or his or her attorney must prepare a petition requesting a Housing Court hearing, which must be served on the tenant and filed with the court. This is called a Petition for Removal.

Once the court date has been set, all parties are scheduled to attend their hearings. This is a two-part process. The first hearing addresses possible Resolution. The landlord, tenant, his or her legal representation, and either a court attorney or judge will discuss the possibility of settling the case. If the case is not resolved at this point, the second part of the hearing, Trial, will be scheduled. This may take place either later that day or in a date soon thereafter. If at any point in the process the landlord and tenant come to a resolution, all parties will sign a Stipulation of Settlement which lays out the terms of the agreement. To ensure all parties understand the terms, a judge will review the settlement, and an established agreement will be made.

⁴ Chester Hartman and David Robinson, "Evictions: The Hidden Housing Problem," *Housing Policy Debate* 14, no. 4 (2003): 463

The Trial Part may result in the decision to move forward with a tenant eviction. If this is the case, the landlord will receive a copy of a Warrant of Eviction. In New York City, City Marshals and Deputy Sheriffs are the only public officers authorized to request a Warrant of Eviction from the court, and it is up to the discretion of the landlord to decide which department they would like to utilize to carry out the eviction. An eviction or legal possession can be conducted only after a court has ruled on the landlord's petition for removal and issued a Warrant of Eviction.⁵

THE EVICTION PROBLEM

Evictions are an under-researched aspect of housing insecurity and homelessness, contributing to New York City's unsustainable housing economy. Evictions pose a threat for low-income or otherwise vulnerable tenants citywide. The following evidence indicates that evictions are a policy concern worth studying.

"Eviction Bonuses" Reward Turnover

One of the largest contributors to rent increases in rent stabilized apartments is the statutory vacancy allowance, otherwise known as the "eviction bonus," which allows for an automatic increase of about 20 percent when an apartment becomes vacant and turns over to a new tenant.⁶ Even in New York City, which has some of the strongest tenant protection laws in the country, tenants may be evicted at the end of their lease without cause if they reside in units that are not government subsidized or rent stabilized. Tenants are vulnerable to displacement from the pressures of the market, as landlords may choose to rent their apartments to higher-paying tenants when the lease is up or when the current tenants can be removed. Eviction bonuses provide a financial incentive to landlords, motivating them to evict and overturn tenants in the interest of profit.

⁵ "NYC Marshals," NYC Department of Investigation, accessed April 1, 2017, <http://www1.nyc.gov/site/doi/offices/marshals-and-evictions-faq.page#q2>

⁶ Tom Waters and Victor Bach, "Making the Rent: Tenant Conditions in New York City's Changing Neighborhoods," *Community Service Society*, (2016): 2

Unfair “Fair Market Rate” Rentals

The Fair Market Rate is the most a landlord is legally allowed to charge tenants in possession of a federal housing voucher. FMR is calculated at the municipal level, which includes high poverty areas, such as the South Bronx, and high income areas, such as SoHo. Therefore, landlords in specifically low-income communities can set rental rates for voucher holders at a higher level than the market rate for that neighborhood. Overcharging voucher holders costs taxpayers millions of dollars each year.

In his Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*, Matthew Desmond uncovers the profitable position that landlords hold by owning property in areas with depressed property values, where both mortgage payments and standards for maintenance are lower than average. As one Milwaukee landlord stated regarding profit potential, “The ‘hood is good. There’s a lot of money there.”⁷

The Bronx has the highest concentration of subsidized housing of all five boroughs. The neighborhoods surrounding Housing Court, including Highbridge, Melrose, Mott Haven and Morrisania, have the highest concentration of rent-stabilized housing in the city.⁸ Furthermore, one-third of all evictions take place in the Bronx. The remaining one-third take place in Brooklyn (Kings County), and the rest is split between Manhattan (New York County) and Queens, with only 2 percent in Staten Island (Richmond County). This is detailed in Table 1.⁹

The share of Housing Court petitions within the Bronx has increased nearly 6 percent since 2011.¹⁰ By contrast, petitions in the other four boroughs have decreased. This indicates a continued and growing juxtaposition between the affordability of a borough and the average income of borough residents. The Bronx is the most affordable of any

⁷ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Crown Publishers, 2016), 152

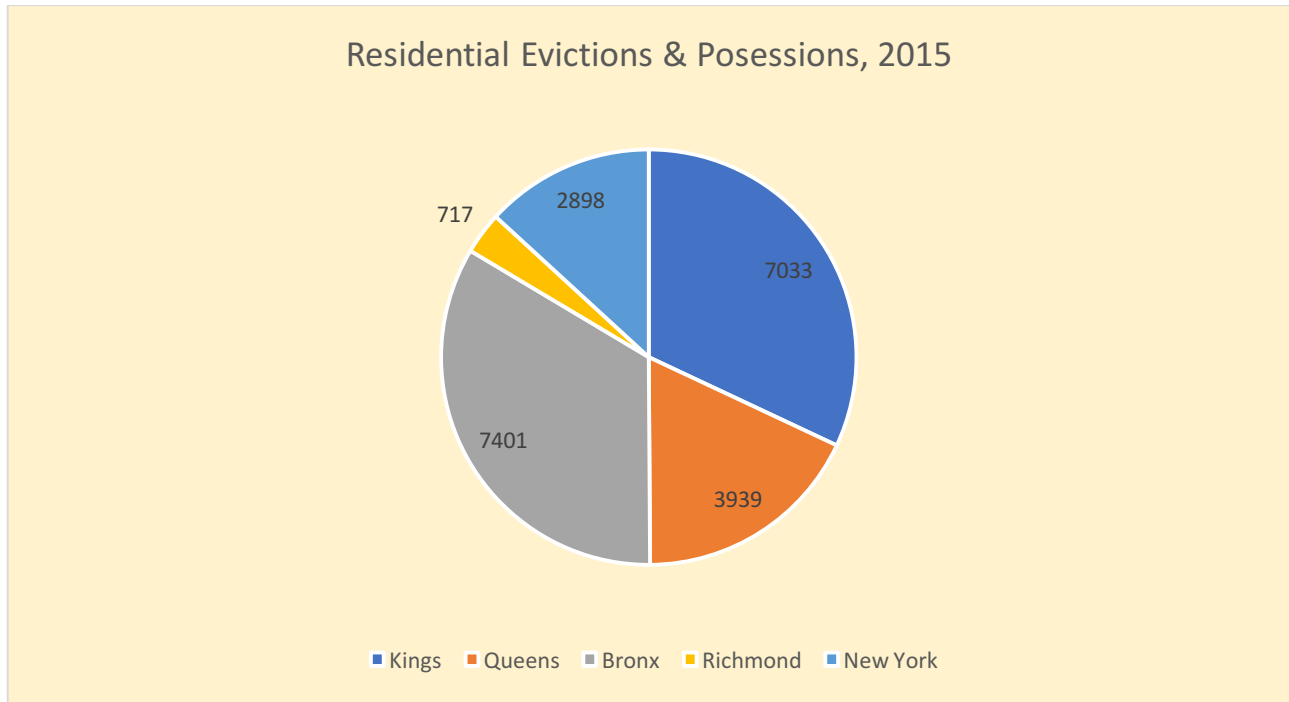
⁸ Kate Pastor, “Housing Court Sees Rising Pressure in Most Affordable Borough,” *City Limits*, February 4, 2015, <http://citylimits.org/2015/02/02/court-sees-rising-pressure-in-most-affordable-borough>

⁹ “NYC Office of Civil Justice Annual Report 2016,” *Human Resources Administration*, (2016): 21, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

¹⁰ “NYC Office of Civil Justice Annual Report 2016,” *Human Resources Administration*, (2016): 21, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

borough in terms of the actual cost of rent, but is least affordable in terms of what the average resident can afford to pay. Evictions play a quiet and deceptive role in the fight for access to affordable housing. Tenants may acquire said housing but find that due to financial pressures, combined with unforgiving landlords, may be unable to maintain this housing.

Table 1



Source: NYC Office of Civil Justice Annual Report 2016," Human Resources Administration

Negative Family Impact

Visit one of New York City's five Housing Courts, and one will observe a stunning number of children attending court with their parents. These children are the innocent bystanders and potential victims of housing insecurity. In the Bronx, Housing Court offers day care services. This alone speaks to the impact that eviction has on children, in that such a sizeable number of tenants facing eviction require child care while in court. According to a 2016 survey completed by the Human Resources Administration, 75.6 percent of all households that sought anti-eviction legal services had children

under the age of 18.¹¹ Additionally, female heads of the household made up 66.2 percent of families facing eviction who did not have legal representation.¹² Instead of shielding them from eviction, children expose mothers (and fathers) to eviction. According to Matthew Desmond, in Milwaukee alone, the presence of kids triples your chances of receiving an eviction notice in Milwaukee, as kids can hurt the bottom line of the landlord.¹³ Families are an aggravating factor of eviction, not mitigating.¹⁴ Housing Court Answers Assistant Director Jessica Hurd indicated that single women with children make up the overwhelming majority of cases that are brought to court on a citywide level.¹⁵ According to the National Housing Institute, evictions that target families with children should be considered a violation of the Fair Housing Act since family status is a protected class.¹⁶

Increases in Homelessness & Housing Insecurity

According to a 2016 report from the National Alliance to End Homelessness, in 2014 there was a 7.1 percent increase in New York's homeless family population, with an increase of 4,168 people in 1,023 family households.¹⁷ As of January 2015, New York state was behind only two states, California and Washington, DC, in rates of homelessness.¹⁸ For New York City, a metropolis rich in social services and public resources, this number is alarming. In short, homeless rates for New York City families is too high and may be aggravated by the housing insecurity posed by evictions.

¹¹NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 35, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

¹²NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 41, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

¹³ Matthew Desmond, interview by Rafael Pi Roman, *Metro Focus*, PBS, May 26, 2016, <http://www.pbs.org/wnet/chasing-the-dream/stories/inside-eviction-epidemic/>

¹⁴ Matthew Desmond, "Eviction and the Reproduction of Urban Poverty," *American Journal of Sociology*, 118: no. 1 (2012): 110

¹⁵ Jessica Hurd, personal communication, March 15, 2017

¹⁶ Eva Wingren, "Does Screening for Eviction Violate the Fair Housing Act?" *Rooflines: The Shelterforce Blog*, April 29, 2016, <http://www.rooflines.org/4460/post/>

¹⁷ "The State of Homelessness in America 2016," *National Alliance to End Homelessness* (2016): 18

¹⁸ "The State of Homelessness in America 2016," *National Alliance to End Homelessness* (2016): 12-13

Evictions contribute to the rising numbers of those in the shelter system. In November 2016, nearly 16,000 families, consisting of more than 48,000 people, were sleeping in New York City homeless shelters each night.¹⁹ Table 2 highlights the breakdown by borough of families who entered the shelter system between 2012 and 2014, indicating that over two-thirds of all shelter entries happened within Brooklyn and the Bronx combined.²⁰

While necessary in emergency situations, the shelter system is particularly problematic for young children. Conditions tend to be poor and rooms small. Families may be relocated to a shelter outside their borough of origin, thus forcing children to attend new schools in unfamiliar neighborhoods. Childhood residential mobility is tied to higher rates of delinquency, poor academic achievement, sexual promiscuity, and substance abuse.²¹ The typical transitional housing model seeks to move families from the shelter to low-income housing in conjunction with engagement in services. However, there are flaws within this model. A 2010 study by the Urban Institute found that among 53 transitional housing programs sampled, an average of 23 percent of families were unable to successfully transition from the shelter to housing through this model.²² “Success” was tracked in terms of getting permanent housing, securing a job, or both.

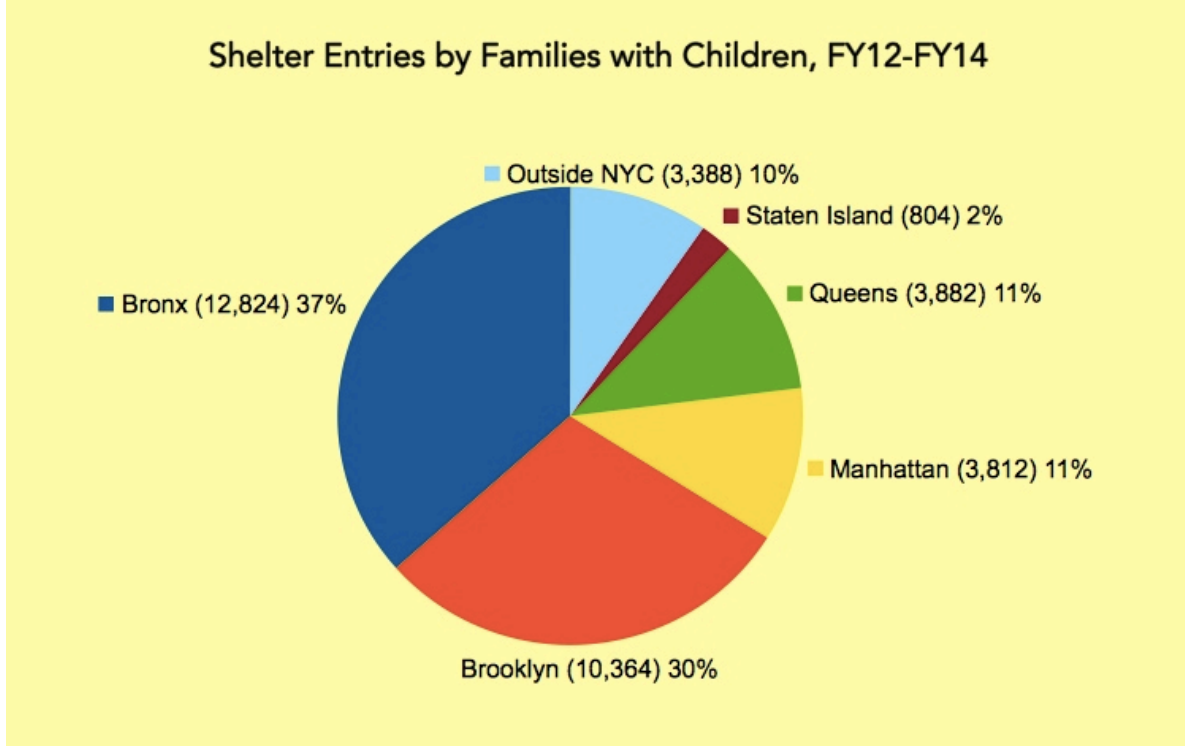
¹⁹ Giselle Routhier, “Briefing Paper: Family Homelessness in NYC,” *Coalition for the Homeless*, January 2017, http://www.coalitionforthehomeless.org/wp-content/uploads/2017/01/Family-Homelessness-1-2017_FINAL.pdf

²⁰ Kate Pastor, “As Housing Court Strains, Debate in Bronx Over How to Ease Crisis,” *City Limits*, February 2, 2015, <http://citylimits.org/2015/02/02/bronx-lures-developers-fills-homeless-shelters/>

²¹ Maxia Dong, Robert Anda, Vincent Felitti, David Williamson, Shanta Dube, David Brown, and Wayne Giles, “Childhood Residential Mobility and Multiple Health Risks during Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences,” *Archives of Pediatrics and Adolescent Medicine*, 159, (2005): 1104.

²² Mary Cunningham, Sarah Gillespie, and Jacqueline Anderson, “Rapid Re-housing: What the Research Says,” *Urban Institute*, (2015): 18

Table 2



Source: Kate Pastor, "Housing Court Sees Rising Pressure in Most Affordable Borough," *City Limits*, <http://citylimits.org/2015/02/02/bronx-lures-developers-fills-homeless-shelters/>

Impacts Employment

A Housing Court petition and impending eviction can impact current or future employment opportunities for the tenant. The simple act of attending the hearing may require time off, something that may be difficult to obtain for the tenants. For employees working an hourly wage, the loss of several hours' worth of labor can be detrimental to the ability to cover basic expenses. Disruption in housing stability may result in termination of employment. Furthermore, eviction records remain on one's record, and can be accessible for future employers. This may impact future employment opportunities.

Disrupts Community Safety Networks

Beyond the raw data, the prevalence of evictions and lack of protections for low income tenants is a worthwhile pursuit for researchers, policy makers and activist groups because preventing evictions is beneficial for the entire community. Housing stability allows neighbors to create community and experience continuity in their

neighborhood and square block. In her book *The Death and Life of Great American Cities*, Jane Jacobs spoke of the concern of “perpetual slums.” Jacobs asserted that slums were created due to socially harmful living conditions such as high-rise structures and superblocks. She argued that this resulted in a lack of social cohesion, community-building, and a social safety network amongst residents. There is inherent value not just in housing but in the creation of community, and the security of a safety net outside of law enforcement.²³ Conversely, increased residential mobility is associated with various negative outcomes, including higher rates of adolescent violence, poor school performance, health risks, psychological costs, and the loss of neighborhood ties.²⁴ If residential mobility brings about such outcomes, then determining why poor families are forced to move as often as they do is crucial to our understanding of the root causes of social disadvantage and to the development of effective policy initiatives.”²⁵

THE EVICTION RESPONSE

The city has introduced legislation and programming to address the eviction problem. These myriad eviction prevention services are available to tenants for whom eviction is imminent.

Non-Profit and Advocacy Groups

The non-profit advocacy group Coalition for the Homeless offers an Eviction Prevention Program, claiming to save 800 families from homelessness each year.²⁶ This program is offered only for tenants who are in court, have a signed court stipulation, and have future ability to pay ongoing rent.

²³ Jane Jacobs, *The Death and Life of Great American Cities*, (New York: Knopf Doubleday Publishing Group, 1961): 279.

²⁴ Maxia Dong, Robert Anda, Vincent Felitti, David Williamson, Shanta Dube, David Brown, and Wayne Giles, “Childhood Residential Mobility and Multiple Health Risks during Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences,” *Archives of Pediatrics and Adolescent Medicine*, 159, (2005): 1104.

²⁵ Matthew Desmond, “Eviction and the Reproduction of Urban Poverty,” *American Journal of Sociology* 118: no. 1 (2012): 89

²⁶ “Eviction Prevention,” *Coalition for the Homeless*, accessed March 1, 2017, <http://www.coalitionforthehomeless.org/our-programs/crisis-services/eviction-prevention/>

Legal Aid Society provides Eviction Prevention support, legal counsel, and basic educational tools, including free *Know Your Rights* videos and tutorials. According to their website, tenants who are facing displacement pressure:

should reach out for information and support to their local City Council Member for general information and constituent services support, the New York State Department of Housing and Community Renewal for general information about the rights of rent regulated tenants and to file a complaint, the New York City Department of Housing Preservation and Development for general information about City services for at-risk tenants, New York City 311 for general information about tenants' rights and to ask for an inspection for needed repairs, and legal Services, and Legal Aid Society of New York for personal and family needs such as evictions and threats of eviction, utility terminations, domestic violence, bankruptcy, divorce, child support and custody, and more.²⁷

Other support programs to combat the eviction problem include Seedco's pilot Housing Help Program, which provided homelessness support services between 2005 and 2008. During this time, the program served 1,388 families, or roughly 76 percent of all eligible families facing eviction in the high-risk Bronx zip code 10456.²⁸ Concerted efforts were placed on serving high-risk families, regardless of the merits of their housing court case. The program was particularly influential in that they served populations that would otherwise be denied social services at other agencies, including Legal Aid Society and Coalition for the Homeless. Unfortunately, due to lack of funding, this program ended in 2008.

According to their website, Housing Court Answers "has been the best place to go for information about Housing Court for people without lawyers for over thirty years," and they are the "major voice in reforming the Housing Court." Housing Court Answers fights to reform the tenant screening process (known as the "blacklist"), advocates for

²⁷ "Know Your Rights," *Legal Aid Society*, March 8, 2011, <http://www.legal-aid.org/en/las/kyr/beingevicted.aspx>

²⁸ "Housing Help Program: Homelessness Prevention Pilot Final Report," *Seedco Policy Center* (2010): 2

legal representation for tenants in Housing Court, and pushes for legislation requiring the courts to post basic tenant rights and responsibilities.²⁹ They take complaints from pro se litigants (people without lawyers) who feel that they were treated unfairly or disrespectfully in Housing Court.³⁰ Their booths, operating in each boroughs' court, are oftentimes the first stop that defendants make upon entering court as they help tenants navigate the complex world of Housing Court and the city's tangle of housing laws and regulations.

Government Agencies and Actors

Human Resources Administration's Office of Civil Justice provides Eviction Prevention Assistance through free legal counsel at Housing Court. Within Housing Court, Family Eviction Prevention Supplement (FEPS) was created in 2005 to prevent evictions by aiding families who have an active public assistance case, are in rental arrears, and have dependents 18 or under. The program directs Public Assistance to increase a family's shelter allowance so that they can more easily afford to pay their rent.³¹

Throughout his first term, Mayor de Blasio has played a role in eviction prevention and displacement programming. At the beginning of his term in 2014, he released a ten-year housing plan, "Housing New York," to the public. Through the construction of mixed-use and mixed-income development, housing preservation, and neighborhood revitalization, the stated goal was to create or preserve 200,000 units of affordable housing city-wide by 2025. To create the space necessary to reach this goal, over a dozen neighborhoods, including Hunters Point, Hamilton Heights, and Cypress Hills, have been identified as sites for major rezoning efforts.³² New construction must adhere to mandatory inclusionary zoning guidelines. Significant community investments, including an earmarked \$1 billion, will be dispersed throughout these communities to help facilitate new projects. East Harlem, along with Jerome Avenue in the Bronx, West Flushing in Queens, and East New York in Brooklyn, have been

²⁹ "About Housing Court Answers," *Housing Court Answers*, accessed March 1, 2017, <http://cwtfhc.org/about-us/>

³⁰ "About Housing Court and How to Complain," *Housing Court Answers*, accessed March 1, 2017, <http://cwtfhc.org/about-housing-court-and-how-to-complain/>

³¹ "Family Eviction Prevention Supplement," *Coalition for the Homeless*, accessed April 15, 2017, <http://www.coalitionforthehomeless.org/get-help/im-in-need-of-housing/family-eviction-prevention-supplement-feps/>

³² "Housing New York: A Five-Borough, Ten-Year Plan," *The City of New York, Mayor Bill de Blasio*, (2014): 30

prioritized for the first round of rezoning. Building on these goals, in February 2017, the Mayor introduced a plan to increase the city's shelter supply from 275 shelters to 365 shelters.³³

Additionally, Mayor de Blasio has introduced various anti-displacement programs that target low-income, gentrifying neighborhoods with higher eviction and homeless rates. Specialists go door-to-door, securing building repairs and bringing free legal help to tenants facing eviction, difficult landlords, or potential instability. According to the Office of the Mayor, evictions by City Marshals have decreased 24 percent since Mayor de Blasio took office, down from 28,849 in 2013 to 21,988 in 2015.³⁴

RIGHT TO COUNSEL LEGISLATION

Perhaps the most impactful anti-eviction response stems from the understanding that no matter the types of eviction support programming available, tenants will always face an unfair advantage so long as they lack legal representation in court.

An Unfair Advantage

A report by the Office of Civil Justice revealed patterns suggesting that tenants in low income neighborhoods appear in court without legal representation at approximately one half of the rate of tenants in middle to higher income neighborhoods.³⁵ According to Housing Court Answers' Jessica Hurd, about 50 percent of Manhattan tenants have legal representation in Housing Court. This number drops to about 24 percent for Bronx residents.³⁶ The Donaldson Report, a 1993 study funded by Community Service

³³Nikita Stewart, "Fight Looms as Bill de Blasio Plans to Seek 90 New Homeless Shelters," *The New York Times*, February 27, 2017, https://www.nytimes.com/2017/02/27/nyregion/new-york-mayor-de-blasio-homeless-shelters.html?_r=1

³⁴ "Protecting Tenants and Affordable Housing: Mayor de Blasio's Tenant Support Unit Helps 1,000 Tenants Fight Harassment, Secure Repairs," *NYC Office of the Mayor*, February 29, 2016, <http://www1.nyc.gov/office-of-the-mayor/news/208-16/protecting-tenants-affordable-housing-mayor-de-blasio-s-tenant-support-unit-helps-1-000#/0>

³⁵ NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 33, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

³⁶ Jessica Hurd, personal communication, March 15, 2017

Society and the Poverty and Race Research Action Council, found that 88 percent of tenants in Housing Court could not afford attorneys, while 97 percent of landlords were represented by counsel. The report also showed that 66 percent of tenants were eligible for free legal assistance but most were unable to get it due to lack of funding for legal providers. Strikingly, unrepresented tenants were more than four times as likely to have a warrant of eviction issued in their case compared to represented tenants.³⁷

Studies have shown that judges are likely to spend less time on a case in which the tenant lacks representation; in some cases, as little as five minutes. Defending oneself in front of a judge, landlord, and the landlord's attorney is likely to be a confusing and intimidating experience for a tenant. Yet the pressure to move on to the next scheduled case supersedes even a sympathetic judges' willingness to move slowly through a hearing to ensure the tenant understands his or her rights and options.

Additionally, tenant attorneys can ensure that stipulations regarding the amount of rental arrears (prior months of rent that are due) and current rents are based on realistic timeframes for payment and are aligned with the tenant's ability to pay, as opposed to signing unfair or biased stipulations that work against them in the long run. For example, money judgements can become part of the tenant's credit record, which can negatively affect the client's future ability to secure credit, employment or housing. Having a lawyer advise on the terms of the stipulation can ensure that tenants take such considerations into account before signing.³⁸

"Right to Counsel" Legislation

In the face of rising inequality and housing unaffordability, in February 2017, Mayor de Blasio introduced "Right to Counsel" legislation. This policy bookmarks an initial \$62 million in funding for "Expanded Legal Services" for 2017, including legal representation in Housing Court for tenants facing eviction.³⁹ Under the measure,

³⁷ "For Researchers: Eviction Numbers and Housing Court Filings," *Housing Court Answers*, accessed April 1, 2017, <http://cwtfhc.org/for-researchers/>

³⁸ NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 51, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

³⁹ Jessica Silver Greenberg, "For Tenants Facing Eviction, New York May Guarantee a Lawyer," *The New York Times*, September 26, 2016, https://www.nytimes.com/2016/09/27/nyregion/legal-aid-tenants-in-new-york-housing-court.html?_r=0

tenants must make below 200 percent of the federal poverty line to qualify, which is \$23,540 for a single person and \$48,500 for a family of four.⁴⁰

An initial roll out of the program has prioritized that funding for legal aid and support services in Housing Court go to the neighborhoods with the highest eviction rates, as of 2015. These eleven zip codes, mapped out in Table 3 on Pages 17 and 18, are located within the Bronx and Brooklyn.⁴¹

Ultimately, should the legislation pass in City Council in July 2017, there will be a five year roll out of the plan, which will further prioritize high-risk zip codes and communities.⁴² By the fifth year, city spending on eviction prevention and legal aid will increase to \$93 million. In doing so, New York City will become the first jurisdiction in the country to provide a right to counsel in housing cases, which is an enormous step forward for tenants.

⁴⁰ Jessica Silver Greenberg, "For Tenants Facing Eviction, New York May Guarantee a Lawyer," *The New York Times*, September 26, 2016, <https://www.nytimes.com/2016/09/27/nyregion/legal-aid-tenants-in-new-york-housing-court.html>

⁴¹ Fitzroy Christian, email message to author, April 19, 2017.

⁴² Jessica Hurd, personal communication, March 31, 2017

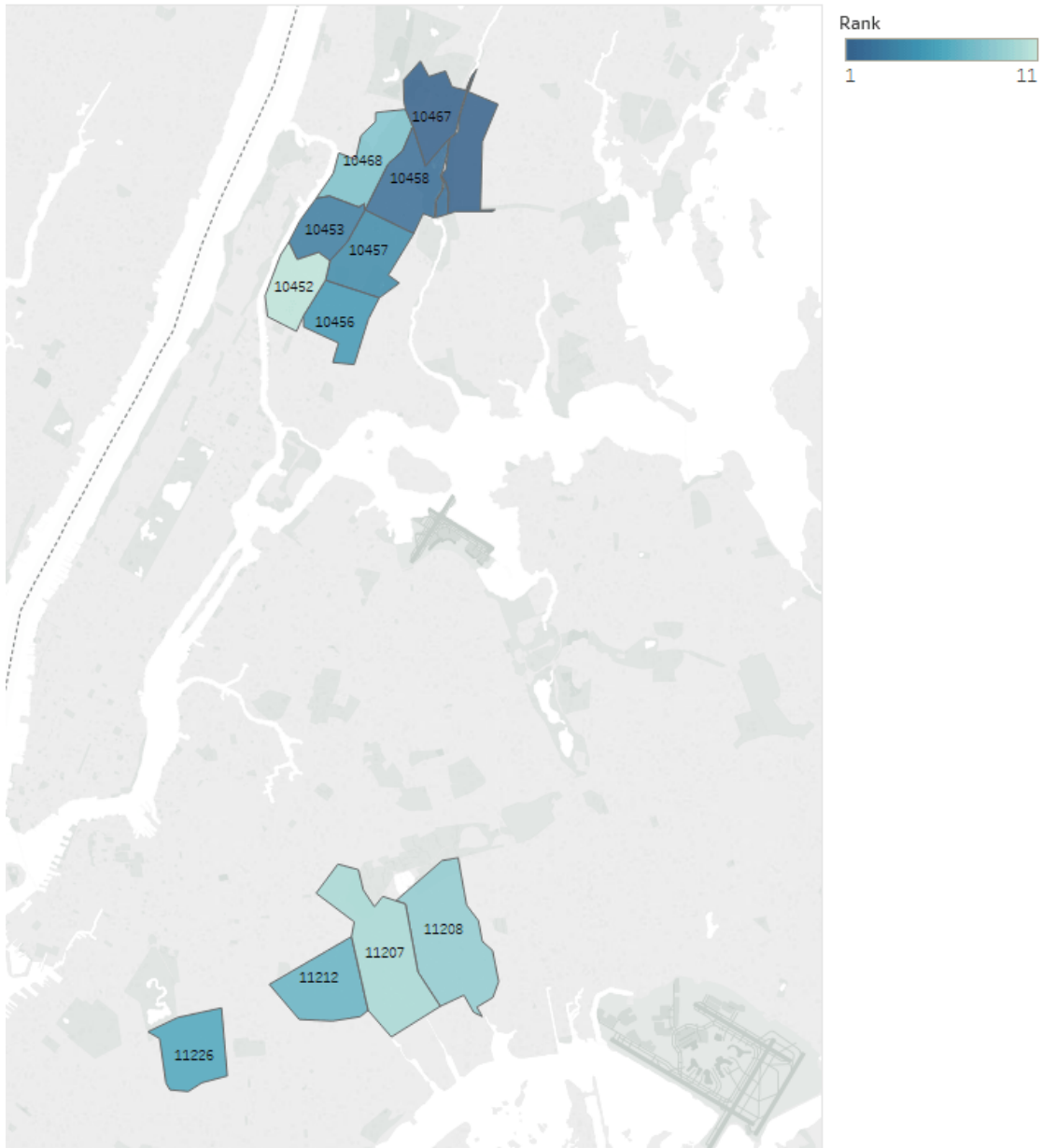
Table 3

Highest Eviction Rates in New York City (2015)		
1	10467	Bronx
2	10458	Bronx
3	10453	Bronx
4	10457	Bronx
5	10456	Bronx
6	11226	Brooklyn
7	11212	Brooklyn
8	10468	Bronx
9	11208	Brooklyn
10	11207	Brooklyn
11	10452	Bronx

Source: Fitzroy Christian, email message to author, April 19, 2017.

Table 3, cont. 1

Highest Eviction Rates in New York City, 2015



Impacts of Legal Representation

The long-term impact of this legislation is that it saves the city money and resources by addressing issues related to housing insecurity, homelessness, the shelter system, and the courts system. As opposed to operating as an eviction mill, the culture of the courts

is improved. If more tenants have legal representation and an understanding of their rights, civility and respect towards tenants is likely to increase. Essentially, lawyers would play a dual role, both as an advocate for their client and a monitor of the hearing process, ensuring that the court system is more responsive to tenant concerns.

Other potential positive outcomes for represented tenants include fewer defaults or judgements against tenants, more stipulations requiring landlords to take responsibility for repairs, and more stipulations requiring rent abatements, which is the provision stating that if the property is damaged, the landlord will allow the tenant to suspend rental payment until repairs are completed.⁴³

EVICTION TRENDS

These various eviction prevention and legal support services have helped create a recent trend of decreases in city wide evictions. Most residential evictions occur in the Bronx and Brooklyn, but both boroughs have seen notable declines in recent years. The number of eviction warrants issued in 2015 represents the lowest point in several years. From 2011 to 2013, warrants of eviction ticked up, reaching 132,734 in 2013. Yet in the two years since then, there has been a marked decline in warrants of eviction of nearly 16 percent.⁴⁴ The marshals complete about 25,000 evictions each year, about one for every five eviction warrants issued by housing court judges.⁴⁵ This indicates a discrepancy in the amount of eviction notices that are brought to housing court, and the amount of actual evictions each year, but one that works in the favor of the tenants. Between 1998 and 2015, evictions or possessions by the Marshal's Office decreased from 23,454 to 21,988, as indicated in Table 4.⁴⁶

⁴³NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 45, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

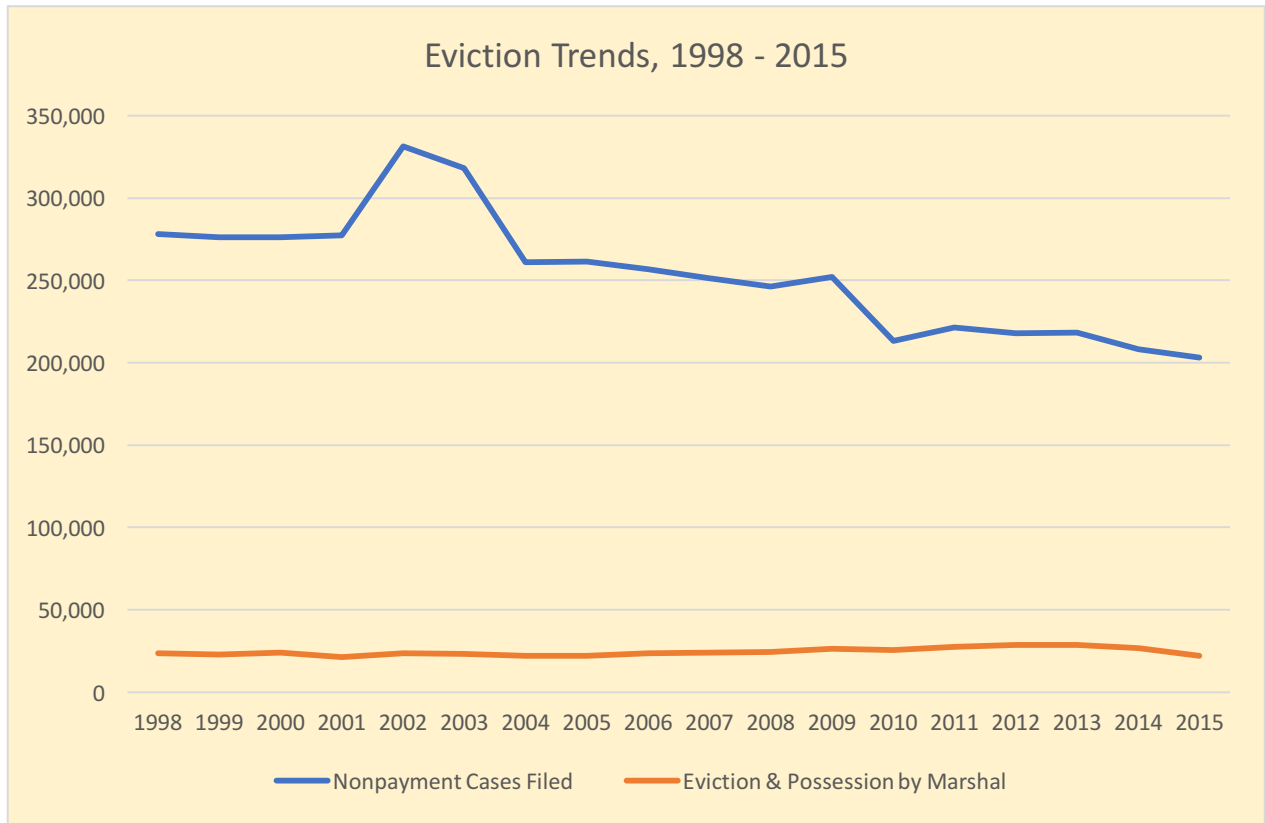
⁴⁴NYC Office of Civil Justice Annual Report 2016," *Human Resources Administration*, (2016): 24, accessed March 15, 2017, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

⁴⁵ Chester Hartman and David Robinson, "Evictions, the Hidden Housing Problem," *Housing Policy Debate* 14, no. 4 (2003): 463

⁴⁶ "Eviction Trends," *Housing Court Answers*, accessed April 1, 2017, <http://cwtfhc.org/wp-content/uploads/2009/06/EvictionTrends1998to20151.pdf>

The city of New York has made strides in lowering eviction rates, supporting homeless communities with increased social services, and addressing the city's growing class disparity.

Table 4



Source: "Eviction Trends," *Housing Court Answers*, <http://cwtfhc.org/wpcontent/uploads/2009/06/EvictionTrends1998to20151.pdf>

BACKGROUND CHECKS IN RENTAL HOUSING

The evidence above indicates that increased tenant support and legal services have aided in lowering eviction rates citywide. However, these programs only address the eviction problem after a landlord has served notices to their tenant. However, for tenants whose cases have already been calendared in court, there may already be a long-term negative impact, regardless of the outcome of the case. Tenant background checks are an increasingly standard practice amongst landlords. However, the lax maintenance, distribution, and oversight of court records puts tenants at risk. The role that tenant screening and background checks plays in the fight for tenant rights and against eviction needs to be addressed prior to when the eviction proceedings have been initiated.

How Records are Maintained

Housing Court records are maintained daily, with the records of all scheduled cases and the names of involved parties. The New York State Unified Court sells this data to Tenant Screening Bureaus (TSB). TSBs then sell the reports regarding individual prospective tenants to landlords who are looking to fill an apartment.⁴⁷ The report tells the landlord if a tenant has ever been sued in Housing Court, and it may also provide details about the case such as the type of case, the amount of rent demanded, and the outcome of the case. However, in the case of New York City Housing Court, in which thousands of eviction hearings are scheduled each day, the amount of detail provided may be limited. Jessica Hurd at Housing Court Answers asserted that the database is “updated daily with the feed of what happened in court, so if anyone has a record it will show,” yet the lack of specifics regarding the tenants or the case itself make the available information problematic at best.⁴⁸ Court records are public, so it is not difficult for anyone to detect an eviction history. However, according to the report “Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State,” “more detailed and trustworthy information about civil

⁴⁷ “Tenant Blacklists, Credit Reports and Debt Collection,” *Housing Court Answers*, accessed March 1, 2017, <http://cwtfhc.org/tenant-blacklists-credit-reports-and-debt-collection/>

⁴⁸ Jessica Hurd, personal communication, March 15, 2017

actions is comparatively difficult, expensive, and time-consuming to obtain.”⁴⁹ Typically, landlords skip the hassle and simply deny tenants outright if there is evidence of a court appearance on his or her record.

Why is this a problem?

Tenant Screening Databases and Housing Court records maintenance have modernized the tenant selection process. The prior model of tenant-screening tools that included written applications, interviews, reference phone calls or conversations with prior landlords seem antiquated in the digital age. Now, landlords have the power to choose their tenants much more selectively, allowing them to bypass potentially problematic renters who may be unable to pay rent, or may damage the property and cause concerns for the landlord. Despite these technological advances, there are still various concerns and social costs that are not adequately addressed under this system.⁵⁰

Unreliable Record Keeping

There are three main consumer credit agencies, Experian, TransUnion, and Equifax. Known as the “Big Three,” these agencies have proven to be unreliable, inaccurate, and to have provided factual errors on consumer reports. Oftentimes credit reports will list mistakenly mix up records for people with the same or similar names. Jessica Hurd claimed that “If two people have the same name, it may come up (on the wrong report); this issue comes up often.”⁵¹ According to Dunn and Grabchuck, a 2004 study found that across thirty U.S. states and 197 interviews, 79 percent of respondents’ reports contained some sort of error, which resulted in a wrongful denial of credit for one in four consumers.⁵² If credit reporting agencies are inclined to provide inaccurate

⁴⁹ Eric Dunn and Marina Grabchuk, “Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State,” *Seattle Journal for Social Justice*, 9, no. 1 (2010): 327

⁵⁰ Eric Dunn and Marina Grabchuk, “Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State,” *Seattle Journal for Social Justice*, 9, no. 1 (2010): 320

⁵¹ Jessica Hurd, personal communication, March 15, 2017

⁵² Eric Dunn & Marina Grabchuk, “Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State,” *Seattle Journal for Social Justice*, 9 no. 1 (2010): 327-8

data regarding criminal convictions, they are likely very commonly providing outdated or misleading data on tenants looking to secure decent housing.

Luckily, under the Fair Credit and Reporting Act (FCRA), tenant screening companies must provide tenants with a free copy every year or if they have been denied an apartment because of a report issued by that company.⁵³ Additionally, tenants can file a petition to the TSBs to have these wrong entries removed. Yet many tenants are unaware of this option or that their record may be factually in error.

Tenant Blacklists

The notorious “tenant blacklist” in New York City is compiled by tenant screening agencies, who collect and maintain an informal record of the names of tenants who have appeared in Housing Court. Management companies, landlords, and building owners will screen prospective tenants and refuse to rent to those who have been brought to Housing Court in the past, where they are subsequently “blacklisted.” The reason for the eviction case does not matter, and landlords are unlikely to follow up with prospective tenants to inquire as to the reason for their court appearance.⁵⁴ There is little legal recourse for a tenant denied housing in this way. This is especially concerning considering the potentially questionable data provided by TransUnion, Equifax or Experian is questionable.

Irrelevant Tenant Information

It is increasingly clear that information, when it is misleading, inaccurate or downright false, can be your enemy. Record keeping should be used as a tool to protect both tenants and landlords. However due to their inconsistency and lack of detailed information regarding the nature of the case, tenant records are being used to exploit low-income communities and families who face housing insecurity. The reports often have other information from public records: criminal background, bankruptcy history, sex offender status, and overall credit worthiness. Certainly, some of this information is

⁵³ “Tenant Blacklists, Credit Reports and Debt Collection,” *Housing Court Answers*, accessed March 1, 2017, <http://cwtfhc.org/tenant-blacklists-credit-reports-and-debt-collection/>

⁵⁴ “Tenant Blacklists, Credit Reports and Debt Collection,” *Housing Court Answers*, accessed March 1, 2017, <http://cwtfhc.org/tenant-blacklists-credit-reports-and-debt-collection/>

vital for a landlord to be informed of, but there is no clear line for what data is acceptable for a landlord to know and what data is considered irrelevant.

Discriminates Against Tenants Who Prevailed in Court

Usually Housing Court cases only appear if there was a judgment issued in the case. However, it will also show cases where the landlord was taken to court by the tenant, or if a settlement was reached between all parties. Even in cases in which the tenant won their case, it will show up on the report with limited details, leaving the potential landlord to assume the worst regarding the potential tenant.

Jessica Hurd claims that the current database system “doesn’t fully and accurately reflect the case” as it lacks specifics and does not provide a true reflection of the nature of the court case.⁵⁵ For example, if a tenant chose to not pay their rent because they were trying to force their landlord to make repairs, the nuance of this situation is lost in the report. Tenants who aim to exert their rights may then face future discrimination, even though it was the negligence of a landlord and not the tenant, that caused the case to come to court in the first place. As Rudy Kleysteuber noted:

Because tenant screening reports function effectively as blacklists, they attach excessive stigma to involvement in the legal process and thus discourage tenants from vindicating the very rights that legislatures have gone to great pains to protect, and courts to enforce.⁵⁶

Impacts Future Housing Opportunities

One of the consequences is that those with an eviction on their record often cannot secure decent, affordable housing. According to Rudy Kleysteuber, the overwhelming majority of landlords “flat out reject anybody with a... record, no matter what the reason is and no matter what the outcome is, because if their dispute has escalated to going to court, an owner will view them as a pain,”⁵⁷ perpetuating housing insecurity.

⁵⁵ Jessica Hurd, personal communication, March 15, 2017

⁵⁶ Rudy Kleysteuber, “Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records,” *The Yale Law Journal*, 116, No. 6 (2007): 1363

⁵⁷ Rudy Kleysteuber, “Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records,” *The Yale Law Journal*, 116, No. 6 (2007): 1347

POLICY PROPOSAL: TENANT SCREENING & RECORD KEEPING FOR THE TWENTY-FIRST CENTURY

Eviction record keeping is a key concern in the fight for access to affordable housing and in the ability to maintain housing in the future. The disparities of information and lack of coherent record keeping regarding eviction records should be a concern for policy makers, advocacy groups, and tenants themselves. In the twenty-first century information age, consumer and tenant protection measures must evolve to match the realities of our digitized world.

There are two frameworks from which to consider policy change regarding tenant screening databases. The first framework is the censorship-based approach, in which information is made unavailable entirely from a given party, such as a tenant's Housing Court record. The second framework is the accuracy-based approach. This approach focuses instead on providing more detailed and specific data to relevant parties. The policy recommendations below fall under one of these two categories, as research indicates that there is room for both approaches depending on the scenario. The following policy recommendations are possible legislative solutions that, if enacted, could mitigate abusive tenant screening practices, protect tenants, and provide more useful data.

POLICY PROPOSAL 1: INSTITUTE A REASONABLE TRACKING SYSTEM CONTAINING SPECIFIC DEMOGRAPHIC INFORMATION OF HOUSING COURT LITIGANTS.

Approach: Accuracy-Based

Cooperating Stakeholders: Housing Court, Housing Court Answers

Cost: Moderate

In conjunction with Mayor De Blasio's Right to Counsel legislation, the city would also benefit from a streamlined and updated tracking and database system for all scheduled summons each day in Housing Court. This would better identify and track exactly who tenants are; age, race, gender, reason for eviction notice or housing court petition, and outcome of their case. Full-time, on-site trackers could identify the daily cases, briefly surveying tenants and landlords upon entry in to court to ascertain important information that can later be tracked.

If more specific data on populations impacted by evictions is made available, social services and city agencies can petition for increased support and services for these populations. Funding can be matched with zip codes, neighborhoods, and populations most in need of eviction support. While available data indicates that women of color, particularly those with children, tend to be the biggest targets of eviction, Housing Court does not track this information when filing daily records. If advocates and policy makers can acquire the data indicating that marginalized communities such as single women, minorities, or housing voucher holders are more likely to be evicted than someone with the same lease violations but who falls outside this demographic range, the case can start to be made "that certain uses of eviction records for leasing decisions perpetuate disparate impact."⁵⁸ This knowledge could be powerful to combat housing discrimination and justify programming aimed at high-risk populations.

⁵⁸ Eva Wingren, "Does Screening for Eviction Violate the Fair Housing Act?" *Rooflines: The Shelterforce Blog*, April 29, 2016, <http://www.rooflines.org/4460/post/>

The cost associated with this proposal is Moderate, as it would require the development of either a new database or of multiple on-site positions to facilitate and record data.

**POLICY PROPOSAL 2:
HOLD HOUSING COURT RESPONSIBLE FOR THE DEPTH AND
RELIABILITY OF COURT RECORD CONTENTS PRIOR TO HANDING
OVER THE INFORMATION TO TENANT SCREENING BUREAUS.**

Approach: Accuracy-Based

Cooperating Stakeholders: Housing Court, Housing Court Answers, Tenant Screening Bureaus

Cost: Low

Following their day in court, tenants should be provided the opportunity to manually review their court record. With the increase in legal counseling provided to high-risk tenants, lawyers should be encouraged to inform their clients of the screening database and the potential long-term impact of its content. Housing Court should take measures to ensure the accuracy of their record keeping. Requiring the court records to mention the defendant's date of birth as a required identifying factor, along with their full legal name, significantly increases the likelihood that eviction actions will not be attributed mistakenly to other individuals sharing the same name.

The cooperation of Tenant Screening Bureaus is necessary to ensure data is not sold that is not properly vetted.

The cost associated with this proposal is Low, as it would simply require increased vigilance and attention to detail on the part of Housing Court. This policy could also be introduced in conjunction with Policy Proposal 1, helping to mitigate overall costs on the implementation of both policies.

POLICY PROPOSAL 3: OFFER PORTABLE SCREENING REPORTS AS AN ALTERNATIVE TO TENANT SCREENING AGENCIES.

Approach: Accuracy-Based

Cooperating Stakeholders: Portable Screening Agencies, Tenant Screening Bureaus, Landlords

Cost: Low

New York City should establish the use of Portable Screening Reports, which is a comprehensive, single, reusable screening report that can be shared between landlords at no cost. Traditional tenant screening reports are not portable, which means that the tenant screening company cannot share reports prepared for one landlord with any other landlords.⁵⁹ Furthermore, portable reports are distinct in that they place the onus on the tenant to acquire the report, which is of no cost to the tenant. This helps ensure that the tenant can access the data, confirm that it is correct, and attempt to make corrections to any inaccuracies prior to submission to a prospective landlord. The fact that the reports are free helps to mitigate the cost of a traditional tenant screening report, which typically falls on the prospective tenant as part of their application fee. These application fees can be prohibitively expensive for low-income families, and therefore portable screening reports address this concern.

Additionally, they are required to provide a minimum standard of information, including credit reports, criminal background checks, and eviction history. They must also maintain a standard of quality, including fraud protections.

Therefore, cooperation and education of Landlords is vital to the proper implementation of this policy. Landlords would need to be provided with incentives to switch to the Portable Screening Reports. Certainly, some landlords may still seek out information from other reporting agencies, such as the Big Three. However, if the standardized portable screening system was without cost and contained more

⁵⁹ "Portable Tenant Screening Reports: The Time Has Come!" *Moco Inc.*, accessed May 1, 2017, <http://blog.myscreeningreport.com/portable-tenant-screening-reports-the-time-has-come/>

reliability, perhaps more landlords would seek out this type of reporting instead, and tenants would benefit from having full knowledge of the content being provided.

The cost is Low, as these screening agencies already exist. Some states, such as Washington State, have already passed legislation requiring the use of Portable Screening Reports first, and any additional reports would be covered by the landlords. It would be low cost for the city to follow the same model.

POLICY PROPOSAL 4: PROVIDE SCREENING REPORTS TO ALL PROSPECTIVE TENANTS DURING THE RENTAL APPLICATION PROCESS.

Approach: Accuracy-Based

Cooperating Stakeholders: Portable Screening Agencies and/or Tenant Screening Bureaus, Landlords, Tenants

Cost: Low

The Fair Credit Reporting Act requires landlords to inform tenants when information gleaned from a screening report was used in the decision to decline their rental application, charge a higher rent, or require a larger security deposit.⁶⁰ In addition to these strides in tenant protections, tenants should also legally be provided with a copy of their report *prior* to the formal submission of their rental application. This would ensure that tenants are provided the opportunity to review the content, submit requests for corrections should there be inaccuracies, and be offered the opportunity to provide an explanation regarding their court case to a prospective landlord, should one be necessary.

This policy would only be necessary in the case that TSBs are still be used by Landlords, as with Portable Screening Agencies, tenants are automatically given a copy of their report. Whether the city adopts PSAs or not, the practice of information-dispersal to all relevant parties should still be practiced.

There is minimal additional overhead in the implementation of this policy, and the cost is low.

⁶⁰ Rudy Kleysteuber, "Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records," *The Yale Law Journal*, 116, No. 6 (2007): 1365

POLICY PROPOSAL 5: EXPUNGE THE HOUSING COURT RECORD IF THE TENANT WON THEIR CASE.

Approach: Censorship-Based

Cooperating Stakeholders: Housing Court, Housing Court Answers, Portable Screening Agencies, Tenant Screening Bureaus

Cost: Moderate to High

If the tenants case prevailed or they settled with the landlord to a mutually agreeable solution, this information should be deemed irrelevant to any future landlord. This approach is also applicable for cases in which tenants were taken to court based on nonpayment, but then were later able to “reinstate” their tenancy through payment of rental arrears. Additionally, records should not be made public should the tenant have pursued Housing Court litigation on their landlord (for example if a tenant sues the landlord for failing to comply with the law, maintaining the building, or fixing necessary repairs). Civil litigation records that do not relate to housing, employment or criminal background should be considered irrelevant to potential landlords. This might include domestic violence protection order cases.

New York would benefit from looking to other states for examples on how the revamp their current policies. For example, in California civil cases are unsealed only if the landlord is found to be the prevailing party.⁶¹ Freedom of information and access to public records is certainly important, but not at the expense of costing them housing stability and the trust of a potential landlord.

This policy does require additional oversight to ensure that records are indeed expunged following the successful resolution of the case. The cost associated with this is Moderate to High, and would require additional support and manpower in Housing Court, Housing Court Answers, and other advocacy groups.

⁶¹ Eric Dunn & Marina Grabchuk, “Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State,” *Seattle Journal for Social Justice*, 9 no. 1 (2010): 363

KEY STAKEHOLDERS

In the question of evictions, tenant rights, tenant screening reports, Housing Court databases, and access to tenant records, there are myriad stakeholders that must be considered based on their willingness (or lack of willingness) to support the policy and be involved in its implementation. These stakeholders span from organizations that provide direct legal services to clients, tenant advocates, Housing Court judges, elected representatives, policy experts, and finally, New York City renters themselves.

Identifying Stakeholders

To garner interest and support of eviction record policy change, the policymaker must complete an analysis regarding the role of potential stakeholders and actors based on their *Power* versus their *Interest*.

High Power and Low Interest

- Landlords

Landlords may have an interest in having access to more specific tenant information that contains fewer inaccuracies regarding potential tenants. An updated tenant database system benefits them in the long run as they can have better information about who they rent to in the future, avoiding confusing or inaccurate data. However, New York City landlords are likely more interested in protecting their bottom line and ensuring they can cover necessary costs of managing a building. They have little incentive to invest time or energy in promoting legislation that doesn't immediately or clearly benefit them, or that they perceive to adversely impact them.

- Judges

Judges possess a deep understanding of the Housing Court process, seeing daily the kinds of cases and populations that are impacted by evictions. Judges must be impartial and unbiased, but even they can see the discrepancy in the court experience for tenants without representation versus landlords with representation, and the long-term impact that this has on tenant's access to housing stability. However, their primary role as an arbiter of justice and rule of law places them just outside the conversation of advocacy and tenant rights.

Low Power and High Interest

- Tenants

Tenants lack power, stemming from any number of areas including a lack of understanding regarding their rights, the eviction process, and how to advocate for themselves in civil court process. Powerlessness may also stem from fear about family stability, access to future housing opportunities, or immigration status. What may be perceived as a lack of interest in this type of policy may be lack of information or understanding of how their records are maintained, or who has access to their case in the future. Tenants may have little power on their own, but they do have their personal stories. Ethnographers, researchers, and politicians would do well to visit Housing Court to hear the vast and varied stories of the lived experience of tenants facing eviction. If given a platform to speak, tenants may be empowered to advocate for themselves.

- Lawyers

Lawyers who provide representation in Housing Court are interested in leveling the playing field so that underrepresented populations may be advocated for in court at the same rates as landlords, which is currently imbalanced overwhelmingly in favor of landlords. Lawyers possess a high level of interest to help engage their clients. However, the Right to Counsel legislation has attracted younger or more inexperienced lawyers who may therefore command less power.

- City Housing Agencies

New York City agencies related to housing include the Department of Housing Preservation & Development (HPD), Department of Homeless Services (DHS), and Human Resources Administration (HRA). As is typically the case in government, these agencies may operate with limited resources and must stretch their funding as far as possible. Therefore, these agencies will likely overwhelmingly support policies that positively impact the housing stability of low income or housing insecure New Yorkers, particularly when this legislation accrues few additional costs or budget increases. An updated tenant database would be legislation that these agencies would likely have an interest in supporting. However, the agencies' power in advocating for this kind of policy change may be limited or appear to fall outside the scope of their agencies

responsibilities. They do have power in access to the Mayor and in supporting programming that lower their bottom line.

High Power and High Interest

- Mayor de Blasio

Tenant stakeholders in the zip codes with the highest eviction rates should feel emboldened by housing legislation under Mayor de Blasio's administration. In considering the tenant population in Bronx, zip code 10457 has the fourth highest number of evictions in the city. It is also in the impact area immediately adjacent to the zip codes 10452 and 10453, which fall along the Jerome Avenue corridor. Jerome Avenue is one of the areas targeted for up-zoning as part of the Mayor's ten-year Housing New York housing plan, mentioned previously. Bronx zip Codes 10452, 10453, and 10456 have the greatest percentage of residents with income below the poverty level (all three greater than 40 percent).⁶² They are also among the districts with the largest numbers of rent stabilized apartments and are among the districts with the highest levels of eviction cases. Additionally, they are now under added pressure brought about by the Jerome Avenue upzoning.⁶³ The Mayor has clearly already identified these neighborhoods as in need of additional support and resources. Therefore, the power that the Mayor inherently possesses may be compounded by his obvious stake hold in these communities as they relate to his housing plan, Housing New York. Mayor de Blasio's buy-in may be easier to obtain.

- City Councilmembers

City Councilmembers possess the power and interest to advocate for their constituency. For example, the communities that face the greatest risk of gentrification and rising living costs are the same communities that are being targeted for up-zoning and have the highest eviction rates. City Councilmembers represent their specific constituency, and they have a duty to their electorate to support them. Successful advocacy efforts may result in reelection, clearly an ongoing concern for any politician.

⁶² Fitzroy Christian, email message to author, April 19, 2017

⁶³ Fitzroy Christian, email message to author, April 19, 2017

- Housing Court Answers

Housing Court Answers has a high interest in programs and policies that positively benefit tenants. Their power also rests in the connection they have with court staff, lawyers, tenant’s rights groups, and deep understanding of the court process. This networking component is vital.

- Research & Advocacy Organizations

New York City has a rich trove of Research & Policy Organizations, including Center for an Urban Future and Community Service Society. There are abundant Housing Advocacy Groups including Picture the Homeless, Coalition for the Homeless, and Breaking Ground. Their core values are advocacy, policy analysis, access to information, and providing a seat at the table for the underserved. Unfortunately, they are only as impactful as the powerful voices that are listening to them. Their power lies in their non-or-bipartisan perspective and interest in proposing policy based on research and analysis.

IMPLEMENTATION

A practical implementation of this policy requires an assessment of how the policy will be introduced, maintained and enhanced as needed. The following questions of implementation may be impacted and enacted need to be considered.

Who will be held responsible to ensure accurate record keeping is maintained?

The above policy proposals call on Housing Court to more accurately maintain records, including demographic data of tenants, as well as offering opportunities for tenants to make corrections to their records. However, this begs the question: what agency, administrative unit, or oversight committee will hold them accountable? Does this require a new position within Housing Court, Housing Court Answers, or the Human Resources Administration to ensure that policies are upheld and standards are maintained? This would require additional funding; the question of whether this funding would need to come from federal, state, city resources needs to be answered,

as well as whether it is up to Housing Court, Housing Court Answers, or Human Resources Administration to ensure policies are kept.

Is the Censorship-based approach a violation of rights?

To what extent does the First Amendment provide a right of access to judicial records? If court records are expunged, for example in the instance of the tenant prevailing in Housing Court, does this call in to the question the Free of Information Law? In other words, do landlords deserve to have this data? The role of freedom of information, access to data, landlord protections, and tenant protections are called in to question with policies that limit this data.

How will the policy stand up to the Real Estate industry, housing development and landlords rights groups?

To up-end the status quo and introduce expansive policy change requires significant lobbying efforts from advocacy and tenants' rights organizations, as well as other key stakeholders. However, New York City landlords are a powerful entity who are likely to be supported and aided by real estate and housing development interests. They are unlikely to support policy changes, specifically those that provide more protections to tenants, and that may hurt their bottom line. This city has experienced tremendous growth, development, and gentrification, which all benefit powerful groups who do not see a concern with the current system of tenant screening reports and "Big Three" background checks. How this policy might stand up to those with competing interests and more money would remain to be seen.

CONCLUSION

Each individual policy recommendations listed above stands on its own merits, and would help foment positive change in tenant protections if implemented individually. However, the greatest impact would be felt if all five policy proposals could be implemented complementarily and in conjunction with one another.

For tenant screening policies to take root, the city must invest more resources in specifically identifying the populations who face the highest risk of eviction. Hard data on evictions within New York City remains a woefully under-researched area of study. From demographic information of tenants facing Housing Court summons, to eviction trends by borough, to specific reasons for evictions, this information is difficult to access if not unavailable altogether. However, for policy makers and researchers alike, this information is crucial to be able to understand the full extent of the eviction problem and how best to designate resources within impacted communities, and to continue to attempt to solve the eviction problem.

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