

Unlawful Detainer Court Study Executive Summary

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Introduction

In our ongoing work with low income people, most of whom are homeless or about to become homeless, we at the Housing Resource Center often see how clients are denied access to due process in Hennepin County Unlawful Detainer Court. This study was designed to explore the problems faced by tenants in Housing Court and to suggest ways to increase the level of fairness in the proceedings.

Review of comparable research shows that for several years other groups have observed many of the same problems addressed in this study. In Minneapolis, one study on Housing Court was conducted about two years ago through the Legal Advocacy Project, and another in the late 1970's by the Legal Aid Society in partnership with the Minnesota Tenants Union. In 1992, the St. Paul Tenant's Union conducted a Housing Court study in Ramsey County, as did the American Civil Liberties Union in New York City in the early 1980's. These studies all raised similar concerns about violations of due process and a severe lack of advocacy and legal representation for poor and vulnerable populations of tenants.

Housing Resource Center found the "summary" nature of the court proceedings to be a problem in itself, as did the New York study. Approximately 1,000 cases are heard in Hennepin County Housing Court each month. The Housing Court system's pressure to rush, combined with tenants' limited understanding of the process, contributed to many families being evicted who should not have been evicted. These defendants were often unaware that they even had a defense to present.

For example, most tenants do not realize that the intent of the laws which govern landlord/tenant obligations does not obligate tenants to pay

rent where substandard housing conditions exist. The rights of these defendants (to live in adequate housing conditions, sue for rent abatement, be served a summons properly, etc.) were continuously abused without advocates available to intervene and see that due process was provided. The majority of defendants had no legal representation or advocacy help. Given the substantial number of Housing Resource Center clients and study respondents evicted from severely substandard conditions, we see that the intent of the landlord/tenant laws which oblige landlords to comply with existing housing codes are being circumvented.

The following summary of our study's results clearly documents the obstructions to justice we had been noticing as our clients recounted their experiences of Unlawful Detainer proceedings. Our hope, now, is that as few lives as possible will be harmfully affected by the existing system before some simple, yet vital, reforms are implemented.

Study Results

Sixty-eight (68) participants were interviewed after they appeared before the Housing Court Hearing Officer. Case numbers were recorded and information was later verified by a review of court documents.

Understanding of the Unlawful Detainer Action. One quarter of the participants did not understand what happened in Housing Court and half did not understand how an Unlawful Detainer judgement would affect them in the future.

Evictions. Most stated that they were being evicted. However, upon reviewing the court records, eighteen (26%) thought they were not being evicted when, in fact, they had judgements against them.

Reason(s) Participants thought they were being evicted. While most admitted the allegations of "nonpayment of rent" were true, almost one-fifth said they were withholding their rent because of substandard building conditions. However, they omitted stating to the hearing officer that they contested their case and wanted it referred for a hearing. They thought this initial proceeding was the formal hearing.

"Your Rights" brochure. Less than half said the pamphlet was helpful. Forty percent said that it did not help them and many stated that they did not or were not able to read it.

Legal representation. Over ninety percent of the participants did not receive advice from a lawyer. No participants recall being asked for evidence and none asked for trials, continuances or referrals to the Referee. PARTICIPANTS WERE UNAWARE OF HOW TO CONTEST THEIR CASES.

Common Housing Code violations. The majority of participants had repair problems and most did not bring up the problems to the Hearing Officer or Referee. Forty-eight (71%) participants responded that their place needed repairs; twenty participants (29%) said that their places did not need repairs.

Most who reported the need for repairs identified multiple problems. Many did not seem to be aware that they may have been eligible for a rent abatement. There were various complaints, such as not having working refrigerators, having electricity illegally shut-off by the Landlord, and not

having a stove or oven with which to cook.

Most participants had serious problems with roaches and/or mice or rats. Fifty percent had missing storm windows or screens and some complained about children falling out of windows without screens. Peeling paint, no smoke detector, no working secure door lock, exposed wiring, and sinks falling off of walls were problems mentioned often.

The threat these problems caused to the participants' children was an overwhelming and common concern. One participant spoke of how her refrigerator cord was patched in several places with electrical tape and that her two-year-old had been shocked by it several times while crawling on the floor. Another related that her Landlord had pulled up some especially filthy, infested carpeting--but left the carpet nails sticking up around the edges of the room where her toddler could become injured.

One father told of how the Landlord had illegally shut off his electricity for two weeks and that he did not feel safe staying there with his two children. A mother reported that her children had both become ill from the effects of lead paint and were hospitalized. Because of the lead poisoning, the county had cut off her vendored rent payment which was usually mailed directly to her Landlord out of her AFDC grant. The defendant was subsequently evicted for non-payment of rent in Housing Court. This Unlawful Detainer judgement disqualifies her for Section 8 housing and also makes it difficult to secure market rate rental housing.

Only one participant reported putting her rent in escrow with the court, and she was successful in forcing the Landlord to make needed repairs.

Relationship of poverty to severity of repair problems. Using U. S. Bureau of the Census and the U. S. Department of Housing and Urban Development criteria for rating the severity of repair problems, Tenants whose primary source of income was from AFDC were more likely to be experiencing "moderate" to "severe" repair problems (37% of all participants). Those whose primary income was from employment or SSI were more apt to be in units with mild or no repair problems. In all, twenty-six participants (38%) had severe repair problems; twelve (18%) experienced moderate repair problems.

Tenant's actions regarding repair problems. The majority of participants who spoke of having repair problems reported the problems to their Landlords or Caretakers.

Landlord's response to the problems. In 66% of the cases where problems existed, no repairs were made after reported by the Tenants to the Landlords. One resourceful Landlord visited the Tenant and "did nothing but hand me [the Tenant] a fire extinguisher."

Housing inspections. Only eleven participants had called the City Inspections Department. Five reported that they had not called, but a neighbor did.

Admitting the allegations of owing rent. Fifty-six (82%) participants responded that their rent was not paid up; eight (12%) said their rent was paid up; and four did not respond. In reviewing the court files, sixty-one (90%) participants reportedly "admitted the allegations of owing rent" when asked by the Hearing Officer, without realizing that doing so is in the Landlord's best interest because it prevents the defendant from contesting their case and being allowed further opportunity to prove housing code violations or other defenses to be raised in a trial.

The amount owed. Eleven Participants (16%) thought they owed less than their Landlords claimed. Many were surprised to find service fees, the \$118 filing fee, and many late fees added to their charges. However, most had an approximate idea of how much rent they owed. It was observed that ten of the eleven participants who disagreed with the amount owed admitted the allegations of owing rent and did not contest that amount.

Landlords usually passed on the \$118 filing fee to the Tenants. Claims that landlords made for service and late fees were varied, and were often previously unheard of by the Tenant or perceived as confusing. Many Landlords bundled the fees together, some inflated the court costs, and some demanded additional payments which are properly requested in Conciliation Court, such as damage deposits.

Monthly rent ranged from \$24 to \$650 per month. The average monthly rent was \$410. The amount of rent owed averaged \$652 (1.59 months). Thirty-five (51%) of the cases were for one month or less of rent owed.

Ability to pay the amount the court has ordered them to pay. Over fifty percent could not afford to pay the amount they were ordered to pay. Most were even originally vulnerable to falling behind in their rents because of very low incomes.

Household income. Income, reflected as "take-home," ranged from no income (6%) to \$3,000 per month. The average total monthly reported take-home household income was \$794.37.

- Almost half of the participants were receiving AFDC with an average monthly AFDC payment of \$535.83.
- Thirty (44%) participants reported that at least part or the entirety of their monthly income was derived from employment. The average reported monthly household take-home income from employment was \$1,138.96.
- Six respondents received SSI benefits and of those, four received their SSI in addition to employment income or another type of benefit. The average monthly income for those receiving SSI was \$509.50 from all sources.
- Other reported sources included unemployment compensation, MSA, "public assistance," and General Assistance.

Number of adults and children. Ninety adults and 104 children were affected by the sixty-eight Unlawful Detainer actions studied. Over two-thirds of the households had one adult living alone or were single parent households. Slightly over one quarter of the households contained two adults. Most households had children; twenty-nine percent had no children.

Have you offered to pay the rent? Over one third had offered to pay the rent to the Landlord (35%). Of the participants who had offered to pay, eight reported that the Landlord had refused to accept the rent money. Defendants were unaware of their right to "pay and stay."

Reasons why rent was not paid on time. The most frequent response was "bad conditions," (35%). Twelve (18%) participants cited either cuts in their vendor payments, cuts in their AFDC or General Assistance, or delays in SSI or in getting their initial assistance checks.

Damage deposits. Sixty-one (90%) of the participants had previously given their Landlord a damage deposit.

Emergency Assistance. Many stated that they had used Emergency Assistance to pay damage deposits (normally equal to one month's rent) to get into their places and acknowledged that they had recognized the

conditions to be inadequate--but were in need of a roof over their heads and did not have anywhere else to go. Most were ineligible to receive additional Emergency Assistance funds. In addition, those who receive a court order to vacate lose their right to have their damage deposits returned.

Damage deposit for the next place. Fifty-seven percent did not have money for a damage deposit for a new apartment.

Eviction history. Most respondents were being evicted for the first time.

Homelessness. Sixty-two percent of the participants did not have another place to live. Those who said they had a place were planning to live temporarily with relatives. Overcrowding from "doubling up" subsequently puts the relatives at risk for eviction themselves.

Rental history. Most (59%) of the participants had lived in their present apartment for at least the previous twelve months. Many commented that they had lived there for a number of years and only recently had run into financial difficulties.

Subsidized housing. Over one third (37%) were on waiting lists for Section 8 housing and it was not uncommon for them to say that they had been waiting for five years or more. Most management companies of subsidized housing (as well as private landlords) disqualify tenants who have unlawful detainer judgements against them.

Recommendations

- **Make the process more understandable and fair for Tenants.**
 - Ask if the rent is not being paid because of condition of the unit.
 - Ask if the Tenant agrees or disagrees with the amount they owe.
 - Have all fees broken down clearly on the complaint form.
 - Impose penalties for Landlords who falsify summonses.
 - Explain how an Unlawful Detainer Judgement will affect people in the future.
 - Have written response forms available for tenants in court.
- **Open court access to Inspections Department records.**
 - Install computer link in Housing Court with Department of Inspections computer terminal to check housing code violations and current rental licensure for properties listed on all Unlawful Detainer filings.
 - Dismiss cases where property address shows condemnation order or Intent to Condemn order.
 - Dismiss or continue cases with severe code violations of a long standing period of time.
 - These recommendations will reduce the number of cases heard by the court.
- **Increase advocacy and representation.**
 - Low income Tenants need advocacy and legal representation to protect their rights. Have housing advocates and attorneys available at all Housing Court hearings.
- **Reduce the amount of money required for escrow actions, continuances.**
 - By requiring the full amount of rent owed to be paid into court, many low income Tenants cannot afford to challenge their Landlords to fix their apartments and have their cases heard.

- **Improve accessibility to Housing Court.**
 - Hold Housing Court during evening hours to enable more working low income people to appear without risking losing their jobs. Many can not afford to take off time from their work during the day--but may have an adequate case to present.
 - Provide interpreters for defendants as needed.

- **Educate about Housing Court.**
 - Increase training on the Unlawful Detainer process for Tenants and those who assist Tenants through community and social service agencies.

- **Improve "Your Rights" brochure which is issued with the summons.**
 - Rewrite the brochure in a more understandable language and revise the graphic layout to make brochure more readable.

- **Consider certain circumstances.**
 - Tenants should not receive an Unlawful Detainer if their assistance is delayed because of change of address, sale of the building, or administrative errors.
 - Petitioners of Orders For Protection should be protected from Unlawful Detainer Actions based on actions by perpetrators of domestic violence.

Related Public Policy Issues

- **Lack of affordable, quality housing heightens the negative effects of Unlawful Detainer proceedings.**

A recent report by the U. S. Conference of Mayors stated that the high cost of housing in the Twin Cities was cited as the leading cause of hunger and homelessness in the area. Both the implementation of laws already in existence to force landlords to adequately maintain property and an increased adherence to Replacement Housing Laws could help.

- **There is a need to increase the opportunities for meaningful employment, higher incomes, child care and medical coverage for low income Tenants.**
- **There are currently no remedies other than eviction for Tenants when Landlord files for bankruptcy or a mortgage foreclosure occurs.**
 - If a building has sold or a Landlord has filed for bankruptcy within 60 days of the action, special consideration should be taken to help Tenants threatened with relocation.
- **Tenants of condemned property need reasonable relocation benefits.**

Conclusion

Despite several years of awareness of the problem, the number of homeless families in Hennepin County only grows, and more rapidly. Many factors are constantly adding to the housing crisis, such as an increase in low-income families moving to Minneapolis; and this study now shows the correlation of Unlawful Detainer proceedings to the overcrowding of the Hennepin County emergency shelter system. In addition, the public policy issues outlined above work intricately alongside the structural flaws in Housing Court to ensure that people remain trapped in a powerful cycle of poor living conditions and damaged rental records. Yet these are not reasons to hopelessly watch Minneapolis sink into the poverty and ruin of the larger urban centers that have gone before us; particularly when clear measures to improve things present themselves.

This recent research confirms what our client interviews have revealed over the past three years at Housing Resource Center. We are therefore committed to doing what we can as a program to meet the study's recommendations, apart from those referring to needed court reform. Those court reforms proposed were simple and practical responses to the study results, and are positive ways to maximize the efficiency of Housing Court in Hennepin County and ensure that due process is observed for all defendants. However, criticism is in no way intended towards any individual Housing Court Referee or any other individual persons.

Our hope is that by giving tenants proper legal advocacy in this system, Hennepin County could begin to minimize the amount of unnecessary displacement due to court ordered evictions, and halt the loss of our inner city housing stock. By streamlining the process, Housing Court in Hennepin County will have the ability to hear cases properly presented and enforce the intent of the landlord tenant laws, including the landlords obligation to maintain property in compliance with local and state housing codes.

The underlying fact, however, is that no matter how busy Housing Court remains or becomes, the poor are entitled to a correct version of their case being heard and presented by competent advocates if they are unable to do it themselves.

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