CHAPTER III

THE INSTITUTIONAL PRACTICES THAT DENY THE RIGHTS OF PRO SE TENANTS

This chapter reviews the institutional practices that operate effectively to deny tenants their rights and possession of their homes and documents the many barriers tenants face in attempting to defend their homes. The information captured by the study reveals that legal advocacy on behalf of *pro se* tenants is critical to reducing, and ideally preventing altogether, the wrongful displacement of tenants through improper evictions.

As previously noted, tenants appeared in court in 46% of all the cases documented in the study. The vast majority of these tenants (863 of 962) appeared *pro se*—without a legal representative.[19] Of the 863 tenants who appeared *pro se*, 518 actually had their case heard, and disposed of on the merits, by the Court.[20] *Yet, of those cases disposed of on the merits, tenants only prevailed against the landlord in 23 of 518 cases—or 4% of the time.*[21] Landlords, on the other hand, were awarded possession of the premises in 493 out of 518 cases—95% of the time.[22] The results of the study suggest that such outcomes are due to institutional practices which clearly favor the landlord.

First, as set forth fully in this Chapter, while the landlord/plaintiff bears the burden of proof—meaning he must prove the elements of his case by a preponderance of the evidence, rarely were landlords held to any such standard. Moreover, the Court routinely assisted the landlord to prove certain elements of his case, while rarely, if ever, assisting the tenant in a similar fashion. In fact, the Court would routinely grant a landlord a continuance, and indeed offer to continue a case, so the landlord could bring in necessary evidence, while rarely continuing a case for a similarly situated tenant. Second, the Court routinely ignored defenses raised by *pro se* tenants. Overall, defenses were raised by *pro se* tenants 583 times. Yet, the Court routinely entered judgments for landlords despite meritorious defenses which should have entitled the tenants to defeat the landlords' claim and maintain possession of their homes. Third, a variety of institutional arrangements and practices, ranging from the designation of a special courtroom for *pro se* landlords to the Court's failure to clearly articulate its disposition of cases, largely render Eviction Court a landlord's domain, one which often operates in a confusing and misleading way and violates the rights of tenants, especially those who must proceed *pro se*.

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[19] The tenant had an attorney in 99 out of 962 cases.

[20] The remaining cases were disposed of through agreed orders (173), continued (128), dismissed for want of prosecution, i.e., neither landlord nor landlord's representative appeared (21), voluntarily dismissed (11), transferred to the jury call (9) or referred to mediation (3).

[21] Four percent represents the 6 cases in which the tenant was awarded possession of the premises and the 17 cases in which the landlord's case was involuntarily dismissed.

[22] In two cases there was no disposition recorded.

The Court Routinely Fails to Require Landlords to Bear their Burden of Proof.

In Illinois, forcible cases are special proceedings, in which the trial court is required to comply strictly with the terms of the Forcible Entry and Detainer Act. *Advich v. Kleinent* 69 Ill. 2d 1 (1977). Yet, while the plaintiff-landlord bears the burden of proof and must prove the elements of his case by a preponderance of the evidence, rarely did the Court hold landlords to any such standard. To be entitled to possession, the plaintiff-landlord must prove five essential elements:

1. The plaintiff has a possessory interest in the premises;
2. The tenancy has expired or has been properly terminated;
3. The tenant remains in possession of the premises;
4. The tenant owes a specific amount of rent (if prayed for in the complaint);
5. The tenant has been properly served with a summons and complaint.

Unless and until a plaintiff-landlord proves his minimum, or *prima facie* case, the landlord is not entitled to any relief and therefore, the tenant is under no obligation to present a defense. However, in practice, Eviction Court has effectively shifted the burden of proof to tenants; more often than not, the landlord is not required, nor even expected, to prove his case.

A critical element of the landlord's case is the requirement that the tenancy be terminated. Perhaps the most common reason for terminating a tenancy is nonpayment of rent, while the violation of many other lease provisions can provide the basis for terminating a tenancy. Illinois law, the Chicago Residential Landlord Tenant Ordinance which applies to most residential buildings in Chicago, and federal law and regulations which govern federally subsidized housing[23] provide strict rules that landlords must follow to terminate a tenancy properly. Failure to adhere to the standards of the Act deprives the Eviction Court of any jurisdiction to hear the case. If the Court is without jurisdiction, it must dismiss the case. However, the Eviction Court routinely fails to do just that.

Pro se tenants raised defenses contesting the landlord's *prima facie* case 109 times. These defenses included: (1) that the summons and complaint were improperly served; (2) that the Notice of Termination of Tenancy was improperly served; or (3) that the Notice of Termination of Tenancy was defective.[24] The landlord's case was dismissed in only 13 of these cases. Of the remaining cases, 26 were continued and in 55 cases the landlord was awarded possession of the premises (32 included rent judgments).[25] Thus, when a tenant challenged the landlord's case, the Court was two times more likely to continue the case than to dismiss it (and thereby allow the landlord to bring in additional evidence) and four times more likely to enter judgment outright in favor of the landlord. Several cases illustrate the manner in which the Court routinely ignored the

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[23] 24 Code of Federal Regulations, Sections 200-900.

[24] *See* Appendix A, Form A Glossary of Terms/Explanation of Each Data Item, for more detailed description of these defenses.

[25] Additionally, 1 case was dismissed for want of prosecution (no landlord or landlord's representative was present); 11 were disposed of by agreed order, and 3 awarded possession to the tenant based on other defenses raised in the case.

law and entered judgment in favor of the landlord, despite the fact that the landlord failed to prove his case and the complaint, therefore, should have been dismissed.

In *Turner v. Howell* , 95 MI 719491, (July 19, 1995), a landlord sought to evict a woman who lived in an apartment with a Section 8 certificate. The landlord gave a rather confusing story about why he was terminating the tenancy and the Court asked the landlord specific questions about whether a notice of termination of tenancy had been served on the tenant. The landlord was unclear about whether a notice had ever been given and admitted that he did not have any notice with him. The Court acknowledged on the record that the landlord had failed to meet his burden of proof:

> COURT: Unless I see the written notice which you gave her notifying her that you intended to end the tenancy, I have no authority to do anything for you.
>
> PLAINTIFF: Okay.
>
> COURT: These do not suffice.
>
> PLAINTIFF: Okay.

In such a scenario, the law demands that the complaint should be dismissed. Yet, rather than do so, the Court asked the tenant how long it would be until she moved and asked the landlord if he would agree to give the tenant 30 days to move. When the landlord responded affirmatively, the Court entered judgment for the landlord, stayed for 30 days. This case demonstrates both the Court's failure to require landlords to meet their burden of proof as well as the Court's resistance to following the law by dismissing the case, if doing so does not favor the landlord.[26]

Similarly, in *Johnson v. Anderson*, 95 M1 721506 (August 3, 1995), the evidence was undisputed that the landlord served a five-day notice on a child who was less than 13 years old. The law is quite clear that service on a child can be proper only if the child is over 13 years of age. *735 ILCS 5/2-203 (A) (2)*. Thus, under the law, the Court should have dismissed the case. Yet, the Court awarded possession to the landlord, stayed (or delayed the enforcement for) 20 days, and merely admonished the landlord that "[n]ext time get the five-day notice into the hands of your tenant. Don't leave it with a child who is under the age of thirteen. Okay?"

The practice of not requiring landlords to prove their case is widespread and is supported by the fact that landlords, or at least their attorneys, often fail to present even the most minimally sufficient case. For example, in *Beckett v. Smith* 95 M1 721390 (August 2, 1995), the landlord's attorney was present without the landlord and the attorney did not present any evidence or argument to the Court regarding the landlord's right to possession or rent. Instead, the landlord's attorney simply characterized the type of case as a joint action based upon service of a five-day notice and announced that the plaintiff sought an order of possession and judgment in the amount of $338.50 plus costs. The Court did not ask to see the five-day notice, nor does it appear that the landlord's attorney ever tendered one to the Court:

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[26] The Court's technique of appearing to "settle" the case rather than dismissing, always against the tenant's interest, is discussed more fully later in this Chapter.

LANDLORD'S ATTORNEY: This is a joint action based upon service of the five-day notice. Plaintiff seeks an order of possession and judgment in the amount of $338.50 plus costs.

THE COURT: Oh, see, I asked everybody to announce their presence, see. We move fast here.

All right. This is Leslie or Antoinette?

DEFENDANT: Leslie.

THE COURT: Leslie. Okay.

DEFENDANT: We had a problem, your Honor, about the security. I have a money order here.

THE COURT: Pardon me.

DEFENDANT: The problem was about the security.

THE COURT: What is the problem?

DEFENDANT: At first Miss Thomas told me I didn't have to put the security up. I kind of fell like behind.

THE COURT: 8-1-95

LANDLORD'S ATTORNEY: I don't know. What I would today (sic) is an order for possession. I don't know whether or not my client is willing to accept it. But if he will talk with them, they can—they can give him direction.

Today, your Honor, I am asking simply for judgment for possession and a stay. I will ask for leave to accept use and occupancy if the parties can work it out, great, but I don't have the authority to do that on their behalf.

THE COURT: All right.

LANDLORD'S ATTORNEY (to Defendant): Okay. See me afterwards.

THE COURT: Leave to accept use and occupancy. All right. Talk to—you want him to talk to the landlord?

LANDLORD'S ATTORNEY: Yes, sir.

THE COURT: All right.

LANDLORD'S ATTORNEY: Judgment in the amount of $338.50.

THE COURT: $338.50. $338.50 costs. All right. You got it.

LANDLORD'S ATTORNEY: And I have a draft order on that.

THE COURT: Okay. Talk to the landlord.

LANDLORD'S ATTORNEY (to Defendant): See me in one second.

Thus, the attorney did not present any evidence about the service of the five-day notice, whether the tenant tendered the rent claimed within the five-day period (which is the tenant's absolute right and serves to defeat any eviction action), or any evidence in support of the landlord's claim for money. While "under constitutional norms of due process, an eviction trial, like any other civil trial, should be an orderly procedure wherein the plaintiff presents evidence of possession and compliance with the necessary procedural steps for notice of termination, filing suit and summons," *Eckel v. MacNeal*, 628 NE2d 721,745 (1st Dist 1993), the landlord's attorney simply made no effort whatsoever to meet his burden of proof, and the Court did not require it.

Moreover, from the few statements the tenant was permitted to make, it appeared the dispute may have been one about a security deposit and not rent. Yet, even this information failed to provoke the Court into requiring the landlord to prove his case. This case typifies the way in which landlords are not held to any real burden of proof and the way the Court often has a discussion with the landlord's attorney about the landlord wants, while at the same time ignoring or not delving into what the *pro se* tenant is trying to say. Further, it is doubtful the tenant understands what the final outcome is—or on what facts it is based. Moreover, while the landlord's attorney implied that perhaps some post-judgment settlement could be achieved between the parties, it is unlikely the landlord would have any incentive to settle a case after the Court had already awarded him all the relief sought in his complaint. Because the Court granted use and occupancy and did not stay enforcement of the judgment, the order for eviction could have been placed with the Sheriff immediately whether or not the landlord accepted the money order the tenant had brought with him to court. The result: the tenant is subject to eviction notwithstanding the landlord's failure to present any evidence supporting his claim for possession and rent.

In other cases, the Court actually takes the initiative to establish the facts necessary to the landlord's *prima facie* case. This is true in the Pro Se Courtroom (room 1302 where all cases are heard in which the landlord is proceeding without an attorney), as well as in the other courtrooms, even when the landlord is represented by counsel.

Larson v. Smith, 95 M1 718899 (July, 19, 1995) exemplifies the way most cases proceed in the Pro Se Courtroom. The case was called, the parties identified, and the Court immediately asked the tenant a series of questions which were designed to prove the landlord's case: "Mr. Smith, did you receive this notice? . . .Were you 600 dollars behind on June Nineteenth?. . . Have you paid any of that?"[27] While this may seem like an "efficient" way to administer justice in the Pro Se (Landlord) Courtroom, it hardly represents the ideal in terms of maintaining an objective

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[27] *See also, Mitchell v. Anderson*, 95 M1 7217165 (August 7, 1995).

judiciary—in either appearance or form. When the Court routinely assists the landlord to prove his case but fails to do the same for the tenant, the fairness of such a judicial proceeding is sorely compromised.

The Court's assistance to landlords is not limited to *pro se* landlords in the Pro Se Courtroom. *Cano v. Giles*, 95 M1 720109 (July 24, 1995) typifies the presentation of cases in other courtrooms even when the landlord is represented by counsel:

> LANDLORD'S ATTORNEY: If the Court please, this action is based upon a five-day notice, a copy of which I tender to the Court. I am asking that an order for possession be entered and as prayed for in the complaint.
>
> THE COURT: That is it?
>
> LANDLORD'S ATTORNEY: Pardon me?
>
> THE COURT: You are finished?
>
> LANDLORD'S ATTORNEY: Judge, yes.

The attorney obviously rested his case, and because the attorney failed to prove the essential elements of his claim, the case should have been dismissed.[28] Yet, in this case and in many others, the Court did not require the landlord to prove any additional facts, but instead took over questioning the tenant.[29] Moreover, even when the tenant testified that she paid the rent claimed in the five-day notice ("I talked to [the landlord] and I tried to get some understanding as to why the notice says June the Twelfth to June the Thirtieth when I have this receipt [for the same time period]"), the landlord was not asked to rebut such evidence. Of course, it would have been impossible for the landlord's attorney to prove any additional facts or rebut the tenant's evidence since his client, the landlord, was not present in court. Still, once the Court finished questioning the tenant, it entered judgment for the landlord even though the landlord had neither proved his case nor rebutted the defense raised by the tenant.

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[28] To be entitled to possession, the landlord must prove a possessory interest in the premises, that the tenancy was terminated as provided for by law, and that the tenant remains in possession. To prove lawful termination of the tenancy in a nonpayment context, the landlord must prove, *at a minimum*, (1) that a five-day notice was properly served; (2) that the tenant did not pay or offer to pay the rent amount claimed in the five-day notice within five days of receiving the notice; (3) and that the tenant remains in possession of the premises since the expiration of the five-day period. Though the landlord's attorney tendered the five-day notice to the Court, that alone can only constitute evidence that the notice was served.

[29] *See also, Fields v. Gray*, 95 M1 720419 (July 27, 1995)(attorney for the landlord simply asserts "Judge, this is a single action based on a 30-day notice terminating a month-to-month tenancy and I will show [the tenant]." At that point, the Court takes over questioning the tenant and although the tenant raises a couple of defenses, the attorney for the landlord is absolutely silent throughout the rest of the proceeding, which transcribed amounted to almost six pages, and still obtains an eviction order).

The Court Favors Even Defaulting Landlords.

Finally, the Court's failure to require plaintiff-landlords to prove their cases is most grievous when it enters judgments for landlords *even though neither a landlord nor landlord's attorney is present at trial*. In all, there were 38 cases in which a tenant appeared *pro se* but no one appeared for the landlord. In 10 of these cases the absent landlord still obtained a judgment for possession (5 also included a rent claim judgment).[30]

In *Quetschke v. Wallis,* 95 M1 717438 (July 31, 1995) and *Quetschke v. Isaacson*, 95 M1 717440 (July 31, 1995), neither a landlord nor a representative appeared. The Court asked the first tenant (Wallis) how many days would be needed to move. The tenant replied 14 days and the Court entered the judgment for the landlord, stayed 14 days. In the next case, the Court again asked the tenant (Isaacson) how many days were needed to move. The tenant replied "if the landlord's attorney is not going to show up—I want at least two months." The Court said no, and entered Judgment for the Landlord, stayed 14 days.

Furthermore, in those cases in which neither the landlord nor tenant appeared, o*nly 40% were dismissed for want of prosecution, 19% cases were voluntarily dismissed (1 with prejudice), and 16% were continued.* While the landlord as plaintiff is responsible for prosecuting the case, which means at least appearing on the return day, it seems that the Court did not uniformly involuntarily dismiss the case for the landlord's failure to prosecute. The Court, in almost half of these cases, entered a voluntary dismissal or continuance. Apparently, the Court is reluctant to dismiss landlords' complaints.

Thus, the Court, in several ways, assists the landlord to obtain judgments against tenants even when such judgments are not supported by law. The Court routinely ignores the landlord's failure to prove his case and often does not require the landlord to attempt to establish his *prima facie* case. Rather, to the extent the Court requires evidence to support a judgment for possession or rent in the landlord's favor, the Court simply takes on the job of advocating for the landlord by questioning the tenant about any issues it deems relevant. As set forth later in the next section, the Court often treats the affirmative defenses raised by the tenant as irrelevant.

The Court Fails to Enforce Well-Established Law by Refusing to Recognize Tenant Defenses.

While tenants have a variety of rights under local, state and federal law which offer certain procedural and substantive protections against improper evictions, such rights are rarely upheld by the Eviction Court. The section regarding the landlord's burden of proof has presented some examples illustrating that the Court ignores defects in the landlord's case. This section describes the failure of the Court to recognize meritorious defenses as well as the failure of the Court to enforce defenses even while recognizing them as meritorious.

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[30] In addition to the ten cases awarding possession or rent to the landlord, these cases were disposed of as follows: 21 were involuntarily dismissed, 3 were voluntarily dismissed; 2 were continued, 1 was transferred to the jury call and in 1 the rent claim was dismissed.

As previously mentioned, *pro se* tenants raised a total of 583 defenses. Yet, the landlord was awarded possession of the premises 95% of the time. In only 6 cases, or 1% of the time, was the tenant awarded outright possession of the premises. In only 3% of the cases was the landlord's complaint involuntarily dismissed.[31] Thus, only 4% of *pro se* tenants succeeded in asserting a defense which the Court recognized as allowing them to remain in their housing. Monitors were trained to record any defense raised by tenants without making a determination of the validity of the defense, and thus, a precise measure of the number of tenants who raised defenses that were meritorious but still lost their case in court cannot be determined. However, several cases suggest that meritorious defenses were often raised and ignored and that improper evictions occurred.

A. The Court Ignores the Enhanced Protections for Section 8 and Public Housing Residents.

The Court fails to recognize meritorious defenses in several different situations. One of the most disturbing findings is the Court's consistent failure to recognize defenses available to tenants living in apartments with a Section 8 Certificate. Landlords who agree to participate in the Section 8 program execute a lease with the tenant and a Housing Assistance Payment (HAP) Contract with the Chicago Housing Authority (CHA). Under these respective agreements, the tenant agrees to pay the landlord an amount which is roughly 30% of her income towards the rent, and the CHA pays the remaining 70% of the rent to the landlord pursuant to the HAP contract. Under federal law which governs such tenancies, tenants can only be evicted for "good cause"—only if a tenant intentionally violates a material provision of the lease. Moreover, participating landlords must agree to maintain the apartment in a condition consistent with federally defined Housing Occupancy Standards. Failure to so maintain the premises can result in the CHA either temporarily abating, or terminating altogether, its HAP payment to the landlord.

In a number of cases observed in the study, landlords were seeking to evict tenants—often for nonpayment of rent—when the CHA, not the tenant, had reduced or stopped making rental payments. The CHA had done so because the landlord had failed to maintain the premises consistent with federal standards. Federal law provides that in such a scenario, the landlord's remedy is to pursue an administrative grievance with the CHA—not to pursue an eviction of the tenant. However, time and again the Court evicted tenants—even though it was the landlord who had violated federal law and despite the fact that the tenant had not violated any lease provision.

For example, in *Gupta v. Dickerson*, 95 M1 719471 (July 19, 1995), the Court entered a judgment for possession against a tenant living in an apartment with a Section 8 Certificate even though the Court recognized that the proper issue was whether the landlord, not the tenant, was in violation of law:

> THE COURT: Well, sir, you have agreed to terminate under these provisions that your (sic) bound only to be able to terminate the lease under these conditions. The lease

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[31] Of the remaining cases, 21 were dismissed for want of prosecution, 9 were recorded as rent judgments only, and in 2 cases there was no disposition recorded.

continues in affect (sic) until you choose to terminate for one of the conditions that are present here.

You have obligations under the lease as well as rights under the lease. One of your obligations is to continue the property in such condition that [CHA] will continue to pay under this program. The issue here is whether the property has been maintained in a condition that they will continue to pay under the program. [The tenant] has continued to pay her portion of this agreement to you.

Notwithstanding such a finding, the Court entered judgment for the landlord.[32] *See also, Phillips v. Blackmon*, 95 M1 20018 (July 27, 1995)(CHA abated HAP payment until conditions fixed by landlord, yet Court evicted tenant and awarded landlord $286); *Laurion v. Marbury*, 95 M1 719719 (August 7, 1995)(CHA stopped HAP payment to the landlord because landlord would not give tenant a key to the back door of unit and tenant was without gas for entire month. Court refused to look at tenant's letter from CHA and evicted tenant, staying possession for only seven days).

In *Fields v. Gray*, 95 M1 720419 (July 27, 1995), the Court evicted another Section 8 tenant even though the tenant had lived in the premises four years and both he and CHA had continued to pay their respective portions of the rent. In that case, the landlord relied on a 30-day notice which is typically used to terminate month to month tenancies (and not based on any "cause" or "fault" of the tenant). However, even though Section 8 leases "convert" to month to month tenancies after their first year, all the lease provisions—including those which provide that the lease can only be terminated by the landlord for good cause—remain in full force and effect. Thus, a 30-day notice is legally insufficient to terminate a Section 8 tenancy. The tenant's attempt to explain this to the Court after acknowledging that she received the 30-day notice was in vain:

DEFENDANT: Yes, my lease had expired and it was month to month. I am on Section 8. Section 8 pays my landlord every month. As of right now, my landlord has not . . . notified Section 8 that he want --[my landlord] has not notified Section 8 that he wants me to move. As of Tuesday, they will be paying him my rent for August for the whole month of August and they're not going to pay him my rent for August and then pay somebody else—they're not going to pay for me for two places.

And I spoke to my Section 8 representative . . . and they said that [my landlord] need to notify them that they—that he wants me to move.

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[32] The Court gave the tenant until August 13, 1995 (a 26-day stay) to move, ostensibly because August 13 was the anniversary date of the lease, which had been entered into by the parties on August 13, 1993. In so ruling, the Court seemed to interpret the anniversary date of the lease as the expiration date of the lease. This is incorrect—a Section 8 lease is entered into initially for a one-year period and once it expires, is treated as a month-to-month lease which can only be terminated for good cause. However, even if the Court's interpretation of the lease were correct, it had no basis for evicting the tenant unless and until the lease had expired and the tenant remained in possession. Thus, notwithstanding the fact this tenant did not violate any lease provision and that there was no basis to evict, the tenant was evicted.

COURT: You may want to tell them not to pay him. I mean, I can't—I don't know the Section 8 procedures.

Despite this confession, and the fact that legally the landlord simply had no case against the tenant, the Court evicted the tenant, giving her 28 days to "find another place."[33] As described later in this chapter, the result in this case is even more odious because of the tenant's assertion at a later point in the proceeding that the actual reason the landlord wanted her out is that she refused to have sex with him (which, if true, constitutes sexual harassment and is yet another defense to the eviction action).

These and other cases in which the Court improperly evicted Section 8 tenants are particularly disturbing for several reasons.[34] First, these tenants are generally considered to have, and indeed do have, the greatest legal protections regarding their tenancy—the right to be evicted only for good cause. If the Court is unable to enforce the rights of tenants who have the greatest legal protections, it is unlikely that tenants with lesser rights will be able to look to the Court for protection. Second, tenants who are eligible for Section 8 are by definition poor and compete in an extraordinarily tight housing market. Additionally, they are likely to have greater difficulty finding housing because they are minorities, have children, or have disabilities. Clearly, it is very difficult, if not impossible, for tenants in these circumstances to locate alternative housing, particularly in the short time frame allowed by the Court. Thus, it is not only possible but predictable that homelessness will result from unlawful evictions of tenants who hold Section 8 Certificates.

B. The Court Fails to Enforce Well-Established Illinois Law requiring the Landlord to Maintain the Premises.

The Court's failure to recognize properly tenant defenses is not limited to cases involving subsidized housing or issues of federal law. For example, for over twenty years Illinois law has recognized that a landlord must provide and maintain a safe and sanitary dwelling for the tenant in exchange for rent.[35] Since 1986 the Chicago Residential Landlord Tenant Ordinance has provided specific rights and remedies available to tenants when a landlord fails to maintain the premises, including the right to withhold rent and to repair and deduct. Yet, of the 108 *pro se* tenants who asserted substandard conditions or the landlord's failure to repair as a defense to the eviction, only 2 tenants were awarded possession of the premises pursuant to such a defense, only 2 tenants secured a repair order from the Court (and both cases were continued), and 1 tenant succeeded in

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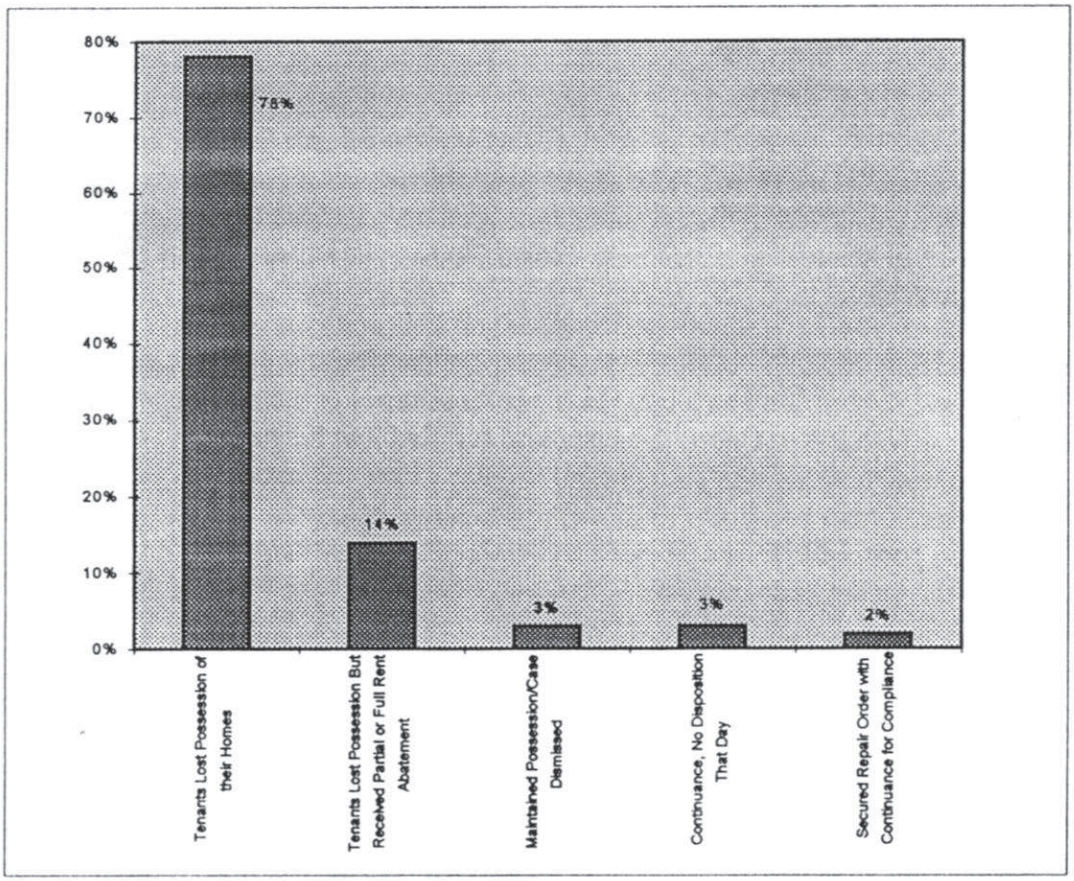
[33] Although the Court's ruling was wholly improper as it was not supported by law, at least the Court in this instance believes it is correctly applying, rather than ignoring, the law (the Court, stated "I do know that he can evict you in this Courtroom by following the law and I believe he did that.")

[34] Other examples of a tenants with Section 8 Certificates being evicted include: *Turner v. Howell*, 95 M1 719491 (July 19, 1995)(landlord failed to serve a proper Notice of Termination of Tenancy on tenant but tenant still evicted); *Gibbs v. Collins*, 95 M1 721253 (August 2, 1995)(landlord served a five-day nonpayment notice on tenant even though tenant did not owe any rent—tenant was still evicted).

[35] *See Jack Spring v. Little*, 50 Ill.2d 351, 280 N.E.2d 915 (1972) and cases that follow it.

having the landlord's case involuntarily dismissed. In the vast majority of cases (98 of 108) the landlord was awarded possession of the premises.[36] While an additional 13 tenants succeeded in securing a partial rent abatement and 2 even received a full rent abatement, such rulings are only partially favorable, because these tenants still lost possession of their homes and had their records marred by eviction.

Chart 5: Outcomes for Tenants Who Asserted Conditions as a Defense Against Eviction



Moreover, the inability of tenants to successfully assert these defenses is not simply a function of tenants failing to properly prove their cases. Rather, in many ways the Court improperly precluded tenants from effectively asserting these defenses. For example, in 24 cases the Court refused to consider defenses based upon conditions or failure to repair, often justifying its refusal to do so on the grounds that "[t]his is not the Court [in] which the deficiencies in the building are determined," *(Garland v. Pierce*, 95 M1 721343 (August 2, 1995)) or that if the conditions are bad, tenants should move. *See Pecoraro v. Torres*, 95 M1 720600 (August 9, 1995) (tenant

[36] Six cases were continued and 1 was transferred to the jury call.

asserts habitability issues, Building Code violations cited by the Department of Buildings, the Court replies "you want to move then, don't you"); *see also Riccordino v. Ford*, 95 M1 721505 (August 3, 1995)(tenant argued defective conditions and the Court replied that the issue was not the province of this court—other courtrooms handle "conditions" cases); *Young v. Carr*, 95 M1 20428 (July 26, 1995)(Court refused to look at tenant's photographs of defective conditions in apartment saying "that's not handled here, if it's handled at all."); *John Jay* Case (no case number or proper name recorded because case was "add-on", i.e., not on docket prior to call)(August 3, 1995)(tenant testified she had no windows, had rat holes, serious problems in the apartment, and a three-month old baby. The Court states "well you probably don't want to live there" and "you should get a tent and put it in the backyard"); *Combined Realty v. Peake*, 95 M1 722301 (August 10, 1995)(tenant asserts defective conditions, Court asks "Why don't you move?").

Such rulings are, of course, improper under the law. These cases demonstrate the Court's failure to properly recognize defenses as well as its refusal to assist tenants in proving their defenses, while, as discussed previously, it routinely assists landlords to prove their claims. Moreover, in many other cases, while the Court "hears" defenses based on substandard conditions or failure to repair, the Court often ignores such defenses, instead focusing its inquiry on the tenants' willingness to move.

In *Coleman v. Warren,* 95 M1 721349 (August 2, 1995), the tenant testified that the ceiling had fallen in and that she did not have any lights in her bathroom or bedroom. She brought pictures of the damaged ceiling with her to Court. The landlord testified that he was going to put lights up but that the tenant told him she was going to move. The Court responded "[w]ell do you want to get this fixed ma'am, or are you going to move?" When the tenant said she was going to move, the Court awarded possession to the landlord and entered a money judgment for the full two months rent that the tenant had withheld.

Legally, whether or not a tenant wants or intends to move is irrelevant to a determination of whether the defective condition of a unit should offset the amount of rent claimed by a landlord, whether the landlord is entitled to possession or whether the landlord is legally obligated to repair certain conditions. Overall, more than twenty years after the implied warranty of habitability was first recognized in Illinois, the Court still resists enforcing legal defenses derived from the principle that the tenant's duty to pay rent and the landlord's obligation to maintain habitable premises are mutually dependent.

Moreover, information collected from tenants as they were exiting the courtroom reveals that many tenants who have defenses based on conditions do not raise them in court. Of the 55 tenant households interviewed, 44 tenants answered "yes" to the question "[a]re there any conditions in your house/apartment that are unsafe?" *While 39 of these 44 tenants reported that they had told the landlord of the condition problems, only 4 reported that they had told the judge.* Moreover, the conditions cited by these tenants were in no sense trivial. One tenant reported that her four-year-old child had lead poisoning from the paint in the apartment and that the apartment also has rats, roaches, ants, and centipedes. Another tenant reported mice, sewerage coming up in the kitchen, mold everywhere, doors with four-inch space at the bottom, and a hole in a bedroom

floor (through which the tenant could see all the way into the basement).[37] Thus, the 108 *pro se* tenants who raised defective conditions/failure-to-repair in defense of the eviction action, in all likelihood, represents only a small portion of tenants who may have meritorious conditions/repair defenses. Yet, based on the institutional practices of the Court, there is no reason to believe that tenants in the future will be better able to raise such defenses or do so successfully without legal representation or changes in the system.

C. The Court Fails to Enforce the Well-Established Defenses of Cure, Waiver, and Discrimination.

The Court fails to recognize, or repudiates, several other defenses available to tenants. For example, in *St. Edmunds v. Brogdon*, 95 M1 722160 (August 9, 1995), a landlord sought to evict a tenant pursuant to a ten-day notice. The premises were located in a building covered by the RLTO which provides that ten-day notices can be used to terminate a tenancy for violation of a lease provision. Under the RLTO, the landlord's ten-day notice must give the tenant ten days within which to cure the violation. In the instant case, the violation involved the fact that the tenant's niece and niece's friend were staying at the apartment. The uncontested testimony of the tenant established that the notice was served on a Thursday and the niece and friend (who had been visiting for a summer vacation) left on the following Saturday. Thus, the tenant had "cured" the alleged violation. The landlord was not present, only an attorney on the landlord's behalf. While the Court seemed to recognize the tenant's defense, it refused to enforce it:

> THE COURT: Well, you might have a legitimate complaint, but the bottom line would be you probably would be asked to leave at some other time.
>
> DEFENDANT: Okay.
>
> THE COURT: So, your best bet would be to probably find a place to move?
>
> DEFENDANT: Okay.

The Court then entered judgment for the landlord, stayed 21 days, even though the landlord had no basis to evict. The tenant's meritorious defense is, again, simply ignored, and of course, the Court did nothing to assist the tenant to prove her defense. It goes without saying that it is improper for the Court to refuse to apply the law on the premise that the tenant will essentially be better off moving. Even if the Court could not contain its advice, it could simply have entered a judgment in the tenant's favor while advising her that she might consider moving—to avoid whatever it is the Court anticipates happening in the future. Also, the tenant's "acquiescence" that it might be best if she move does not justify, nor rationalize, a judgment being entered against her. Indeed, if the tenant wants to move and the landlord wants her to vacate, a judgment for the landlord is wholly unnecessary. Moreover, the judgment is likely to destroy the tenant's credit and rental history and, with only 21 days to move, the tenant is at grave risk of homelessness.

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[37] A complete list of the conditions problems cited by tenants is provided in Appendix C.

Another well recognized defense is that of waiver. A landlord may lose the right to pursue an eviction if, after the termination of the tenancy, the landlord does something to renew the tenancy. *St. Edmunds v. Sims,* 95 M1 722164 (August 9, 1995) provides an example of a waiver defense which should have defeated the eviction. In that case, the tenant received a 10-day notice complaining of some sort of wrongful conduct on the part of her children (the record does not reveal the exact content of the notice). In addition to testifying that the allegations in the notice were not true, the tenant stated that since the notice, she had paid, and the landlord had accepted, rent for two months. Notwithstanding this uncontested evidence, the tenant was evicted and given a mere 21 days to surrender the apartment.

Again, the Court failed or refused to enforce the tenant's meritorious defense of waiver and did not inquire in any way as to whether any alleged breach has been cured (an additional defense). This case typifies the failure of the Court to credit the uncontested testimony of the tenant, and its failure to assist tenants in the presentation of their defenses. *See also Oak Park Real Estate v. Williams*, 95 M1 722403 (August 10, 1995)(uncontested testimony of tenant that since receipt of nonpayment notice, she had entered into a payment plan with landlord, the landlord had accepted some rental payments and agreed to accept additional funds from the City's Department of Human Services Homeless Prevention Program.)

Finally, in view of the Court's widespread failure to recognize and enforce such well-recognized defenses, it is not surprising that more "complex" defenses are ignored as well. For example, in *St. Edmunds v. Sims*, 95 M1 722164 (August 9, 1995), the tenant also asserted that the maintenance man, who appeared to be the person making the complaint about the tenant's children, had made sexual passes at her 13 and 14 year old daughters, and that she had reported that and other illegal conduct to the management office. Such facts would support a defense and counterclaim of sexual harassment. However, the Court simply failed to address the claim in any way. *See also Fields v. Gray*, 95 M1 720419 (July 27, 1995)(tenant testified that the reason her landlord wanted her out is because "he told me he was a leg and thigh man and I can't pay rent and give him sex, too." The landlord was not present in Court and the Court simply ignored the tenant's claim and entered judgment for the landlord).

Whether the Court's failure to recognize, follow-up on, or enforce the myriad defenses raised by *pro se* tenants is due to ignorance of the law or refusal to adhere to the law, clearly tenants are being wrongfully evicted.

The Court Accommodates the Needs and Schedules of Plaintiff-Landlords while Not Doing the Same for Defendant-Tenants.

The Court is much more likely to give or offer continuances to landlords to prove up their *prima facie* case (generally when challenged by the tenant) or to rebut evidence presented by the tenant as part of an affirmative defense, than it is to give or offer continuances to tenants when one is necessary for the tenant to prove their defenses. While the extent of this problem cannot be precisely quantified based upon information collected on the data forms alone, comments provided by the court monitors indicate that, with some variability among judges, the Court routinely grants continuances to the landlords while rarely granting continuances to *pro se*

tenants. The following two cases exemplify the disparate way the Court grants continuances requested by landlords and tenants.

In *Turner v. Howell,* 95 MI 719491, (July 19, 1995), the Court acknowledged the landlord's failure to prove his case because the landlord lacked any Notice of Termination of Tenancy. The Court explained to the landlord why his case was defective and volunteered that "if you have a copy of something that you wish to bring back to Court . . . I will give you the opportunity to do that." Thus, in *Turner*, the landlord does not even have to request a continuance. Rather, the Court suggested that the landlord might want to continue the case so that he could properly prove his case and secure relief (rather than having his case dismissed as required by law). The Court did this despite the fact that the plaintiff-landlord who filed the case in the first place bears the burden of proof on the date of trial.[38]

The Court is not nearly so accommodating to a tenant who, like the landlord in *Turner*, finds his evidence lacking. In *Mitchell v. Anderson*, 95 M1 7217165, (August 7, 1995), the tenant defended against a charge of nonpayment by testifying to an agreement between himself and the landlord and that rent should be excused pending the repair of plumbing problems in the bathroom and kitchen and the provision of adequate heat. The tenant testified that he had a rent receipt, a printout from City Hall about the code violations in the apartment, and some pictures, but that he did not have them with him in Court. In response, the Court stated:

> THE COURT: Sir, you walked into Court today. You don't have any receipts for anything you're telling me you paid since April. You say there are code violations, but you didn't bring anything with you. You say there are problems with your apartment but you didn't bring any pictures.
>
> This is your day for trial. Without evidence, I can't help you.
>
> DEFENDANT: I understand.
>
> THE COURT: Evidence was all incumbent upon you to bring to Court with you. You will have until the end of the month to move. There will be a judgment for two months rent. That will be 790 dollars plus the Court costs. Good luck.
>
> DEFENDANT: Excuse me your Honor. If I can bring in the evidence and the receipts and the photos, and the code violations.
>
> THE COURT: All of that should have been here today, sir. Today is your trial. You have until the end of the month to move. Good luck.

These cases typify what the monitors routinely observed and recorded about the way the Court accommodated the needs and schedules of landlords while failing to offer or provide similar

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[38] *See also , Gupta v. Dickerson*, 95 M1 719471 (July 18, 1995)(case continued for landlord to bring in lease); *Oak Park Real Estate v. Phillips*, 95 M1 720511 (July 27, 1995)(case continued for landlord's attorney to "double check" with her client certain facts which were contested by the tenant).

accommodations to tenants. In fact, the Court's resistance to accommodating the needs of tenants extended so far as to include its denial of many requests by tenants for time to secure a lawyer. *See, e.g.*, *Drier v. Kondacina*, 95 M1 719260 (July 18, 1995)(continuance denied with the judge observing that if the tenant did not have money for rent, in the judge's experience, the tenant would not have money for a lawyer); *Lifelink Corp. v. McGlothin*, 95 M1 718419 (August 2, 1995)(continuance denied: "why do you need an attorney, you didn't pay rent." When tenant claims she had been injured on the premises because of unsafe conditions, the Court responds "get an attorney to vacate the judgment"); *O'Donnell v. Martinez*, 95 M1 720705 (July 27, 1995)(continuance denied, Court told tenant to try to find a lawyer during the time it has given the tenant to move); *CMS v. Carney* (no case number recorded)(August 10, 1995)(tenant asked for time to speak with an attorney; Court ignored the request and proceeded with the trial).

A. *Pro Se* Materials and the Designation of a Special Courtroom for *Pro Se* Landlords Places Tenants at a Distinct Disadvantage.

In addition to the Court's widespread failure to require landlords to prove their cases for possession or rent and its improper rejection of a variety of tenant defenses, the administration of the Court denies the rights of tenants in several other ways.

First, for those landlords who do not have counsel, a special courtroom is designated to hear their claims and form pleadings are made available by the Clerk of the Court.[39] Yet, for *pro se* tenants, there is no such specially designated forum and no form pleadings are available to assist in the presentation of their claims or defenses. Moreover, the form complaints available to, and largely utilized by landlords, provide only the most general information about a landlord's claim for possession and, if a joint action, rent.[40] Yet, because forcible proceedings are summary proceedings, tenants who have received a form complaint that lacks any supporting facts, must be prepared to defend themselves within about a week of receiving the complaint. It is extraordinarily difficult for tenants to articulate their legal defenses and claims and "think on their feet" in the context of being in a courtroom, before a judge, and most often, litigating against a landlord's attorney. Even the most seasoned attorneys would be hard pressed to prepare and present defenses and counterclaims on their first court appearance in a case—especially when their knowledge of the plaintiff's claim is limited to the information contained in a wholly conclusory complaint. Most attorneys would avoid trying a case in such a context by filing motions, conducting discovery, or securing a continuance.

Also, because there is no specially designated courtroom for *pro se* tenants, such tenants can be required to conduct their trial in any of five courtrooms, room 1302, 1402, 1406, 1408 or 1409. With the exception of room 1409, a feature shared by each of these courtrooms is an exceptionally low rate of tenant representation. (As noted previously, Courtroom 1409 is the jury trial courtroom, and tenants with legal representation are concentrated in that courtroom.) Very

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[39] In fact, these form pleadings are available for use by all landlords, and indeed are widely used by landlords, whether represented by counsel or not.

[40] Copies of the form complaints as provided by the Clerk's Office are in Appendix C.

few tenants' attorneys litigate cases in room 1302, 1402, 1406 or 1408. In fact, during a four-week period in the course of our study, in room 1302 a mere 0.3% of tenants were represented, in room 1402 a mere 3.9%, room 1406 only 2.2% and in room 1408, only 2%. Thus, rarely do the judges sitting in these courtrooms have the benefit of, or receive pressure from, tenants' attorneys who can present and argue the law or appeal improper rulings. In contrast, judges in rooms 1402, 1406 and 1408 regularly hear from and deal with landlords' counsel.[41] In fact, during the same four-week period, 98% of landlords in 1402 were represented, 100% of landlords in room 1406 were represented and 99% of landlords in room 1408 were represented. Thus, these forums are largely landlords' forums with very little institutional presence on the part of tenants or tenants' attorneys. Without regular advocacy on behalf of tenants in all the courtrooms, a certain level of checks and balances is absent.

B. The Court's Practice of Initiating "Settlements" is Misleading and Unfair to *Pro Se* Tenants

Another aspect of the Court's practice that often results in unfairness to tenants is the Court's inclination to initiate settlements that favor landlords' interests and disfavor tenants' interests. In many instances, the Court's disposition of cases is at best confusing, and at worst misleading, to *pro se* tenants. As touched on earlier in this chapter, the Court at times seems to lead the parties into an "agreement" and uses such "agreement" to seemingly justify an otherwise improper judgment in favor of the landlord. For example, in *Turner v. Howell*, 95 M1 719491 (July 19, 1995), after the Court concluded on the record that the Court could not do anything for the plaintiff-landlord due to a fatal defect in the landlord's case, the tenant volunteered that she intended to move. Rather than dismiss the case as provided by law (leaving the tenant free to vacate the premises without threat of eviction by the Sheriff or the harm of a judgment on her record) the Court proceeds as follows:

> THE COURT: How soon will that be, ma'am?
>
> DEFENDANT: At least be about thirty days because the landlord that I got the papers here now from Section 8 for him to fill out.
>
> THE COURT: Do you agree to give her thirty days to move?
>
> THE PLAINTIFF: What is today's date?
>
> THE COURT: The Nineteenth.
>
> THE PLAINTIFF: The Nineteenth of August.
>
> THE COURT: Around then. Eighteenth.
>
> THE PLAINTIFF: Yes.

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[41] Of course, the judge in room 1302, the Pro Se Courtroom, rarely hears from counsel for either party. However, this courtroom is, by definition, a forum for *pro se landlords*, not *pro se tenants*.

THE COURT: Thirty days.

THE PLAINTIFF: Yes.

THE COURT: Do you agree to vacate in thirty days?

THE DEFENDANT: Yes, I do.

THE COURT: Okay. Then we have an agreement. Wasn't that easy?

Judgment for possession stayed for thirty days.

THE DEFENDANT: Okay. Thank you.

THE COURT: Thank you.

Thus, notwithstanding the fact the Court had no legal authority to enter judgment for possession in favor of the landlord, the Court does so ostensibly as a result of an "easy" agreement reached between the parties. Yet, the "agreement" between the parties was at most an agreement about when the tenant will move—they did not agree to the entry of a judgment for possession in the landlord's favor nor did such "agreement" authorize the entry of such judgment. Contrary to the Court's rhetoric of some kind of "agreement" reached between the parties, none of the corresponding orders were entered as "agreed." The court file simply reflects that an order of possession for the landlord was entered.

Given the tenant's failure to protest, it seems unlikely that she understood what happened, or perhaps she was too intimidated to question or challenge the judge. Because the order is for possession, and not entered as an "agreed" order, the judgment will be entered as an eviction and damage the tenant's rental and credit history. This will make it more difficult for her to obtain housing in the future. Furthermore, in the event the tenant is unable to vacate the apartment in 30 days, the landlord can have the Sheriff's Office physically eject her from the premises. *The landlord, meanwhile, learned that he does not have to follow the law to evict the tenant.*

There is simply no good justification or rationale for the Court entering a judgment against the tenant pursuant to an "agreement" rather than dismissing the case pursuant to applicable law. *See also Johnson v. Anderson,* 95 M1 721253 (August 2, 1995)(despite notice defects, judgment for the landlord after Court made landlord and tenant "agree" that tenant needs 20 days to move); *Heffley v. Lubriz*, 95 M1 719686 (July 20, 1995)(landlord failed to prove that the tenancy had been terminated for an alleged noise violation; Court said it would continue case for landlord but then encouraged tenant (who had great difficulty speaking English), to "agree" to move in 30 days and entered judgment for the landlord); *Gibbs v. Collins*, 95 M1 721253 (August 2, 1995)(despite landlord's failure to properly terminate a Section 8 tenancy, judgment for the landlord after the Court convinced the tenant to "agree" that since she already had her moving papers, she should have been able to find another place, get it inspected and once it's inspected and approved, move in within the next thirty days, by the end of the month).

C. The Court Fails to Clearly Articulate the Bases for and Effect of Its Dispositions.

Other cases demonstrate that many tenants may not understand the implications of certain orders entered by the Court, and the Court is unlikely to offer helpful explanations. For example, in *Park Management v. Drake*, 95 M1 721786 (August 7, 1995), the tenant admitted that she had not paid the rent claimed in a nonpayment notice within the requisite five days. However, she explained her plan to be able to pay all outstanding rent:

> DEFENDANT: [I] have just recently returned back to work from maternity leave. Before I had complication, -- well, I gave birth and I am just returning back to work and I wanted for the Twenty-fifth to make both payments and the two hundred dollars which is for the Court fee and that is for a thousand dollars or something.
>
> I think it would be like a thousand dollars. I will be able to pay that on the Twenty-fifth of August.

However, the landlord's attorney and the Court simply ignored the tenant:

> LANDLORD'S ATTORNEY: I would ask for an order of possession giving a reasonable time to the defendant, perhaps fourteen days would be acceptable to the Court.
>
> DEFENDANT: I won't be able to get paid until that Friday. I work at the post office.
>
> THE COURT: What is the total?
>
> LANDLORD'S ATTORNEY: The total at this point inclusive of the calendar month of August is 950 even plus costs.
>
> THE COURT: August Twenty-fifth Pardon me. August Twenty-eighth. Twenty-one day stay madam.
>
> DEFENDANT: Okay. How much do I owe?
>
> LANDLORD'S ATTORNEY: And the judgment would be in the amount of 950 dollars and costs.
>
> DEFENDANT: Okay.
>
> LANDLORD'S ATTORNEY: And may we have leave, your Honor, to accept money without prejudice as well. I will draw up an order.

Based on the proceedings, the tenant in all likelihood thinks she has until August 28 to pay the past due rent and that she can remain living in the apartment. *Yet, because the Court granted possession to the landlord and the landlord's attorney requested leave to accept money without prejudice (and the Court did not deny it), the landlord can accept all the back rent from the tenant and still evict her.* The landlord's attorney never indicated during the case whether the

tenant's request to pay the rent on the 25th was acceptable to the landlord—nor did the Court ask. As a result, this tenant may pay all the rent owed on the twenty-fifth of the month, and she and her newborn baby can still be evicted by the Sheriff. *See also Sunset Apartments v. Buckner,* 95 M1 718388 (July 25, 1995)(at conclusion of fairly lengthy trial in which tenant asserted defective conditions, Court refused to explain the basis of its finding regarding amount of money owed by tenant. When the tenant asked for seven days to pay the amount, the Court replied "I am entering the order for possession, seven-day stay," and then confirmed with the tenant that she wanted to pay the rent. The transcript reveals that the likely impression of the tenant is that the Court has only settled the amount of money the tenant owes to the landlord and has not, in fact, awarded possession, i.e., the right to evict, to the landlord.)

The failure of the Court to articulate clearly its disposition of cases, the bases for such dispositions and the effects of such dispositions, negatively impacts tenants in several ways. When tenants do not recognize a judgment as adverse (such as when the judge suggests the judgment is entered pursuant to some "agreement" of the parties), the tenant will be less likely to pursue any post-judgment relief (such as an appeal or a Motion to Vacate) that may be warranted.[42] For tenants who do not understand that the Court has actually evicted them, results may be devastating. Tenants who believe that the Court's order is a settlement that allows them to pay the outstanding rent while remaining in possession are unlikely to take the necessary and rather urgent steps necessary to locate alternative housing prior to the day the Sheriff arrives to execute the judgment. Similarly, tenants who think they have entered into an "agreement" with the landlord about when they will move, and then find themselves unable to vacate by the agreed-upon date, may not realize that they are then subject to eviction by the Sheriff.

That many tenants mistakenly believe that they have settled their cases rather than having been evicted is reflected in the fact that the form completed by the Sheriff's Office upon evicting a tenant contains the following language:

> THE DEFENDANT, _____, CLAIMED THAT HE/SHE HAD SETTLED THIS MATTER TO THE PLAINTIFF'S SATISFACTION. I SPOKE WITH THE PLAINTIFF'S REPRESENTATIVE, _____ _____, WHO DENIED THE CLAIM AND INSISTED THAT I PROCEED WITH THE EVICTION, WHICH I DID.[43]

Such boilerplate language indicates that it is commonplace for the Sheriff to evict tenants who mistakenly believe that they are not subject to eviction. While it is impossible to measure the precise extent to which this is a result of vague or ambiguous orders entered by the Court, clearly such orders increase the risk that tenants will not understand that they are subject to eviction. If tenants do not understand that they will be evicted, the Sheriff's arrival is often a complete surprise, and many tenants will likely be rendered homeless.

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[42] While this will be difficult without greater access to legal representation, it will be impossible so long as tenants do not understand the judgments being entered against them.

[43] A copy of a Daily Worksheet utilized by the Eviction Department of the Sheriff's Office of Cook County is provided in Appendix C.

The Court is Largely Insensitive to the Position of Tenants.

The Court appeared less than sensitive to the circumstances of tenants and has failed to recognize the shrinking housing market that plagues Chicago. While the Court seems to bend over backwards to enable landlords "to make their mortgage payments,"[44] the Court makes no such sympathetic allowance for tenants who are facing homelessness. In response to a tenant who indicated that she would not be able to move in 21 days as provided for by the Court's order, the Court replied "[w]ell, I certainly hope you will. Otherwise you will find yourself in a very embarrassing position. They want you out of there, I would assume that they will make arrangements to have you evicted." *St. Edmunds v. Sims*, 95 M1 722163 (August 9, 1995). In the *John Jay* case, when the tenant testified to severe conditions problems, the Court joked with the landlord's counsel that the tenant should probably put a tent in the backyard. *John Jay* (no case number recorded)(August 3, 1995). Under such difficult circumstances, the fact that *pro se* tenants raised even 583 defenses is really quite impressive. Certainly, the Court gives short shrift not only to tenants' rights, but to tenants' difficulties.

Furthermore, in the cases in which the tenant did not appear in court personally, but had a friend or relative appear on her behalf (28 cases), the monitors reported that in essentially all of these cases the friend or relative explained that the tenant was ill or hospitalized and unable to appear. The vast majority of these people requested continuances, yet only 6 cases (or 21%) were continued by the Court. Of the remaining cases, landlords were awarded possession of the premises in more than half the cases (40% of these included rent judgments), and 7% were recorded as rent judgments only. Eighteen percent of the cases were settled by agreed orders.

Legal Representation Dramatically Impacts the Outcomes of Cases.

As previously mentioned, of those tenants who appeared in Court, very few had legal representation. In fact, of the 962 tenants who appeared in Court, only 99 had attorneys. Of these represented tenants, only 18 actually had their cases heard and disposed of by the Court.[45] This low number of cases adjudicated on the merits (18%) is largely a result of three factors. First, very few tenants had legal representation. Second, of the tenants who did have counsel, the vast majority litigated their cases in room 1409 (the jury courtroom), which was not observed by court monitors. Third, in the courtrooms that were observed, on any given day, only a small percentage of cases involving represented tenants were actually heard and disposed of on the merits. This is because many of these tenants demanded a jury trial, engaged in discovery, or presented motions. As a result, there are relatively few cases available from the study that can be used to determine how represented tenants fared, relative to *pro se* tenants, in court. However, even the data from the limited number of available cases reveals that legal representation has a dramatic impact on case outcomes.

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[44] The monitors indicated that judges asked, on more than one occasion, how the landlord was going to pay his mortgage payments when tenants tried to explain why they were not paying rent.

[45] The remaining cases were disposed of through agreed orders (20), were continued (33), transferred to the jury call (22), dismissed for want of prosecution, i.e., no landlord or landlord's representative appeared (4), voluntarily dismissed (1), or referred to mediation (1).

For example, while landlords were awarded possession against *pro se* tenants 95% of the time, landlords were awarded possession against represented tenants only 50% of the time.[46] Moreover, represented tenants were six times more likely to prevail against landlords than *pro se* tenants.[47] In fact, while *pro se* tenants succeeded in having the landlord's case involuntarily dismissed a mere 3% of the time, represented tenants had the landlord's case dismissed 22% of the time. Similarly, while *pro se* tenants were awarded possession 1% of the time, represented tenants were awarded possession of the premises 5% of the time.

Overall, for represented tenants, the greatest single action by the Court was a continuance (33 of 99), followed by a jury demand (22). The prevalence of continuances and jury demands granted to represented tenants stands in contrast to the number granted to *pro se* tenants. Represented tenants were more than twice as likely to have their case continued (33% of the time) than were *pro se* tenants (18% of the time). Moreover, as pointed out previously, the vast majority of continuances granted when a tenant was *pro se* were in favor of the landlord, not the tenant. Also, while only 1% of *pro se* tenants requested a jury trial, 22% of represented tenants did the same. These numbers indicate that compared to *pro se* tenants, represented tenants are able to assert their rights and are not likely to proceed with a trial on the "return day"—the first day the case is heard in the Court. Represented tenants are more likely to receive the time needed for discovery, motions and preparation for trial.

Agreed orders are also more favorable to tenants when they are represented. Landlords only obtained possession against represented tenants 52% of the time, pursuant to an agreed order, whereas landlords obtained possession against *pro se* tenants pursuant to agreed orders 70% of the time.

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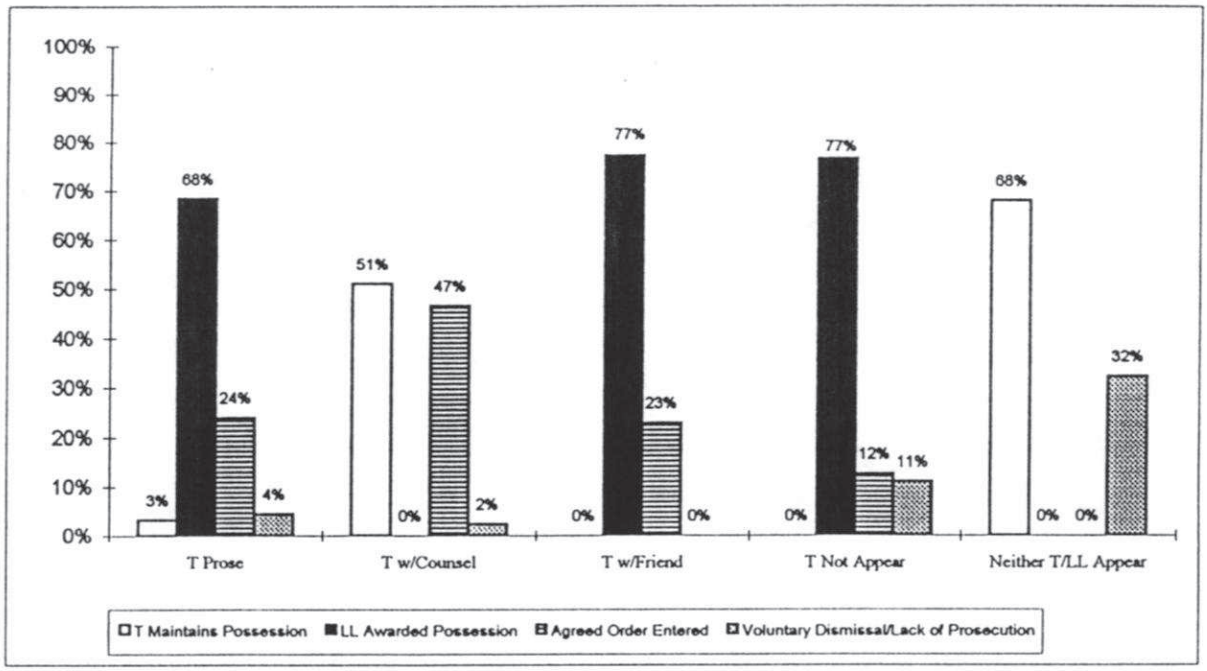
[46] Of the 18 cases disposed of on the merits, the landlord was awarded possession in 9, the landlord's complaint was involuntarily dismissed in 4, no disposition was recorded in 3, possession tenant was awarded in 1, and 1 case was recorded as rent judgment only.

[47] Represented tenants prevailed against landlords outright 27% of the time (in 5 of 18 cases the tenant was awarded possession or had the landlord's complaint involuntarily dismissed). Only 4% of *pro se* tenants similarly prevailed against landlords.

Chart 6: The Outcomes of Legal Representation



Pro Se Tenants Have Little Likelihood of Success—Whether or not They Appear in Court.

We have already discussed those cases in which a tenant proceeded *pro se* (863 cases), and those in which a tenant had counsel (99 cases). Together, these categories of cases (962 in all) make up 45% of the 2,114 cases in the study. In another 48% of the cases in the study (1028 of 2,114), the landlord or landlord's representative appeared in court but the tenant did not appear.

In 48% of the cases observed, the landlord or his representative appeared but the tenant did not. Of these cases, 9% were voluntarily dismissed by the landlord, 8% were continued, and 0.3% were transferred to the jury call. Of course, without the tenant present in court, landlords in these cases had the right to secure a default judgment against the tenant. That such landlords did not do so indicates that the tenants, though not present in court, were working or had worked with the landlord to avoid or in some way address the attempted eviction. Second, in an additional 11% of the cases the tenant did not appear, but the landlord or landlord's attorney entered an agreed order. The entry of an agreed order indicates that the case settled on or before the trial date. As a result, tenants were under no obligation to appear in court. Thus, although 48% of tenants did not appear in court, 34% "failed to appear" and were therefore subject to default judgments being entered against them. Such cases are treated herein as "defaults."

Landlords were awarded possession of the premises in a default situation 98% of the time. In over half of these cases (54%), the landlord was also awarded a money judgment. Only 9 cases were involuntarily dismissed against the landlord (1%) when a tenant failed to appear.[48]

A comparison of these actions by the Court with those entered against tenants who appeared in court *pro se,* reveals that a tenant's chances of prevailing in an eviction case is only slightly enhanced by appearing in court. While 98% of landlords were awarded possession of the premises against absent tenants, 95% of landlords were awarded possession of the premises against *pro se* tenants. Similarly, while 1% of landlords' complaints were involuntarily dismissed when a tenant failed to appear, 3% of landlords' complaints were dismissed when a tenant appeared *pro se*. Such figures demonstrate that *pro se* tenants have little likelihood of success—whether or not they appear in court.

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[48] An additional 9 cases were recorded as rent judgments only and 1 case was recorded as rent claim dismissed. That there are 5 more recorded dispositions than actual defaults is due to the fact that some cases had more than one disposition recorded (i.e., some cases recorded possession landlord and a continuance—presumably the money count of the complaint was continued).