

## CHAPTER IV

### *EVICTIONS, HOMELESSNESS, AND THE LACK OF HOUSING OPPORTUNITIES FOR LOW-INCOME TENANTS*

#### **The Impact of Evictions in Chicago**

In 1994, over 40,000 eviction actions were filed in Chicago.<sup>49</sup> With occupied rental units in the City numbering close to 600,000 during the last year, evictions involved almost 7% of the entire rental housing stock.<sup>50</sup> Because Chicago households average 3 persons per household, evictions touched the lives of almost 120,000 Chicagoans in 1994 (1 in every 15 people who live in renter households) and over 600,000 people over the last five years.<sup>51</sup>

Of the roughly 40,000 eviction actions filed annually, between 13,000 and 14,000 are placed with the Sheriff's Office of Cook County for execution of the eviction. In a little over half of these cases, the tenants are actually physically removed from the premises by the Sheriff.<sup>52</sup> Again, assuming 3 persons per household, approximately 20,000 people are physically ejected from their homes every year in Chicago pursuant to an eviction.

For the thousands of households faced with eviction and forced displacement from their homes, homelessness is often inevitable. Of those fortunate enough to avoid homelessness, their credit and rental histories may be ruined and their ability to compete in an increasingly tight affordable housing market is severely compromised.<sup>53</sup> Moreover, when the legal obligation of landlords to maintain housing in compliance with Building Codes is not enforced as vigorously as the legal obligation of tenants to pay rent, thousands of units will remain unsafe, unsanitary, and overpriced.

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<sup>49</sup> Eviction actions filed in Chicago in 1994 numbered 41,333. This includes both possession only and joint actions (a claim for possession and rent). (Clerk of the Circuit Court of Cook County, 1st Municipal Civil Division.) The vast majority of these involved residential premises. A mere 4% of all cases observed in the study involved commercial premises.

<sup>50</sup> The number of occupied rental units in 1990 was 599,763 (58.5% of the 1,025,174 housing units in the City). (Chicago's 1995 Consolidated Plan to the U.S. Department of Housing and Urban Development, [hereinafter "City's Plan"] at 23).

<sup>51</sup> According to the City's Plan, African-American households average 3.02 persons per household, Hispanics 4.01 persons per household, and whites 2.15 persons per household. *Id.* at 8. Thus, overall, roughly 1,800,000 Chicagoans living in rental housing.

<sup>52</sup> Of the remaining cases filed with the Sheriff, an additional 5% of tenants have already moved by the time a sheriff arrives; 30% of the evictions are canceled altogether; 10% are temporarily called off, and the remaining cases are awaiting action by the Sheriff's Office. (Sheriff's Office of Cook County, Illinois, Eviction Master Record, 12/89-6/95).

<sup>53</sup> Hundreds of Tenants reported to the Hotline operated by the Metropolitan Tenants Organization that an eviction on their records not only prevents them from obtaining alternative housing, but also prevents them from obtaining good credit. Credit companies consider eviction court records in completing credit reports.

## Evictions and Homelessness

A "significant portion of homeless families and individuals become homeless as a result of eviction." One remedy that will prevent a number of new entries into the homeless population is free legal assistance to prevent eviction of low-income tenants and homeowners."<sup>54</sup>

In August 1994, the American Bar Association (ABA) officially recognized the connection between evictions and homelessness and passed a Resolution committing itself to working with state and local bar groups in efforts to prevent unnecessary evictions and foreclosures. The ABA's Resolution was grounded in large part on the recognition that in jurisdictions throughout the country, vast numbers of low-income tenants are unrepresented in eviction actions and that for the most part, tenants are unable to assert their rights effectively. Relying on studies in different parts of the country, the ABA found that:

Unrepresented low-income tenants in housing court face a variety of obstacles when presenting their cases... eviction hearings last from three to five minutes. For many tenants, the language and procedure of court are mystifying. A five-minute hearing hardly affords a tenant, possessing little or no formal education, sufficient time to comprehend the proceedings or to respond. Tenants are unsure about when they are allowed to raise their defenses and frequently wait until the hearing has ended, and the judgment is rendered, only to learn that the decision is final.<sup>55</sup>

As a result, the ABA concluded that many low-income tenants, deprived of the resources to contest evictions, are rendered homeless. A similar finding was made by the ABA Presidential Working Group on the Unmet Legal Needs of Children and their Families: "...lawful justifications exist for a landlord to evict a tenant...but low-income and minority families are often illegally evicted. Many low-income and minority families become homeless because they do not have the time or resources to find a new apartment before they are illegally evicted from their home."<sup>56</sup> The information gathered through this study of Chicago's Eviction Court, and a review of homelessness in Chicago, reveals that there is every reason to believe that this nationally recognized problem is every bit as pervasive, and results in the same pernicious consequences, here in Chicago.

In fact, in 1994 the *second leading cause of homelessness cited by all people in Chicago's shelters was eviction.*<sup>57</sup> A 1990 study of homeless women and children in Chicago found that the

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<sup>54</sup> American Bar Association, Report to the House of Delegates, Recommendation, August 1994, [hereinafter "ABA Resolution"] at 1-2 (citations omitted).

<sup>55</sup> *Id.* at 7-8 (citations omitted).

<sup>56</sup> ABA Presidential Working Group on the Unmet Legal Needs of Children and Their Families, *America's Children at Risk*, August 1993, at 22, *quoted in* the ABA Resolution, at 5.

<sup>57</sup> Eviction was cited 14% of the time as the cause of homelessness. Other causes included insufficient income (12.6%), substance abuse (18.4%), family disputes (12.9%) and domestic violence (10%). (City's Plan, *supra* note 50, at 19).

most frequent reasons for families to be without housing were abuse or harassment by a partner, *eviction or fear of imminent eviction*, rent increases, or a late welfare check.<sup>58</sup> Estimates of the total number of people who are homeless in Chicago over any given year varies between 20,000 and 40,000. The City's Department of Human Services (DHS), the agency charged with coordinating homeless services in the City, reports that 18,768 people were served by DHS shelter programs in fiscal year 1994. An additional 3,843 people were unsheltered.<sup>59</sup> However, the Chicago Coalition for the Homeless and other advocates in Chicago put the number of people who are homeless at over 40,000 based on the City's 1990 estimates and annual increases in requests for shelter.<sup>60</sup>

In 1994, about 40% of those served by DHS were families, and 90% of those families consisted of single women with children.<sup>61</sup> The City reports that over 80% of people who are homeless in Chicago are African-American, 9% are white and 7% are Hispanic.<sup>62</sup>

Similarly, the majority of tenants who appeared in Chicago's Eviction Court were women (61%) and 65% of tenants reported having children in the home.<sup>63</sup> Over 70% of tenants were African-American, 17% white, 7% Latino, 0.8% Asian, and 0.7% "other." Additionally, 70% of the tenants interviewed had "extremely low" to "very low" incomes, which makes relocating pursuant to an eviction even more difficult.<sup>64</sup> "Extremely low income" households are those with an income level which is less than 30% of the median family income of \$30,707 in Chicago.<sup>65</sup> As a result, such households are clearly at risk of homelessness if evicted.

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<sup>58</sup> Promises Made, Promises Broken...The Crisis and Challenge: Homeless Families in Chicago, The Chicago Institute on Urban Poverty, Travelers & Immigrants Aid, October 1990.

<sup>59</sup> City's Plan, *supra* note 50, at 18.

<sup>60</sup> October 3, 1995 telephone call with John Donahue, Executive Director, Chicago Coalition for the Homeless. Variations in estimates of numbers of homeless people is a result of numerous factors inherent in counting people who are homeless: most homeless people are hidden or doubled up during each month or sometime during the year; many do not use existing services; private organizations which serve people who are homeless are not required to report on the populations being served; and seasonal variations and methodological differences can influence outcomes. *See id.*

<sup>61</sup> City's Plan at 19.

<sup>62</sup> *Id.* at 18.

<sup>63</sup> Of fifty-nine tenants interviewed, 43 provided information about the number of children in the household. Of those, 65% reported that there were children in the home.

<sup>64</sup> 40% of the tenants interviewed reported household incomes of less than \$800 per month, or \$9,600 annually. Annual household income which is less than \$10,000 annually is considered "extremely low income." Another 32% of tenants reported household incomes of between \$800 and \$1,200 per month, which generally places them in the "very low income" category of city households. *See* 1994 Census figures; City's Plan at 10-12.

One Chicago tenant's testimony in Eviction Court serves as painful witness to the linkage between eviction and homelessness:

THE DEFENDANT: But, your Honor, and I explained to you, my son did also. That I have been looking for an apartment, but at the present time I am not working. I am on Public Aid. And most of the time if you look for—while I have never been on aid, I haven't been on aid in eighteen years, but I found that no one want to rent to you. He even was kind enough to give me numbers for agencies that would help me.

I went to those agencies. They don't have anything available. My children and I, we have never been in this predicament. I don't—I even talked to the shelter places. They tell me, my son being nineteen, he have (sic) to be in a separate area. I do not want to separate my family. I understand that [the landlord] is losing money and he's got the bank waiting and everything, but I am having a hard time finding an apartment. I go and I look almost everyday on the days when I don't have to take care of my grandmother.

*White v. Reed*, 95 MI 717681 (July 17, 1995). While it is unclear whether this particular tenant had any defense to the eviction, many tenants do indeed have defenses, but as discussed fully in Chapter III, their defenses are routinely ignored by the Court. As a consequence, it is likely that thousands of tenants are rendered homeless every year as a result of improper evictions by the Court. The findings generated in this study indicate that Chicago, like other jurisdictions throughout the country which provoked the ABA Resolution, is indeed yet another jurisdiction where vast numbers of low-income tenants are unrepresented in eviction actions and where, for the most part, tenants are unable to effectively assert their rights. The tragic consequence of this institutional bias in favor of landlords is that thousands of tenants are unfairly rendered homeless each year.

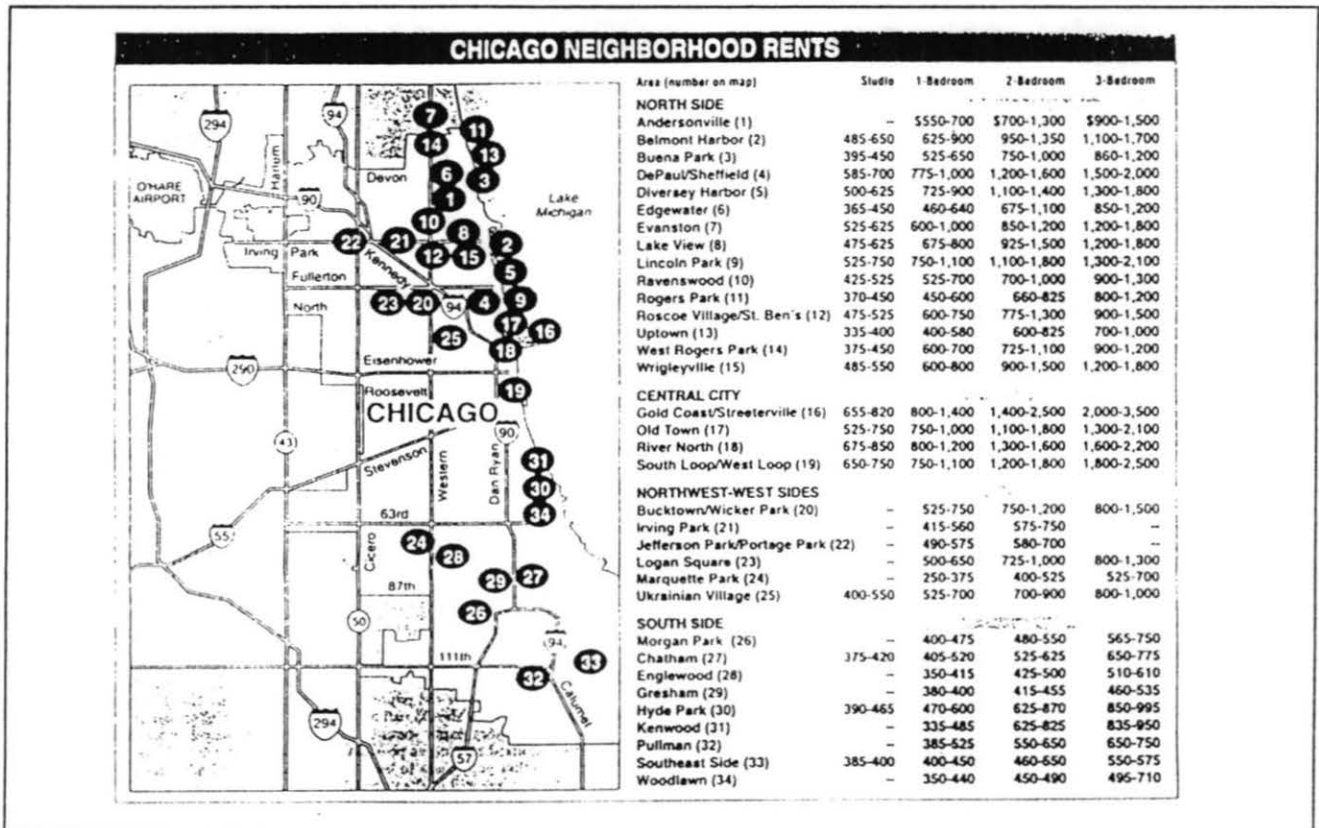
The cost of homelessness is exacting, both in human and financial terms. Eviction and homelessness can result in the loss of one's personal property, credit standing and stability within a community. It can interrupt a parent's employment, a child's education and threaten a family's ability to remain together. Financial costs are, of course, born by the individual or family who becomes homeless, but also by the community at large which bears the public cost of supporting homeless services. Yet, the findings set forth in this report suggest that in Chicago, these costs can be avoided—if tenants, through the provision of legal representation and/or other systemic changes, are better able to enforce their rights and, therefore, avoid unlawful evictions.

### **The Lack of Affordable Housing Opportunities for Low-Income Tenants Raises the Stakes in Eviction Court**

Chicago has a shortage of housing, especially housing that can be considered affordable to persons with low to moderate income. A recent article in *The Chicago Tribune* reported that vacancy rates in 1996 are down to 2.7% from 4.3% in 1994. When such a vacancy rate occurs, the market is considered "fully occupied". The article cites condominium conversion as one of the leading causes of the decrease in available apartments, though deterioration and abandonment

are certainly companion causes.<sup>65</sup> Since 1980, Chicago's housing stock has been rapidly deteriorating, with a loss of tens of thousands of housing units between 1980-1990. As housing is lost due to age, neglect or gentrification, there are not enough resources available to replace them. As the number of available units decrease, average rents in Chicago increase dramatically. According to *The Chicago Tribune* article, the area is experiencing some of the biggest rent increases in at least 5 years in the Chicago area.

**Chart 7: The Affordability of Housing in Chicago**



Reprinted with permission of *The Chicago Sun-Times*.

<sup>65</sup> "Apartment squeeze pushing rents way up." *The Chicago Tribune*, (Tuesday, March 26, 1996, Front page).

For those with limited resources, increased rents will further restrict their ability to move from apartment to apartment. An "affordable rent" is defined relative to the renter's income. A rent is considered "affordable" according to U.S. Department of HUD guidelines, if the rent does not exceed one-third of his income. For families and individuals with low and very low incomes, this means that there are very few affordable housing choices. The study indicates that most tenants facing eviction are poor but working. A family relying on the income of one member earning minimum wage for 40 hours per week can only afford a rent of \$251/month. The housing possibilities for this family and families like them are severely limited<sup>66</sup>

The availability of apartments in affordable rent ranges depends, of course, upon the number of bedrooms desired as well as the community area in which the apartment is sought. According to the 1990 census statistics, the average overall rent in Chicago is \$411. However, according to a recent article in *The Chicago Sun-Times*, the availability of such rent is likely to be limited. According to the article, the average low end rent for a one bedroom apartment in 34 sample communities covering a broad cross-section of Chicago is \$557. Of the 34 communities surveyed, only five communities had rents for one bedrooms that were below \$400. Those communities are Marquette Park, Englewood, Gresham, Kenwood, and Woodlawn.

So, while the rental market is actually tightening for all consumers, even those with substantial resources, those tenants with limited resources face a hostile market in which finding housing is a virtual treasure hunt. As stated in the Chicago Tribune, "The law of supply and demand means the landlord is king and will probably continue to be so to the end of the century."

### **The Court's Role in Maintaining a Hostile Housing Market**

Eviction Court as an institution is an important player in maintaining a housing market that is hostile to tenants, particularly those with lower incomes. First, it is well-known that some landlords make the economic decision to draw revenue away from their residential buildings,<sup>67</sup> allowing the buildings to deteriorate in violation of the Building Code. Those tenants who complain, or who assert their rights under the RLTO by, for example, withholding rent for substandard conditions, are dealt with by the landlord through the eviction process. When the Court fails to recognize the rights of such tenants and grants possession to the landlord, it ensures that the housing unit will remain in its defective condition and so becomes complicit in the landlord's repudiation of the Building Code.

Further, when the Court fails to recognize that the landlord must provide and maintain a safe and sanitary dwelling unit for the tenant in exchange for rent, there is no legal or economic (as in the form of a fine, or rent abatement) impetus for the landlord to maintain his dwellings in compliance with the Building Code. This is especially true in a tight housing market, in which the landlord can easily replace an evicted tenant. In Chicago, estimates are that there are more than 250,000

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<sup>66</sup> A worker earning minimum wage at 40 hours/week earns an annual salary of \$9048 with monthly gross wages of \$754. One third of that income is \$251 per month.

<sup>67</sup> See Duncan Kennedy, *The Effect of the Warranty of Habitability on Low-Income Housing: "Milking" and Class Violence*, 15 Fla. St. U.L. Rev. 485 (1987).

housing units with serious Building Code violations<sup>68</sup> and close to 16,000 cases are now pending in housing court. The opportunity for code enforcement in these buildings rests largely with tenants, who make complaints to City officials or exercise their rent withholding rights under the landlord tenant ordinance.

Unfortunately, as set forth in Chapter III, Eviction Court often allows landlords and management companies to purge themselves of these "troublemaking" tenants through evictions, even though this retaliation is clearly contrary to the law. Tenants who initiate actions in Housing Court or who cooperate with the City in a case it initiates, will often find themselves defending a retaliatory law suit for possession in Eviction Court. Unfortunately, this study indicates such tenants are rarely successful in defending against eviction. As a result, the price that tenants pay for attempting to enforce their rights under the law is often the loss of their homes through wrongful eviction. In other words, the Eviction Court awards possession to the very landlord who is defending against the tenant in Housing Court! Ironically, because of the consequent deterioration and eventual loss of affordable housing units, the Court is stepping up its own volume of cases: as the housing market continues to shrink, the difficulties in finding and maintaining affordable and decent housing increase.

In sum, a tenant has a great interest in maintaining (or, not being evicted from) his current housing. When the court fails to adhere to the basic notions of due process (as set forth in Chapter III), it deprives the tenant of an important and valuable property interest. The loss of such a valuable property interest has profound consequences—tenants, as a class, are relegated to substandard housing and many are rendered homeless.

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<sup>68</sup> Source: The Chicago Affordable Housing Fact Book; 1990, Chicago Rehab Network.

## CHAPTER V

### CONCLUSION AND RECOMMENDATIONS

Information gathered in the study reveals many practices and dynamics operating within the Eviction Court that undermine the ability of *pro se* tenants to assert their rights. The near total failure of *pro se* tenants to defeat evictions (4%), combined with the information revealed from a variety of transcripts and comments from monitors, indicates that tenants are not losing because they have no defenses nor because they are unable to present them effectively. The evidence suggests that *pro se* tenants are faced with an extraordinary burden that goes beyond having to assert their defenses against landlords—*pro se* tenants have to enforce their defenses *against the Court*. Without institutional reforms, including greater access to counsel, it is unlikely that tenants will ever have their rights respected and protected in the Eviction Court.

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This study was conducted to determine the extent to which wrongful evictions occur in Chicago's Eviction Court. Because of the evident link between evictions and homelessness, it is extremely urgent that the institutional practices that contribute to wrongful eviction be eliminated. The results of the study indicate a number of institutional practices which make it difficult for tenants to assert their rights, and, even when asserted, tenants' rights are often ignored by the Court. As a result, tenants are wrongfully evicted and, as recognized by the American Bar Association, many people are rendered homeless. It is our hope that the public, the judiciary and the bar associations will respond to these results in the same way they did to the circumstances surrounding Juvenile Court a few years ago. The judiciary, to its credit, worked with the bar associations and with community and advocacy groups to reshape Juvenile Court. The task force enabled significant changes to a court system in order to better to serve the interests of justice.

We call on the judiciary and the bar associations to join with community and advocacy groups to address the injustices of Eviction Court. Because the problems of Eviction Court are systemic, and not the fault nor creation of any individual judge or administration, we believe that the judiciary can provide valuable input into creating a model Eviction Court that can be consistently fair to both landlords and tenants.

Accordingly, our primary recommendation is that an advisory task force be convened to determine how the problems enumerated in this study can be addressed. Such an advisory task force should include members of the judiciary, representatives from community organizations, representatives from the social service field and other public sectors, representatives from the landlords' bar, bar association representatives, and lawyers who represent tenants. The task force should be organized as soon as possible and should be charged with developing measures to reduce the number of wrongful evictions and to reduce the number of evictions that result in homelessness.

The task force should consider the following recommendations for reform of Eviction Court. The recommendations are not exhaustive and not listed in any particular order of importance. The task force will, of course, consider and make recommendations we do not make here; however, because serious harm is imposed upon those who are illegally evicted, we urge that recommendations 1 through 5 be acted upon immediately:

**1. Judges should be educated not only about Forcible Act but about the RLTO, Section 8 regulations, and the common law related to this area.**

The study demonstrates that some of the judges sitting in Eviction Court do not adhere to the requirements of the law. To the extent that this is due to the fact that the judges are simply not familiar with the law, immediate steps should be taken to ensure proper training. It is our understanding that judges are provided with a Bench Book for their use which was compiled by the Legal Assistance Foundation of Chicago. To our knowledge, the Bench Book has not been updated with the new law (the RLTO was amended in 1991) and in any event, is rarely used by the judges. We are not aware of any training program for judges who are newly assigned to the court, even though it is a court in which the law is somewhat specialized. This problem is aggravated by the frequent reassignment of judges, some of whom have never served in Eviction Court and who know very little about landlord-tenant law.

To the extent that judges are simply choosing not to adhere to the requirements of the law, they should immediately be compelled to do so.

**2. Copy of the Notice of Termination of Tenancy must be included in court file, since without proper termination, the Court has no jurisdiction to hear the case.**

Since the Notice of Termination of Tenancy is integral to the prove-up of the landlord's case (without proper termination, in fact, the Court has no jurisdiction), and must be attached to the complaint according to the Illinois Code of Civil Procedure<sup>69</sup>, a copy of the notice should be included in the court file.

Currently, the landlord or the landlord's attorney verbally informs the Court that the tenancy has been terminated, but often the Court is not presented with proof that proper termination has occurred. Instead, the Court should require landlords to produce a notice free of defects and that was properly served. A copy of that notice should always be included in the court file. The Court should be scrupulous about establishing that it has jurisdiction before taking any action in a case.

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<sup>69</sup> 735 ILCS Chapter 135 Sec. 5/2-606.

**3. Continuances should be granted on an equal basis to tenants as well as landlords.**

Currently, landlords are given continuances if they are missing a piece of evidence. Tenants who ask for the same latitude to bring in receipts or pictures are often denied continuances. There should be an articulated standard for the allowance of a continuance and each party should be held to the same standard.

**4. Any final order or disposition, including agreed orders, should be placed in a written order, in plain language, and given to the tenant.**

As discussed in this report, in many instances, the Court's disposition of cases is at best confusing and at worst misleading to *pro se* tenants. Moreover, tenants are not routinely provided copies of the orders entered in their case. The Court should not only ensure that the order entered reflects the actual disposition of the case (for example, whether the disposition is agreed or not) but also the effect of the disposition (for example, at what point and under what conditions the tenant is subject to eviction). These orders should be written, with a copy routinely given to the client. This may reduce the incidences of the Sheriff evicting tenants who thought their landlord had agreed to let them stay.

**5. Judges should conduct a proper inquiry about whether the landlord is entitled to possession, and only then, whether the tenant has defenses and counterclaims.**

Judges rarely require landlords to prove that they are entitled to possession of the premises. To the extent that the Court does require proof, it is more often the Court and not the plaintiff that establishes the elements of the plaintiff's case. Too often judges only inquire whether tenants have paid the rent or whether they are willing to move. Yet, questions such as, "Did you pay the rent?" unfairly narrows the testimony allowed from the tenant, since there are many legal defenses to paying the rent. Similarly, the question "Do you want to move?" is entirely irrelevant and often results in forcing a "settlement" upon a tenant who should not be forced to give up possession. Moreover, judges rarely listen to or elicit the defenses tenants might have.

An eviction trial should be an orderly procedure where the plaintiff presents evidence of possession and compliance with the necessary procedural steps for termination of the tenancy, filing suit and summons. Only if the landlord has proven his case, should the judge even inquire as to the tenants' defenses, and in doing so, allow the tenant full opportunity to present any and all defenses and counterclaims.

**6. Tenants should be provided access to legal representation in Eviction Court.**

While a right to counsel for indigent tenants has never been realized, the study indicates that tenants without attorneys do not receive due process and are at greater risk of being improperly evicted. To the extent legal representation of tenants can reduce the number of evictions, it may be cost-effective to fund legal advocacy for indigent tenants because it will reduce costs borne by homeless shelters and other social service agencies. In fact, New York City instituted a program that funds legal services to indigent tenants after determining that keeping tenants housed was more cost-effective than sheltering homeless

people. A similar model should be instituted in Chicago. Furthermore, the private bar and the legal services community should join in efforts to ensure that low income tenants have access to legal assistance and representation.

**7. Docket fluctuations should be examined and controlled.**

The daily volume of cases presented in each courtroom varies dramatically. However, the Clerk's Office informs us that individual judges have a great deal of control of their dockets, since they schedule continuances. Intuitively, it is clear that a high volume of cases increases the incentive to move cases off the docket more quickly and that the resulting decrease in time to hear a case most often works against the interests of the tenant. We suggest that a schedule be created that consistently caps the number of cases heard by the Court each day, to (1) decrease the urgency judges feel in disposing of cases (2) increase the time that each case is provided for hearing, and (3) avoid the frustration that judges must experience.

**8. Form pleadings should be developed for *pro se* tenants.**

Currently, landlords have access to form complaints and form orders for possession that they can utilize in prosecuting their cases. These form pleadings have been approved and are accepted by the Eviction Court. They are provided, free of charge, by the Cook County Clerk's Office. No form pleadings are provided for *pro se* tenants to defend their cases. Form answers and relevant motions and orders should be drafted and revised by the task force. Such form pleadings will not only assist tenants in preparing their defenses but also facilitate the decision-making process.

**9. *Pro Se* landlords and *Pro Se* tenants should be given the same treatment and same level of assistance by the court.**

*Pro Se* plaintiffs are currently assigned to one courtroom. This courtroom has a docket that is significantly larger than any other courtroom. Hence, the pressure to move cases off the docket is very great. We believe that the placement of *pro se* landlords all in a single courtroom encourages the court to relax the standard of evidence as, often, the Court takes on the responsibility of proving the landlord's case for him. Similarly, the Court sees tenants who attempt to assert defenses as hampering judicial expediency and a manageable docket. The Court's job has become one of administering the docket, rather than administering justice.

10. **Mediation should be reexamined as a valuable tool in resolving landlord tenant disputes.**

In the course of the study, less than a handful of cases were referred to mediation. The task force should review the ways in which mediation could and should be better utilized in Eviction Court.

11. **The use of lay advocates should be examined as a way to assist *pro se* tenants in presenting their cases.**

Short of losing one's freedom or income, we can think of nothing more serious than losing one's home. The nature of such a loss and its consequences demand that tenants be allowed to take a greater role in and have a meaningful ability to defend their homes. Yet, the sheer number of cases filed in eviction court each year guarantees, at least for the time being, that not every tenant can be provided with representation, even if funding allowed significantly increased legal representation. Lay advocates have been utilized in other jurisdictions and have significantly increased the ability of tenants to access the justice system. See Appendix B, Model Eviction Defense Advocacy Projects.

12. **When the judge orders an eviction, the current restrictions of the housing market should be considered in determining the amount of time the tenant has to move.**

Judges most often give tenants 7, 14, and at most 30 days in which to move from their homes. The allowance of more time is completely within the discretion of the judge hearing the case. The standard allotment of days does not take into consideration the current state of the housing market. This statistic shows clearly why evictions with short stays are likely to result in homelessness. Given such a competitive market, tenants should be allowed more time to find housing.

13. **The City's Department of Buildings should coordinate its activities with the Court.**

Many tenant defenses to evictions are based on defective building conditions. Tenants need ready access to City Building Inspectors and Inspector Reports in order to prove these defenses. Just as inspectors readily appear in Housing Court to testify on behalf of the City that code violations exist, they should also be prepared and willing to testify on behalf of tenants who experience such problems.

14. **Homelessness Prevention and Rental Assistance Programs should coordinate their activities with the Court.**

The City funds several homelessness prevention programs that provide rental assistance to tenants. Other private organizations provide rental assistance to tenants who get behind in their rent. Landlords who agree to accept, in emergency, rental assistance should not be allowed to evict tenants unless the tenant misses rent again. However, monitors reported that some tenants were evicted even though they informed the Court that the landlord had agreed to accept homelessness prevention funds. Efforts should be undertaken to ensure

that homelessness prevention funds are truly effective in preventing qualified tenants from being evicted.

Furthermore, the Court and other public and private entities should coordinate efforts to ensure that tenants who are evicted have access to relocation assistance and have adequate time to secure alternative housing so that homelessness is avoided.

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In the event that a task force is not created, LCBH will continue to work with other legal advocacy organizations, community groups, and individuals to press for these and other reforms of Eviction Court.

**APPENDIX A:**  
**Study Methodology and Data Forms**

## STUDY METHODOLOGY

The data collection methods utilized to gather information about forcible actions included: 1) court observations by trained interns; 2) brief interviews with tenants after they had appeared in and exited the court; and 3) review of court files to obtain information not readily identifiable in court. Each of these methods is described further herein.

Court observations. During six weeks of court observation by trained monitors, data was collected on 2,114 eviction cases. The vast majority of these cases, 1,951, are from a four week period between July 17, 1995 and August 10, 1995 ("Phase 1"). The additional 163 cases are from the weeks of September 18, 1995 through September 25, 1995 ("Phase 2"). Phase 2 was necessitated because in Phase 1 we fell short of our goal of capturing data on 2,000 cases (5% of the approximately 40,000 cases filed annually).

All monitors were trained in tenant/landlord issues, the operation and administration of the Cook County Forcible Court in the 1st Municipal District and use of the actual data collection forms. Interns were provided with a copy of the Bench Book (formal name), data collection forms, and a glossary of terms which defined each item in the data forms. Copies of the data collection forms (Data Form A and Data Form B) and the corresponding Glossary of Terms/Explanation of Each Data Item are contained in this Appendix. Two different forms were utilized by interns to collect information regarding any particular case. Data Form A was used to record information about whether a case was a joint action, the parties present, basis of eviction, the defenses raised and the dispositions. Data Form B was used to record information about the dollar amount at issue, proof offered by the parties, the judge's conduct with regard to the evidence, and the parties and rulings. These forms were devised in large part by studying the data forms used in the 1978 Judgment Landlord study and with the assistance and advice of several legal services attorneys in Chicago.

As a rule, court observations were performed by two monitors at a time, each completing one of the two data forms. However, on a handful of occasions two monitors were not available to cover a call, and one intern completed both forms. Daily dockets were provided for most days in advance so that interns were able to write in case names and numbers prior to observing.

Monitors sat in either the witness box, to either side of the Judge, or in the jury box in each of the courtrooms.

Phase 1. Between July 17, 1995 and August 10, 1995, monitors observed a total of 16 days. For each of these four weeks, monitors, working in teams, observed in courtrooms 1302, 1402, 1406 and 1408 Monday through Thursday. Originally monitors were only scheduled to observe the morning (9:30 a.m.) call based on our understanding that the vast majority of return day cases were set for the morning. However, after it was brought to our attention that CHA cases (and bulk filings by landlord's attorneys) are largely heard in the afternoons only, as of July 25, 1995 monitors observed both the morning and afternoon calls in 1402, 1406, and 1408. Afternoon calls were not observed in 1302, the pro se courtroom, as CHA cases are not heard there.

Data in the total sample of 1,951 cases from Phase 1 is from the following courtroom calls: 1302--16 morning calls; 1402--15 morning calls and 10 afternoon calls; 1406--15 morning calls and 9 afternoon calls; 1408--16 morning calls and 10 afternoon calls. To ensure that our sample included the same number of calls per courtroom, calls observed during the Phase 2 part of the study were added so that the sample data included 26 calls from each of courtrooms 1402, 1406 and 1408.<sup>1</sup>

Phase 2. Between September 18, 1995 and September 25, 1995 students from Loyola University Chicago School of Law participated as court watch monitors. These students, part of a Real Estate Seminar, were trained in the same way the students from Phase 1 were trained. Data from observations recorded from 6 of these calls was included in the sample to ensure, as previously discussed, that the final sample data included a total of 26 calls from each of courtrooms 1402, 1406, 1408, and the largest number of calls from 1302 as possible (19 in all).

Exit interviews. Exit interviews with tenants who had appeared in court were conducted by interns beginning the week of July 5, 1995. Between July 5 and July 14th, two to four interns were posted outside of 1302, 1402, 1406 and 1408 during the morning call. Forty-nine

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<sup>1</sup> This includes 15 morning and 11 afternoon calls observed in 1402, and 16 morning and 10 afternoon calls for each of 1408.

interviews were conducted in 7 days. An additional 10 exit interviews were performed by Loyola law students in September, 1995. A copy of the Tenant Questionnaire is available in this Appendix. The exit interviews were performed to record the tenant's perceptions about what happened in court, the tenant's knowledge of his or her rights and ability to exercise rights, information about tenant's and their tenancies--length of time, oral or written lease, amount of rent, household make-up and income, gender/race, plans to deal with eviction (where they will go), plans to fight eviction, and use of legal services.

File reviews. A random sample of 200 cases were reviewed to collect information not readily identifiable from court observations. The sample consisted of every 10th case from those cases in which data was collected through the court observation component. The information collected from the files included the address of the premises, whether or not the case was a joint action, and if so, the amount of money in dispute, the amount of monthly rent if readily identifiable from the complaint, the type of service of process, the amount of any money judgment entered in the case and whether any post-judgment relief was sought by either party. A copy of the Eviction Case File Review Form is provided in this Appendix.

**FORM A**  
**GLOSSARY OF TERMS/EXPLANATION OF EACH DATA ITEM**

**CASE IDENTIFIER AND TYPE INFO**

Case Title, Case Number and Line Number--This should be inserted from the court docket before going to court.

Joint action--check if is an action for possession and rent.

**Difficulty with English** - If either L/L or T has difficulty speaking English, insert L/L (if L/L has difficulty) or T if tenant has difficulty or both ("LL/T") if appropriate.

**ABOUT THE LANDLORD (L/L)**

L/L Present in Court - L/L means the owner, agent, lessor or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is a part.

L/L Race (B, W, L, A, O) - black, white, Latino, Asian, other

L/L Gender

L/L/ Represented by Atty

Witness Present

**ABOUT THE TENANT**

T Present in Court

T's Friend, relative - (without T)

T Race (B,W,L,A,O)

T Gender

T Represented by Atty

T Witness present

**GROUNDS FOR TERMINATION**

**(5-Day) Nonpayment of rent** - If T has not paid rent the L/L can serve a 5-day Notice (or 14-day notice in subsidized housing) which provides that unless the rent is paid within 5 (or 14) days the tenancy will terminate. Check this box if it is a nonpayment case regardless of whether a 5-day or 14-day notice is used.

**30-day notice** - used to terminate a month to month tenancy.

**Expiration of lease** - If term of tenancy is fixed by lease, no notice to terminate the tenancy is required at end of lease term. However, under the Ordinance, a L/L must give a Notice of

Refusal/Intent not to Renew a Rental Agreement thirty days prior to the expiration date of the rental agreement (although this issue, if it is scene, will brought up by T as a defense).

Breach of Lease/10 day notice - LL may serve a 10 day notice when the tenant has violated a term or condition of an oral or written lease. Examples include disturbing neighbors, keeping a pet which violates a no-pets clause in a lease, etc.

Other - this category includes any other type of notice terminating a tenancy such as a 7 day notice to terminate a weekly tenancy, or a 60 day notice to terminate an oral year to year tenancy.

## DEFENSES

Improper service (complaint/summons) - This defense, that the defendant did not get properly served with a summons and complaint by the sheriff, goes to whether the court has personal jurisdiction over the defendant. Although a special appearance must be filed to assert the defense (or the defense is waived), we want to document all cases which have a service problem. Listen for things from a tenant like "I didn't know I had to be here till yesterday...my friend or neighbor told me I got papers...my LL told me to come". Check the box if T argues or complains that s/he did not get service from the sheriff or if an attorney asserts.

Defective Termination Notice - This defense is available when a L/L has failed to properly terminate a tenancy by failing to adhere to the notice requirements set forth in the Forcible Act or the RLTO. It includes cases when the wrong notice is served (e.g.. 5-day instead of 30 day); when the right type of notice is served but the notice is inadequate (e.g.. 5-day does not have a rent amount in it) or when the complaint is filed prior to the expiration of the stated notice period; and even when no Notice of Term. has been served. Finally, it includes a L/L's failure to give a 30-day Notice of Refusal/Intent not to Renew existing rental agreement required under the Ordinance.

Defective Service of Termination Notice - This defense is available when a L/L fails to adhere to the service requirements of serving Notices to Terminate tenancies. See p. 9 of your manual. Examples include when a 5-day notice is posted on a wall or slid under a door.

Payment/Tender of rent - Tenant paid rent due before receiving 5-Day (or 14 day notice in subsidized housing) Notice, within 5/14 days of receiving notice or during 5/14 day period tendered the rent but the L/L refused to accept. It also includes cases where the T says she/he has agreed to a protective payee (this may be common in CHA cases).

Condition of Premises - Refers to the implied warranty of habitability where premises are in defective condition--not maintained in substantial compliance with applicable building codes. The most obvious examples include failure to maintain heat, plumbing, electrical systems, leaking roofs and ceilings, insect and rodent problems. See, pp. 40-45 of your manual.

Failure to Repair - Tenant has right to recoup or counterclaim for damages if landlord has expressly promised either orally, in writing, or in the lease to repair but has failed to do so. The RLTO also provides that a tenant can, after notice to the L/L, repair minor defects at the L/L's expense.

Retaliatory Eviction - Refers to when a L/L terminates, refuses to renew a lease, increases rent or decreases services because the tenant has in good faith: complained of code violations to appropriate governmental agency; community organization or media; sought assistance of community organization or media to remedy code violation; requested L/L to make repairs; joins tenant union or similar organization; testifies in any court or administrative proceeding regarding condition of premises; exercised any other right or remedy provided by law.

Discrimination - (R, F, G, H, I, O)(race, family, gender, handicap, source of income, other). When L/L has terminated or refused to renew a tenancy or otherwise made unavailable or denied a tenant the use and enjoyment of premises because of that tenant's race, children, gender, handicap, source of income (e.g. AFDC, SSI or Section 8) or other characteristic or trait protected by law.

Cure - The tenant can assert that objectionable conduct has been cured and therefore the tenancy can't be terminated. If the basis for the LL's termination of the tenancy is that the tenant breached some part of the lease (other than by nonpayment), such as interfered with other tenants, damaged common property, or violated a no-pets clause, the LL should serve the T with a 10 day notice. If the T cured the violation within the 10 days, T can defeat the LL's attempt to terminate the tenancy.

HUD housing - Due Process - HUD subsidized landlords cannot terminate tenancies without *good cause*. What good cause means is often disputed but it gives subsidized tenants more defenses to an eviction. If the landlord has sought to terminate the tenancy because of some type of objectionable conduct of tenant (disrupting neighbors, excessive visitors, etc.) the tenant can defend on the basis that the conduct did not amount to a serious or repeated violation of the lease. Subsidized tenants can also raise more defenses to a non-payment case, such as that the rent was improperly calculated, the non-payment was not tenant's fault (e.g. delayed public benefits), the issue is late payment rather than nonpayment. This defense type should also be checked if the T asserts that the L/L failed to follow federal law and regulations governing evictions from HUD subsidized housing.

Delayed Public Benefits/other financial emergency - Though not a defense to an eviction in private housing, it may be in HUD subsidized housing. Check this box if tenant gives this reason for non-payment so we can measure extent of problem and court's response.

Utilities (cut-off or payment) - This defense is likely to arise in two common situations. 1) where the tenant has withheld rent because the landlord has terminated utility services for some reason and 2) where the landlord has breached an agreement to pay for utilities and the tenant has paid

the bill and deducted the amount paid from the rental. Utilities include gas, water/plumbing, heat and electricity.

Waiver - This defense arises when a L/L, after knowledge of a lease forfeiture (breach) by T, does something to renew or reaffirm the tenancy. Listen for the T saying things like "the landlord said it was o.k. . . . the L/L knew I had a pet (in violation of the lease) 6 months ago and kept taking my rent ...the L/L always did (some action) in the past...the L/L and I agreed to a repayment plan." Look for it in cases where a L/L serves multiple Notice to Terminate Tenancy (e.g.. L/L served 5-day and then serves 30 day, but files eviction based on 5-day--T can assert L/L waived his/her right to terminate on 5-day and tenancy is only properly terminated under 30 day.

L/L breached the lease - This might arise when a T defends a non-payment claim on the ground that the L/L has violated the lease agreement. An example is if a L/L unlawfully enters the T's apartment.

Other - Any other defense. Insert an "N" in this box if no defense is presented.

## DISPOSITION

Agreed Order/Judgement by Agreement W/O Tenant - Parties (usually the L/L or L/L's attorney) advise Court they have come to some agreement and the Judge accepts (enters) the order. Also, some judges will ask L/L's attorneys if there has been some agreement made. If this is checked, the other applicable dispositions should also be checked (e.g. an agreed order might provide judgment for the L/L, \$ 400 plus costs paid by T and T agreeing to move in 3 weeks").

Agreed Order/Judgment by Agreement/Tenant Present - Check if T is present in Court when the agreed order is presented by L/L and entered by the Court. If this is checked, the other applicable dispositions should also be checked (e.g. an agreed order might provide judgment for the L/L, \$ 400 plus costs paid by T and T agreeing to move in 3 weeks").

Possession L/L - Possession awarded to the L/L.

Possession Tenant - Judge rules in tenant's favor based upon merits of defense other than service of summons or improper termination of tenancy.

Rent Claim Judgment - Some amount of past due rent awarded to the L/L.

Rent Claim Dismissed - Judge dismisses L/L's claim for past due rent.

Voluntary Dismissal - L/L volunteers to dismiss its complaint for possession and/or rent. This often happens as part of a settlement. A complaint can be dismissed like this either **with or without prejudice**. **With prejudice** means the L/L cannot refile his complaint. **Without prejudice** means the L/L can essentially reinstate his case. If the voluntary dismissal is **with prejudice**, enter a "P" rather than just checking the box.

Involuntary Dismissal - Judge dismisses the lawsuit for defective service, improper termination of tenancy, or for want for prosecution (L/L fails to appear). Involuntary dismissal can be upon T's motion or by the Court's ruling after the L/L's case. A complaint can be dismissed like this either **with or without prejudice**. **With prejudice** means the L/L cannot refile his complaint. **Without prejudice** means the L/L can essentially reinstate his case. If the voluntary dismissal is **with prejudice**, enter a "P" rather than just checking the box.

Continuance - Case continued to future date.

Judgment Stayed 7 days - Judge gives judgment for L/L, but stays execution of the judgment for 7 days (during this time, the L/L cannot file the judgment with the sheriff for the purpose of having the tenant physically removed from the premises).

Judgment Stayed 14 days - Same as above except stay is around 14 days.

Judgment Stayed 21 days or more - See above.

Jury Call - Case assigned to jury call - This will generally happen if T gets a lawyer who will file a jury demand.

Mediation - Judge refers case to mediation.

Comment Necessary - Check this if:

Case heard in chambers

case continued from previous date (not the first time up)

Multiple Defenses presented- if several, check each and then on supplemental sheet make best effort to note outcome of each defense.

Condition of premises - note the specific defects alleged (rats, heat) and how long existed.

outrageous conduct by:

judge, landlord, landlord's atty, defendant or defendant's atty (conduct described on supplemental sheet).

Tenant has obvious handicap or disability (and note type if possible)

Any other comment you think is worth noting

And write comments on back of your Data Form with some case identifying info (line or case no.).

**FORM B**  
**GLOSSARY OF TERMS/EXPLANATION OF DATA ITEM IN FORM B**

**CASE IDENTIFIER AND TYPE INFO**

Case Name, Case Number and Line Number--This should be inserted from the court docket before going to court.

Joint action--Write the dollar amount of rent prayed for by the landlord (this will often come up as the amount of rent at issue).

**LANDLORD'S PROOF** - Check all that apply regardless of whether admitted by court:

**Proof of Service/Summons** - Offer of proof by L/L regarding the way the complaint and summons was served (personal, substitute, constructive (see pp. 11-14 of manual)). Check regardless of whether admitted by court testimony of owner or agent but NOT attorney.

**Proof of Notice/Termination** - Offer of proof regarding the content or form of Notice of Termination (i.e. 5-Day, 10-Day, 30-Day, etc.) regardless of whether admitted by court testimony of owner or agent but NOT attorney.

**Proof of Service of Notice/Termination** - Offer of proof regarding the service of the Notice of Termination (i.e. by delivery to tenant, with 13 year old or older, certified or registered mail w/return receipt or posting if no one in actual possession). Check regardless of whether admitted by court testimony of owner or agent but NOT attorney.

**Landlord Testimony** - Offer of proof regardless of whether admitted by court.

**Witness Testimony** - Offer of proof regardless of whether admitted by court.

**Documents** - Check if the L/L presents any documents in court regardless of whether admitted by court. Documents include a Notice of Termination of tenancy, rent ledger, returned check, etc.

**TENANT'S PROOF** - Check all that apply regardless of whether admitted by the Court:

**Rent receipts** - receipts, cancelled checks, money orders, rent calculation worksheets, etc.

**Photographs** -

**Own Testimony** - Offer of proof, regardless of whether admitted by Court.

**Witness Testimony** - Ditto.

**Tenant asked L/L questions** - Ditto

**JUDGE'S CONDUCT**

**Checked Service** - Judge actually examines the return of service filed by the Sheriff's Office. In default cases (when the T does not appear in court), the Court should examine the return of service filed by the Sheriff's Office to determine that personal or substitute service was made on the T or posting notice was mailed by comparing the address at issue with the address at which service was made or to which the posting notice was made.

**Checked Not. of Termination** - Judge actually examines Notice.

**Checked Service of Not. of Termination** - Judge actually examines the affidavit of service on the Notice of Termination (5-Day, 10-Day, 30-Day, etc.).

**Swore Witnesses** -

**Swore Parties** -

**Refused Tenant Testimony**

**Refused Tenant Witness Testimony**

**Refused L/L Testimony**

**Refused L/L Witness Testimony**

**Allowed L/L Lawyer Testimony**

**Allowed Tenant Lawyer Testimony**

**Questioned T** - Judge questioned T, NOT T's attorney

**Questioned L/L** - Judge questioned L/L, NOT L/L's attorney

**Questioned L/L Atty** - Judge questioned L/L's attorney

**Questioned T Atty** - Judge questioned T's attorney

## **Criticized Tenant for Raising Defense**

### **Criticized L/L for filing case**

TIME - Judge asked T information considered relevant to length of stay of writ or tenant volunteers such information:

**Number of Children -**  
**Length of Tenancy**  
**Other**

## RULINGS

**Defense not Proved** - Court ruled that the evidence was irrelevant, insufficient, inadmissible, or otherwise inadequate to substantiate the defense raised. General ruling -- rarely raised specifically.

**Defense Proved** - Court rules that defendant has presented adequate proof on some point to defeat the L/L's claim for possession and/or a complete or partial defense to a rent claim. The Judge may also rule, on tenant proof or on his own observation, that notice or service is bad or that the Court lacks jurisdiction. Ruling may be stated directly or may be implied from the judge's action (i.e., reducing the rent, dismissing case, etc.).

**Partial Rent Abatement** - Court finds tenant owes less rent than landlord claimed in 5-day notice or joint action. This term includes partial rent abatement based upon defective conditions and payment of rent.

**Full Rent Abatement** - Court finds tenant owes no rent in lawsuit based on non-payment of rent. This term includes full rent abatement based upon defective conditions and/or payment of rent.

**Refused to consider Defense** - Judge refuses to consider any defense offered by tenant. The judge may do this in several ways, all of which lead to a decision in which the defense is not considered. The judge may refuse to hear any testimony on the defense, and/or refuse to admit any evidence on the issues. He may also tell the tenant to raise the defense in some other court, or sue on the issue affirmatively instead of raising it as a defense. He may inform the tenant that Illinois law does not allow the defense to actions for possession only or to any forcible action.

**Conditions bad so T should move** - This ruling is possible when the tenant has raised building conditions, failure to repair, warranty of habitability or failure to supply utilities or other services, but the court, despite these conditions, merely uses such conditions as a reason why the tenant should move out and enters judgment for possession and/or rent to landlord.

**Ordered Repair** - Judge ordered repairs to premises.

**Ordered Utilities Restored** - Judge ordered L/L to provide utilities.

**Told Parties to settle** - Judge says that s/he wants the parties to settle and a judgment is entered that same day.

**Defense not Germane** - The Judge states that the defense raised is not germane to the issues in the forcible action, such as a breach of the warranty of habitability raised in a 30-day notice action.

**Landlord prerogative** - Judge recognizes or acknowledges that T has stated a valid defense but enters judgment for landlord.

Examples:

Tenant has shown a defective termination notice, but the judge says the landlord would just file a new suit anyway, and enters judgment for L/L.

Tenant testifies that paid the rent claimed in the 5-day within the 5-day period, Judge then asks if this month's rent paid and when T says no, enters judgment for L/L.

Tenant testifies did not get Not. of Termination but judge asks if Tenant paid the rent and gives judgment to L/L.

L/L admits T paid rent but says he returned it or wants to return it while in court and Judge allows it and enters judgment for L/L.

**Other** - check this if something other than above and you can't identify.

**Money Judgment (\$)** - Fill in the amount.

**Time in days** - Fill in the number of days, if any, the execution of the judgment is stayed.

**Comment** - Check box if a comment is necessary and then turn sheet over and write comment (I.D. by line number or something). Include in this section, among other things, any question regularly asked T by the Judge such as "Do you have anything to add/say"..."When do you want to move"..."Do you owe rent".



LAWYERS' COMMITTEE FOR BETTER HOUSING TENANT QUESTIONNAIRE

Student Conducting Interview \_\_\_\_\_ Date \_\_\_\_\_  
COURT ROOM \_\_\_\_\_

(READ TO INTERVIEWEE)

Hello, I'm a student intern from Lawyers' Committee For Better Housing. We are doing a study of Eviction Court to try to learn about the experiences of tenants who come to Eviction Court. If you are willing, I would like to ask you some questions about what happened in court today. It should take about 10 minutes. NO INFORMATION THAT IDENTIFIES YOU WILL BE MADE AVAILABLE TO ANYONE. Can I ask you these questions? Thanks for your help.

\*\*\*\*\*

SECTION A.

1. Have you been to Eviction Court before today? Y\_\_\_ N\_\_\_

(a) IF YES: How many times (and w/in what time period)?

\_\_\_\_\_

2. Before you came to Eviction Court today, did you talk to anyone about what happens in Eviction Court? Y\_\_\_ N\_\_\_

(a) IF YES: Whom? Friend \_\_\_ Landlord \_\_\_ Lawyer \_\_\_

Eviction court clerk \_\_\_ Other \_\_\_\_\_

(b) If you got legal help, who helped you and how? \_\_\_\_\_

\_\_\_\_\_

(c) If you did not get legal help, why not? \_\_\_\_\_

\_\_\_\_\_

3. How did you know that you were supposed to be here today?

Posted notice \_\_\_ Sheriff gave it to me \_\_\_ Sheriff gave it to someone in my home over age 13 \_\_\_ Other \_\_\_\_\_

4. What was the Judge's decision in your case? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_. (Confirm courtroom # \_\_\_\_\_)

(a) Decision by agreement betw/ you and L/L? Y\_\_\_ N\_\_\_

(1) IF YES: What was it? \_\_\_\_\_

\_\_\_\_\_

(2) Were you there when it was told to the Judge? Y\_\_ N\_\_

(a) IF NO: Why not? \_\_\_\_\_

---

5. Did you think that the Judge's decision was right? Y\_\_ N\_\_

(a) IF NO: Why not? \_\_\_\_\_

---

(1) Did you tell that to the Judge? Y\_\_ N\_\_

6. Is the L/L evicting you for non-payment of rent? Y\_\_ N\_\_

(a) IF NO: Why is the landlord evicting you? \_\_\_\_\_

---

(b) IF YES: Did you pay your rent? Y\_\_ N\_\_

(1) IF NO: What happened? \_\_\_\_\_

---

(a) How much rent do you think you owe? \$\_\_\_\_\_

7. Are there any conditions in your house/apartment that are unsafe, or not as they should be? Y\_\_ N\_\_

(a) IF YES: What? \_\_\_\_\_

---

(b) Did you tell the Judge? Y\_\_ N\_\_

(c) Did you ever tell the Landlord? Y\_\_ N\_\_

8. Did you bring anything/anyone to court with you? Y\_\_ N\_\_

(a) IF YES: What? Rent book/receipts \_\_\_ Photos \_\_\_

Inspection Rpt. \_\_\_ Letters \_\_\_ Friend/relative \_\_\_ Other \_\_\_\_\_

9. What is your case number: 95M17\_\_\_\_\_

SECTION B.

10. Did you know that you can ask the Eviction Court:

(a) to make your landlord repair bad conditions in your apt/house? Y\_\_ N\_\_

(b) to decide that you owe less than all the rent because of the bad conditions? Y\_\_\_ N\_\_\_

(c) to stop the landlord from cutting off your utilities? Y\_\_\_ N\_\_\_

11. Did the Judge give an explanation of what was going to happen in court this morning? Y\_\_\_ N\_\_\_

(a) IF YES: Did you understand what the Judge said? Y\_\_\_ N\_\_\_

12. Did you stay for your case to be called? Y\_\_\_ N\_\_\_

(a) Why/or why not? \_\_\_\_\_

13. Will you do anything to try to stop the eviction? Y\_\_\_ N\_\_\_

(a) IF YES: What? \_\_\_\_\_

14. Where will you go if you are evicted? \_\_\_\_\_

SECTION C.

15. What is the amount of income/month your household receives?

a. Less than \$500 a month \_\_\_ b. \$500-799 a month \_\_\_

c. \$800-1199 a month \_\_\_ d. \$1200-1599 a month \_\_\_

e. \$1600-2500 a month \_\_\_ f. More than \$2500 \_\_\_

16. What is the source of that income? Job \_\_\_ AFDC \_\_\_ SSI \_\_\_

Social Security \_\_\_ Unemployment Insurance \_\_\_ Other \_\_\_\_\_  
(Check all that apply)

17. How long have you lived in this apt/house?

1-3 mos\_\_\_ 3-6 mos\_\_\_ 6-12 mos\_\_\_ 1-2 yrs\_\_\_

2-5 yrs\_\_\_ More than 5 yrs \_\_\_

18. Lease type? (oral, written, month to month) \_\_\_\_\_

19. HH total monthly rent? \$\_\_\_\_\_ Subsidized? Y \_\_\_ N \_\_\_

20. How many people live in the place you rent, including yourself? \_\_\_\_

21. How many are under 18?\_\_\_\_ Under 13?\_\_\_\_ Over 60?\_\_\_\_

(a) Anyone in household disabled?\_\_\_\_ (insert # of people)

22. Gender: M \_\_\_\_ F \_\_\_\_

23. Race: Black \_\_\_\_ White \_\_\_\_ Asian \_\_\_\_ Hispanic \_\_\_\_ Other\_\_

Thank you for your time. What you told us today may help us help other people who come to Eviction Court.

EVICTON CASE FILE REVIEW FORM

Eviction Defense Project, Lawyers' Committee for Better Housing

DATE OF CASE REVIEW: \_\_\_\_\_ Reviewer \_\_\_\_\_

- 1. Case No. 95 M1 7 \_\_\_\_\_ (M1 2 if CHA case)
- 2. Name of Case: \_\_\_\_\_ v. \_\_\_\_\_

3. Complete address of premises:  
 \_\_\_\_\_  
 Street # N,S,E,W Street name (include St., Ave., Way, ZIP  
 Blvd., Ln. etc.)

- 4. Joint Action? (circle) YES NO
- 5. Amount of monthly rent: \_\_\_\_\_ (if contained in complaint).
- 6. Rent or damages for withholding possession of premises from  
 \_\_\_\_\_, 19\_\_\_\_, to \_\_\_\_\_, 19\_\_\_\_, in the  
 date date

the amount of \_\_\_\_\_. (This information should be contained in complaint if is joint action).

- 7. Did T appear? YES NO Have Counsel? YES NO
- 8. Did LL appear? YES NO Have Counsel? YES NO
- 9. Service of T by Sheriff: \_\_\_\_ personal \_\_\_\_ substitute  
 \_\_\_\_ no service \_\_\_\_ posted/const. \_\_\_\_ # of attempts
- 10. Judgment for: LL T (circle) \$: \_\_\_\_\_ Costs: Yes No

Date: \_\_\_\_\_ Stay: \_\_\_\_ Agreed? YES NO  
(jmt. entered) (days)

- 11. Date Judgment filed (if applicable): \_\_\_\_\_  
 Date Judgment executed: " \_\_\_\_\_

12. Circle any that apply and indicate whether LL or T's Motion:

Mot. to Vacate w/in 30 days: LL T Mot. to Stay Execution of Jmt: LL T  
 Mot. to Vacate beyond 30 days: LL or T Mot. to extend time: LL T  
 LL Mot. to Vacate DWP

Additional information obtained to complete or corroborate information secured during in-court observation or exit interview: (complete on back of form).

**APPENDIX B:**  
**Model Eviction Defense Programs**

## Appendix B

### MODEL EVICTION DEFENSE ADVOCACY PROJECTS

1. Tenant Advocacy Project of the Public Justice Center, Baltimore, Maryland. Ken Walden, Director (410) 625-9409. The Tenant Advocacy Project is part of a community based organization and its goal is to improve outcomes for low income tenants facing eviction. The Project has pushed for some interesting law reform initiatives including a law advocacy statute which was passed in 1990. Prior to this law, tenants had to be represented by attorneys although landlords could be represented by "agents". Because the advocates didn't think they would ever get enough attorneys, and to level the playing field, they pushed this reform. The law allows tenants to be represented by law advocates if they are trained and certified by a special group (I believe this Project). The Project also pushed to get a staff lawyer in court everyday with an office across the hall (staff cited this as the biggest improvement the Project has secured). This attorney handles cases and supervises lay advocates. There are some coordination problems, because tenants don't know to see attorney until the morning their case is to be heard. However, the attorney can tell clerk which tenants are waiting to see her the their cases are passed--but still, some problems. The Project is also currently writing a manual all persons involved--judges, lawyers and lay people.

The Project is currently staffed by three attorneys: 1) the director 2) the in- court attorney; and 3) a community based attorney who works out of a neighborhood location. The Project is trying to bring in volunteer attorneys to raise more legal challenges--both at the trial and appellate level. The Project also has a steering committee made up of 15 members including pro bono attorneys, legal aid attorneys, community people and lay advocates. This committee oversees the Project and staff. The committee has two subcommittees: 1) community based initiative which is trying to develop a reputable advocacy model which can be duplicated; and 2) Rent Court committee which is divided into two groups/focuses: substantive and procedural. The substantive group focuses on substantive laws and reforms and the procedural group focuses on how to equalize the landlord's control over the docket and the tenant's knowledge of the docket.

Maryland has some interesting substantive law provisions/issues. First, anytime before an actual eviction a tenant can pay rent and stay--even if the tenant pays the sheriff who is at the door prepared to remove possessions from the premises. Second, Maryland has an escrow statute which enables tenants, after notice to the landlord (oral is o.k. but hard to prove) and an opportunity to repair, to pay their rent into an escrow account. The tenant can do this for months and to disburse funds, tenant must file a motion. If at any time the tenant misses a payment to the escrow account the court moves to terminate and disburses the money to the landlord without the landlord having to do anything. In addition to the using the escrow account offensively against landlords, tenants can use an escrow account defensively when fighting an eviction. In practice, if a tenant utters the right stuff about conditions in an eviction, the court sends out an inspector. The inspector really becomes the arbiter--the inspector surveys the property and returns for the next court date. If the inspector finds defects (some inspectors are really good, others can be very bad), the Judge can open an escrow for the tenant to make deposits and order landlord to make repairs. The landlord must then file a motion to disburse the escrow and prove it up by showing

he has made the repairs. A problem with this "defensive" escrow is that some judges will only open an account if the tenant has all the back rent.

A current issue receiving a good amount of attention involves what happens to tenant's property once a writ is executed. The City Council is looking at the cost of evictions and trying to impose the burden of taking possessions to the dump on the landlord. City used to store property but it wasn't cost effective. Salvation Army doesn't want the property because it is a processing hassle.

**Study:** Barbara Bezdek, a Professor at the University of Maryland School of Law, in conjunction with her Legal Theory and Practice course conducted a study of Baltimore's rent court in the Spring of 1990. The study involved in-court observations (a total of 399 cases were observed); court record study (659 case files from 1989 were reviewed); and 106 exit interviews were conducted. The results of the study and Professor Bezdek's analysis of the data and critique of the court can be found at Bezdek, Barbara, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 Hofstra Law Rev. 533 (1992). Our understanding is that this study had some role in bringing about the extensive attention rent court is receiving from advocates and the community.

2. The Helping Hand Project of the Sounding Board, Boise, Idaho. The Sounding Board is a community mediation organization which initiated a "Social Systems Mediation" project to help tenants remain housed and avoid homelessness. The project employs a two-tiered mediation process. One tier tackles the money issues which threaten a family's home. Project volunteers mediate between members of a household at risk of eviction and community agencies with the resources to help the family with its bills and other needs. The other tier involves mediating repayment agreements between the family on one side and the landlord and utility companies on the other. In one year the project helped 176 households to mediate 182 agreements to avoid eviction.

**Study:** Appears the project did a study which revealed that the average owed but unpaid rent or utilities per household in eviction actions is \$600. Evicting a family cost an average \$3,000 in emergency shelter and other assistance before new housing is found. (information obtained from materials from ABA).

3. New York City fee for service grants. Currently funded at 12 million/year through the Emergency Assistance to Families Program (25% city, 25% state, 50% federal), the NYC effort includes a fee/case to qualified legal service providers for representation of up to 10,000 income (public assistance) eligible households facing eviction. Add info regarding long term coalition efforts.

**Study:** "Housing Court, Evictions and Homelessness: The Costs and Benefits of Establishing a Right to Counsel", 1/93. This report is part of a long-term advocacy effort beginning in the mid-eighties when a group of advocates from diverse legal and advocacy organizations began to meet to develop a right-to-counsel strategy. Included in the group is legal aid, ACLU, community groups and 3 prominent NYC firms (including Skadden, Arps). In

addition to political advocacy, the group filed a lawsuit, Donaldson v. State of New York, which advanced the argument that judges in the Housing Court have an obligation to assign counsel to tenant who are unable to afford or obtain counsel. The Donaldson case advanced two main legal theories: 1) Due process clause of U.S. and NY State Constitutions are violated if there is no right to representation by counsel in evictions (meaningful opportunity to be heard prior to deprivation of property); and 2) The failure of judges to appoint counsel is an abuse of discretion because N.Y. Poor Person's Statute authorizes judges to assign counsel for litigants who need, yet are unable to obtain, counsel. The case was dismissed on technical grounds but remained alive enough to help put pressure on for more tenant representation.

The study demonstrates that a right to counsel for low-income tenants is an enormous cost saver for the city and can begin to address a significant inequity in the judicial system. This project came about through intense litigation pressure (perhaps right to shelter more than right to counsel), escalating shelter costs, and political pressure to stem the tide of homelessness.

4. Legal Assistance of Los Angeles, Los Angeles, CA. Consists of five neighborhood offices providing eviction assistance to low-income residents of Los Angeles. Although the project provides intensive eviction representation, it does not focus on any particular neighborhood of L.A. The offices screen an extremely high volume of cases: 1.7 million people in the region are eligible for legal services; 9000 people per year are screened by paralegals working for the offices (about 4 each); of these, a very small percentage are represented by about 3 attorneys for each office. The attorneys rotate days they will be in court; the cases are assigned by day so that whichever attorney is scheduled to be in court on a given day takes the cases assigned to that day. Each attorney argues between 2 and 4 cases each day she is in court. Clients being sued for non-payment who have no defenses are screened out by paralegals. They are given materials to assist them to make best efforts to defend their evictions pro se.

The defenses available to the clients screened are particular to California (or LA) law (heavy use of warranty of habitability and rent control defenses), and the high-volume system used by this organization accommodates the rapid pace of eviction proceedings required by California law. (Tenants have a short time to file an answer to a complaint for eviction. Once the answer is filed, the landlord has to write a memo to have a trial set. The trial must take place 20 days from the filing of this memo. Although the landlord has two years to file the memo after he receives an answer to the complaint, landlords tend to file very quickly to expedite the eviction.) The only way that attorneys working for the project may slow the process down is to make a discovery request with the filing of the answer. If the landlord does not comply, the attorney may move for a continuance or for sanctions against the landlord. Staff reported that some tenant-side eviction lawyers in the city resort to filing bankruptcy in an attempt to slow the proceedings, but that his office does not because it is unethical and essentially fraudulent.

The paralegal screening interview establishes which, if any, of a limited number of defenses to eviction are available to a given tenant, such as violation of the warranty of habitability, violation of rent control ordinances, or failure properly to serve. The office uses computer generated form answers to respond to complaints, and attorneys require only several hours to prepare each defense. They win 90% of the cases they actually retain, although cases that are screened out

because they involve only economic issues generally lose. Staff Lee noted that habitability used to be the most commonly used defense and that it worked against slum lords in the city, but that increasingly the defense is not available. Buildings tend to be better maintained, ironically leaving little recourse to tenants who fail for financial reasons to pay their rent.

**APPENDIX C:**

**List of Poor Conditions Cited by Tenants and Sample  
Complaint Form**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS ..... DISTRICT

Plaintiff \_\_\_\_\_  
v.  
Defendant \_\_\_\_\_

No. ....  
Rent or Damage Claimed \$. ....  
Return date .....

COMPLAINT

The Plaintiff ..... claim ..... as follows.

1. The plaintiff ..... entitled to the possession of the following described premises in the City or Village of:

.....  
.....  
.....  
.....  
.....  
.....

2. The defendant .... unlawfully withhold .... possession thereof from the plaintiff .....

3. There is due to plaintiff ..... from the defendant ..... for rent or for damages for withholding possession of said premises from .....,19....., to .....,19....., after allowing the defendant .... all just credits, deductions and set-offs, the sum of \$ .....

The plaintiff ..... claim .... possession of the property and \$ ..... as rent or damages.

.....  
Attorney .... for plaintiff .....

Name  
Attorney for  
Address  
City  
Telephone  
Atty No.

I, ....., on oath state that I am the plaintiff in the above entitled action. The allegations in this complaint are true.

.....  
[ ] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 the abovesigned certifies that the statements set forth herein are true and correct.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS . . . . . DISTRICT

Plaintiff ____  v.  Defendant ____	No. ....  Return Date .....
--	-----------------------------------

COMPLAINT

The Plaintiff \_\_\_\_ claim \_\_\_\_ as follows.

1. The plaintiff \_\_\_\_ is/ are entitled to possession of the following described premises:

.....

.....

.....

2. Defendant \_\_\_\_ unlawfully withhold \_\_\_\_ possession of the premises from the plaintiff for the following reason ,

a. The defendant failed to pay rent.

b. The defendant held over after the tenancy ended.

c. The defendant breached the terms of the lease by .....

.....

d. ....

(insert specific facts showing how defendant unlawfully withhold possession)

(Strike "2a", "2b", "2c" or "2d" , as appropriate.)

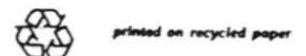
3. The Plaintiff \_\_\_\_ claim \_\_\_\_ possession of the property.

.....  
 Attorney \_\_\_\_ for plaintiff \_\_\_\_ / Plaintiff Pro-Se

I ....., on oath state that I am the plaintiff in the above entitled action. The allegations in this complaint are true.

Name  
 Attorney for  
 Address  
 City  
 Telephone  
 Atty No.

.....  
 Under penalties as provided by law pursuant to 735 ILCS 5/1-109 the abovesigned certifies that the statements set forth herein are true and correct.



## Appendix C

### Poor Conditions Cited by Tenants during Exit Interviews:

- Plumbing Problems: Leaks  
Torn Out Pipes  
Pipes Exposed
- Electrical Problems: Wires Torn Out or Exposed  
Outlets not working  
Light fixtures hanging off walls by single wire
- Safety &  
Security Problems: No window locks  
Windows won't open, even in summer  
Broken window  
No smoke detectors
- Health &  
Sanitation Problems: Animal Hair and Feces in Hallway  
Rats  
Roaches  
Centipedes  
Sewage coming up in kitchen  
Bugs  
Lead Paint, Lead poisoning  
Chipped paint  
No Faucet in bathroom  
Bathroom sink missing fixtures  
Mice (30 caught so far)  
Kitchen Sink stopped up  
Gas stove broken (suffered burns)  
Toilet Broken, No toilet  
No working bathtub or shower  
Carbon Monoxide detectors show presence of gas
- Utilities: All Utilities Cut Off  
No heat  
No water  
No hot water
- Structural Problems: Hole in Bedroom Floor  
Doors do not meet floor, 4 inch space  
Windows falling out  
Ceiling falling in

Water Damage on Ceiling  
Back porch broken  
Plaster falling off in chunks  
Floor is buckling

Other:

No accomodation for disability  
No screens