

David Rubel  
Community Planning and Development  
215 17th Street  
Brooklyn, New York 11215  
718-768-2675

---

# From Expletives to Accolades: A Proposal for the Restructuring of New York City Housing Court ©. David Rubel 1997.

## Summary:

Housing Court has been widely condemned as one of the least effective institutions of governmental authority operating in New York City. Its major product, roughly 22,000 evictions a year, causes much hardship for thousands of low income families. As a system of reward and punishment for getting tenants to pay rent and landlords to provide basic services, the benefits are very few and the costs are very high. For most tenants and landlords, resolving a dispute in Housing Court is a lose-lose situation. Despite the system's existing irrationality, it has the potential to become a cost-effective force for improving housing conditions for both landlords and tenants.

Critics from both sides, landlords and tenants, have called for major reforms. Despite the urgent need, past reform efforts have been meager, and current ones have reached a stalemate. This proposal calls for a restructuring of Housing Court so that it will better serve the needs of *both tenants and landlords*. Based on annual indicators of usage and expenditures that were documented in a recently released Study by the author ("*Housing Court Usage and Preventive Services: A Study of Borough Housing Courts and Low Income Renters*", May 1997, Citizens

Advice Bureau), an alternative system of tenant-landlord dispute resolution is described below.

The main objectives and programmatic ingredients of the proposed system are:

**-reduce the need (and cost) for landlords or tenants to be represented by counsel;  
establish a two track system to differentiate between complex and routine cases**

**-replace Housing Court with an alternative dispute resolution system of administrative hearings or binding arbitration;**

**-increase the number of judges so that they can devote to each case the amount of time necessary for a fair resolution;**

**-establish a large reserve fund for covering emergency rent arrears payments for low income tenants by instituting a fee user system for all owners of rental units**

**-substantially reduce the costs and hardship that occurs in the existing system of Housing Court, eviction and homeless shelter usage**

All institutional and programmatic ingredients for the new system are already in use; *they have been well tested*. This proposal will describe how they can be slightly modified and expanded for a new system of resolving tenant-landlord disputes.

## **A. The Problem in its Current Context**

Of all the numerous government institutions and agencies operating in New York City, it would be hard to find one more unpopular than Housing Court. All groups involved with Housing Court [tenants, landlords (especially small ones), legal services lawyers, community workers, and judges] agree that the system desperately needs major reform. Several major studies have been forceful in documenting the inherent weaknesses and inequities of the Court.<sup>1</sup>

---

1

Nevertheless, the Housing Court system continues year after year, impervious to substantive reform.

There are three factors that together explain the systemic weaknesses of Housing Court in New York City: rental market, unequal representation by counsel, and expense.

**1. Rental market:** A chronic mismatch between the availability of affordable rental housing and poverty generates most of the business of Housing Court. Despite impressive efforts by the City to increase the supply of low income housing, 640,000 renter households still pay more than 35% of their income on rent. An estimated 25% of all households eligible for Federal Housing assistance actually receive it. Un-subsidized housing accounted for 83% of households with annual incomes between 10,000 and 25,000 dollars. The only recourse for nonpayment of rent available to landlords is Housing Court. This situation has seen little change since a separate Court for housing problems was first established in New York City in 1974.

**2. Representation by counsel:** A highly unequal power relationship between tenants and landlords continues unabated. According to one recent study, representation by counsel in summary proceedings is highly unequal: 97% of all landlords are represented by counsel; 12% of all tenants are. In the same Study, conducted by the Citywide Taskforce on Housing Court, almost 68% of all tenants brought to Housing Court had incomes below 19,000 dollars in 1992; 47.9% had incomes below \$10,000. Further exacerbating this problem are the recent cuts to the neighborhood free legal services. In 1995, the National Legal Services Corporation lost close to one third of its Federal funds. The unstable and weak mandate for government funded legal services points to even less tenant representation by counsel in future years.

**3. Expense:** Evictions are very expensive and time consuming. Small landlords can barely afford the cost of hiring an attorney for an expensive and lengthy eviction through Housing Court. Not only does the landlord have to spend between \$1,000 to \$2,000 on legal fees, they also often lose the

rent. Owners of large apartment buildings, while better equipped to handle evictions, still have to add legal fees to the costs of operating any apartment building. Each year, several hundred million dollars are spent on attorney fees. However, the landlord and tenant are both losers. The landlord loses several thousand dollars in lost rent and attorney fees, the tenant loses the apartment. The apartment building also suffers in lost revenue that could have been used for repairs and maintenance.

## **B) Little Improvement in Existing Conditions or the Foreseeable Future Unless Major and New Reforms are Initiated.**

**B-1. Economic conditions will see few changes.** The operations of New York City Housing Court are directly affected by the underlying conditions of the rental market and employment changes in the regional economy. These economic conditions include the cost of managing housing, scarcity of affordable housing, new housing units, and the income capacity of low income tenants to pay higher rents. Any program of reform must take a careful look at how changes in these conditions influence Housing Court. Nevertheless, based on the past 14 years, it is highly doubtful that any changes in these conditions will significantly reduce the amount of Housing Court activity in the foreseeable future. This 14 year period included a recession as well as peak economic growth; however, the number of petitions filed for nonpayment of rent and holdovers fluctuated between a high of 360,000 to a low of 304,000 in the past 14 years.

**B-2. Current Reform Efforts Are at a Stalemate.** Past efforts at reform of Housing Court have accomplished little. Existing proposals from tenant advocacy and landlord organizations have encountered strong resistance from the each other.

**Right of counsel:** The main reform strategy by tenant advocacy groups is to require that any low to moderate income tenant be represented by counsel in a Housing Court summary proceeding. The proposal and its cost savings were described in detail in the Study "*Housing*

*Court, Evictions and Homelessness: The Costs and Benefits of Establishing a Right to Counsel*" by the Community Training and Resource Center and the Citywide Task Force on Housing Court, Inc.

In a period of fiscal austerity, the likelihood of a program this expensive passing (estimated at 70 million dollars) is very remote. Furthermore, even if counsel would be available to all tenants brought to Housing Court, the underlying problem of poverty and rent would not be touched. Tenants would still lack the money to pay the rent necessary for a building to be serviced and profitable. Also, landlords would end up spending more money on their own attorney fees.

**Mandatory deposit of rent arrears:** The major reform initiative from landlords, offered through the Rent Stabilization Association and City Council Resolution is to require all tenants to deposit rent arrears in a Court escrow account. If the bill is passed, it is estimated that half of all cases would disappear. This solution does not deal with the problem faced by tenants- lack of money to pay rent. Furthermore, it has encountered stiff opposition from tenant groups and has little chance of passage.

Current reform initiatives have reached a stalemate. None of them have sought to balance the interests and needs of *both* landlords and tenants. To compound matters, the next few years could be even worse for low income tenants due to the weak political support of the Legal Services Corporation, the NYC-HRA emergency rent arrears program and NYS-DSS "Jiggetts Relief" rent assistance payments.

### **New York State Unified Court System Housing Court Program -1997.**

***Housing Court needs reform.*** In a period when government is more intent on limiting its obligations than in "re-inventing" itself, what are the *realistic* possibilities for making Housing Court better serve tenants and landlords? Also, what are the requirements for effective and

substantive reform? The constellation of relationships that connects tenants, landlords, poverty, government, law, poor neighborhoods and affordable\safe housing to each other is very complicated. Any serious attempt at reform must be sensitive to all parts of this very complex system.

### **C. Seven Objectives for Reforming NYC Housing Court**

For any reform effort to be both substantive and just, it has to be able to achieve a wide range of objectives.

- 1. Protection of legal rights. Tenants and Landlords must be on equal footing when they appear before a Judge.**
- 2. A sufficient pool of money must be made available to cover emergency rent arrears payments for very poor\means tested New Yorkers. Working poor as well as public assistance households should be eligible.**
- 3. Landlords who rent to predominantly poor tenants must have a sufficient cash flow to make repairs and keep buildings well managed.**
- 4. All tenant-landlord disputes must be resolved with speed. Landlords should not have to lose six months to a year of rent waiting to obtain an eviction.**
- 5. Minimize the potential for fraud and abuse for a means tested emergency rent payments program.**
- 6. Build upon experience by modifying and expanding existing institutions and programs.**
- 7. Cost-effective. Substantial savings to the City and less hardship for vulnerable families must be shown.**

## **D. Programmatic Components for a New and Better System for Resolving Tenant-Landlord Disputes in New York City.**

Below is a description of 5 concrete programmatic changes for the restructuring of New York City Housing Court and related emergency support services. All aspects of the restructuring are built upon the utilization and expansion of several existing and fully tested government programs and institutions of law. The new system of resolving tenant-landlord disputes has been designed to meet the needs of all tenants, especially poor ones, as well as the landlords who rent to them.

### **1. Replace Housing Court with a System of Alternative Dispute Resolution such as Administrative Law Hearings or Binding Arbitration**

The first program step is to completely abolish the existing Housing Court system. It will be replaced by a system that will accord a hearing before a judge. The tenant and the landlord (or a representative) will be required to attend the hearing. Neither side needs to have any prior understanding of tenant-landlord law. Either the Judge can preside fully in the hearing or assign an aide to listen to both sides prior to the hearing. The judge will be responsible for explaining the process, possible decisions\outcomes, and the anticipated as well as unanticipated consequences of the decisions. The judge will explain to each party what pieces of evidence are needed. If additional evidence is needed, (such as photos, income verification, leases, inspection), a second hearing will be scheduled. Evictions will take place in situations where the tenant has clearly abused and broken their contractual obligations. The administrative law judge will have the power to evict a tenant. A landlord can attend the hearing or send a representative. At the suggestion of the judge, the need for counsel will be recommended for only very complex cases.

**Appeals Process:** An administrative appeals process will enable individuals to challenge the decision of an administrative law judge. Court review could be obtained pursuant to a

substantial evidence standard. The appeals process could resemble existing models of appeal such as Article 78 standards.

## **2. Double the Number of Judges and Support Staff.**

To expedite the process of resolving tenant-landlord disputes, as well as enable each Judge to have an adequate amount of time to hear each case, the number of Judges will increase from its current number of 35 to 70.

**-Ensure a Reasonable Caseload.** In 1994, 122,500 nonpayment and 18,000 holdover cases were added to the calendar in New York City Housing Court (140,500 cases). With 70 judges working 231 days a year (standard number of days excluding City Holidays and four weeks vacation), there will be enough time for each Judge to give an average of 42 minutes to each case (assuming 6 hours a day of hearings). To be sure, the length of trials varies greatly. The point is to ensure that each Judge will have enough time to review evidence and make a decision without either party being represented by counsel. If the need for more Judges is warranted, there will still be enough funds available to meet this need.

**Social Service Support Staff.** Each Judge will refer appropriate cases to a staff of case workers (either provided by HRA or contracted through a not for profit organization) for collecting\processing documents and making determinations for emergency rent payments. Bi-lingual support staff will be hired to ensure that translation services are available.

**-Code Inspectors.** Increase the number of HPD Housing Maintenance Code Inspectors assigned to Housing Court to 70. Each Judge will an HPD inspector assigned to their courtroom and available to conduct inspections when needed.

**-Computer system.** Utilize existing computer systems for building violations, repeat cases, etc. To minimize fraud and abuse, the computer systems of HRA, DHCR and HPD will be available for case review. **Total administrative costs are estimated at \$32,000,800. In 1994, the budget of Housing Court was \$16,261,000.**



### **3. Eliminate or Significantly Reduce the Cost of Counsel to Landlords**

The new system of dispute resolution will not require lawyers. The judge will be responsible for administering decisions without either party represented by counsel. There will be enough time for a judge to hear the specifics of the case and look at evidence. Without the need to be represented by counsel, all landlords will immediately see real savings: between 4% and 8% of operating costs. The most conservative estimate for the amount of dollars spent annually by landlords on Housing Court nonpayment and holdover cases legal fees (including Marshal evictions): \$141,000,000 dollars. Other estimates go as high as \$300,000,000 dollars. An itemized breakdown of the annual cost of legal work (petitions, cases calendared, trials, stipulations, final judgments, possessions, order to show cause, marshal services) generated by New York City Housing Court can be found in the Appendix.

### **4. Establish a Fee User System for all Buildings in the Rent Stabilization System in New York City and all Other Owners of Rental Housing.**

All building owners with buildings that are registered with the New York State Rent Stabilization system will be required by law to pay an annual fee of 60.00 dollars per apartment unit. In 1995, there were 1,013,097 rent stabilized units in New York City. At \$60.00 each, these units would generate \$60,785,820. annually. These funds will be used to cover the costs of operating the new system.

All other owners who have a tenant-landlord dispute will be required to pay a fee of 300.00 dollars to have their case heard before an Administrative Law Judge. This group includes rent controlled, New York City Housing Authority, owners of buildings with 5 units or less, apartments no longer in rent stabilization, and coop\condo owners who rent their apartments. In 1993, there were a total of 1,976,671 renter occupied units. There are no figures on the number of non-rent stabilization petitions for non-payment\holdovers brought to Housing Court. A very conservative estimate would be 25% or 75,000 petitions (out of an annual 300,000). At 300

dollars a case, this group would generate an additional 22,500,000 dollars. **Total Amount of Dollars Generated Annually: \$83,285,820.**

The \$83.2 million would be used to cover the new system for resolving tenant-landlord disputes. The funds would be used to cover the salaries of Judges, case workers, clerical staff, code inspectors and emergency rent payments. The money could be administered by one new agency or parceled out to several existing agencies (Office of Court Administration, HPD, DHCR, HRA). These funds could be collected very easily through the existing mechanisms of the New York City Department of Finance.

Outside of the \$16 million it currently pays for Housing Court administration, the State of New York will not have to contribute a single dollar of tax revenue to operate the program.

#### **5. Expand the Use of HRA Emergency Rent Arrears Payments and NYS-DSS "Jiggetts Relief" Payments for all Court Approved Cases.**

The primary reason for most nonpayment cases is lack of money. According to the 1990 Census, 640,000 renter households in New York City were paying more than 35% of their incomes on rent. A major change in every day life such as loss of job, family break-down or a large medical expense can cause rent arrears to build up. For tenants on Public Assistance, the shelter allowance does not keep pace with the minimum costs of renting a privately owned apartment (for a family of four it is set at 312 dollars; \$286 for a family of three).

These conditions have been recognized and responded to through two means of income aid: HRA Rent Arrears Payments ( applicant rent arrears grant, EAF, EAA, and EHR) and NYS-DSS "Jiggetts Relief". To prevent an eviction, an emergency payment is made to the landlord. HRA emergency rent arrears payments are made mostly as "one shot deals". "Jiggetts relief", named after the plaintiff in a law suit against the New York State Department of Social Services, consists of a lump sum payment to cover arrears plus ongoing payments to cover difference between the PA shelter allowance and the legal rent.

It is common practice for these payments to be approved only after the tenant has received a 72 hour notice of eviction from a City Marshal. Both the landlord and tenant have spent many hours and several days of lost work in the process (as well as attorney fees). These two programs could be slightly modified and expanded significantly to be used as a mechanism to resolve cases of non-payment.

**All Marshal evictions could be painlessly resolved through the expansion of these two programs:** For the past 8 years, Marshal evictions in New York City have averaged around 23,000 a year. To provide an emergency rent arrears payment of \$250 a month to each of these households to cover a 12 month period would cost \$66 million. *Around \$66 million will be paid directly to landlords for arrears instead of to their attorneys.*

The \$66 million would be spent down through emergency one shot payments. After a year, most tenants will be able to stabilize their economic situations and resume paying the full rent amount. In other cases, an individual determination of need will be made as to continuing the rent supplement. After covering the estimated additional administrative costs of \$14 million, the program would still have another \$2 million to operate with. These funds would be put into an interest bearing reserve fund. It would cover tenants who require more than one year of assistance.

Information on the current participation and costs of the HRA emergency rent arrears and “Jiggetts relief” payments is difficult to determine due to unwillingness of the two governmental agencies to release information. What is definite is that an additional \$66 million in rent supplemental assistance will help prevent many evictions of poor people (including households threatened with eviction but not eligible for “Jiggetts Relief” payments). An additional benefit would be flexibility of eligibility requirements. Families and individuals who do not qualify for “Jiggetts Relief” or HRA emergency one shot payments could be assisted through these new funds.

**Put Money Back into Buildings in Poor Communities.** Under the current system, *all* money spent on an eviction goes to the law firms that specialize in landlord-tenant law. After losing

months of rent, all the landlord gets is a vacant apartment and stiff legal bills. The tenant loses his\her home; a hardship on children as well as parents. The building has less cash flow for needed repairs and basic maintenance. Except for the attorney, it is a lose-lose situation for all other parties.

Under the new system, the tenant in most cases will keep the apartment. The landlord will have money to improve the buildings cash flow and respond to maintenance code violations. A win-win situation.

**Evictions will still take place.** In extreme cases, where the tenant clearly refuses to comply with their contractual obligations to pay rent, is disruptive (examples include drug dealing, squatters, a fired super who refuses to leave the apartment) or can no longer live independently- evictions will take place. The threat and reality of eviction will remain. The importance of paying monthly rent will be reinforced by the use of eviction.

## **6. Mechanisms To Minimize Fraud and Abuse.**

Will a new program of dispute resolution and rent subsidy create a huge increase in non-payment petitions? While any program will have some abuse and fraud, mechanisms must exist to prevent it from being widespread and destroying the program for the people who really need it. What's to prevent some tenants and landlords from collusion? What's to prevent tenants from fabricating expenses or squandering resources to create a rent emergency?

All the administrative mechanisms for the new system are already in use today. All tenants in the Rent Stabilization system have leases that have been officially record. A tenant cannot just walk into Housing Court with his\her landlord and show a large rent deficit due to a rent hike. Any change in the tenants ability to pay rent will be due to his\her own economic situation-not to a change in rent. The existing HRA and NYS "Jiggetts Relief" programs have already established tough guidelines for eligibility. These programs require that the tenant show various forms of income verification and/or medical emergency expense before approval for an emergency payment.

## **CONCLUSION**

### **What will the day to day new system look like? How will each group see tangible benefits?**

Assuming the number of cases that are put on the Court calendar continue at numbers similar to previous years, 72 Judges will preside over 130,000 cases a year. The main improvements and tangible benefits to low income renters, landlords and the City of New York are:

*-approximately 27,500 very poor tenant households can be directly assisted with an average rent subsidy of 2,000 dollars.*

*-at least \$66 million will go back into the pockets of the landlords who rent to the City's poorest tenants.*

*-the time spent on resolving tenant-landlord disputes and getting back rent collected will be cut in half.*

*-NYC will save between \$160 and \$180 million due to a reduction in the number of families and single adults using the Shelter System.*

**Appendices: 1, 2, 3**

**1) Formula for Determining How Much Money is Spent on Legal Fees for Tenant-Landlord**

**Disputes:** In 1994, the following activity took place in the Housing Part of Civil Court of New York City. Figures for Marshal evictions come from the NYC-Department of Investigation.

**Landlord Initiated Cases:**

Petitions: 312,533. x \$ 60.....	\$ 18,751,380.
Trials: 122,533 x \$100.....	\$ 12,253,300.
Final Judgments: 179,527 x 250....	\$19,250,000.
Possessions: 102,020 x 600 Dollars ..	\$ 61,212,000.
Marshal Eviction: 23,970 x 250 Dollars ...	\$ 5,992,500.
Orders to Show Cause: 120,357 x 200.....	\$ 24,071,400.

(includes the cost of Process Servers)

---

**Total ..... \$ 141,530,580.**

These figures do not include the cost of representation by tenant or landlord for Tenant\HPD initiated Cases or the cost of tenant representation in a dispossession or holdover. The formula for calculating the annual amount of money landlords spend on Housing Court related legal fees is difficult to estimate. For the purposes of this proposal, the most conservative assumptions, based upon best case scenarios for a tenant eviction, are being used with the total cost at 141.5 million dollars. The reality is much closer to 250 million dollars and maybe as high as 300 million dollars.

**2) Large Indirect Benefits: Less Families will end up in the New York City Shelter System**

Of the roughly 23,000 Marshal evictions that take place each year, according to several studies, 40% of those households end up spending time in the New York City Shelter System. The Study conducted by

the Community Training and Resource Center and Citywide Taskforce on Housing Court has shown that eviction related shelter usage is very significant. It placed the cost to NYC-HRA (now Department of Homeless Services) for eviction related shelter stays for families and individuals at 150.9 million dollars in 1993.

Total Number of NYC-Shelter System Users in 1992	Number of families and single adults homeless by eviction	Average cost of HRA Shelter System Use	Total Cost of Eviction Related Shelter Usage
11,280 families	4,873	\$24,910.	\$121,386,430.
29,820 single adults	3,567	\$ 8,301.	\$ 29,609,667.

While the CTRC-CWTFHC study sought to make savings by providing counsel as of right for all tenants brought to Housing Court, the current proposal would result in full savings of the 150 million it cost the City to shelter the eviction related homeless families and single adults.

**3) Current Combined Federal, New York State and City Government Expense of Operating Housing Court and Eviction Prevention Programs in NYC:**

Housing Court: ..... \$ 16,261,000.

HRA Rent Arrears. .... \$ 13,000,000. (Estimated)

Jiggetts Relief..... .\$ 50 million to 75 million (Estimated)

Staff for Legal Services, HRA Diversion Teams, non-profit sector eviction prevention community workers, Income Maintenance Center staff..... \$20,000,000 to \$25,000,000. (Estimated)

NOTE: information on the cost of the HRA Rent Arrears and NYS “Jiggetts Relief” payments has not been made available despite efforts at submitting FOIL letters to both Agencies. The absence of this information hinders any final cost analysis.

## Endnotes

All of the data was collected during the period of 1996 and 1997. Almost of the analysis was also written during these two years.