



SPOTLIGHT EXCLUSIVES

How Cities Are Trying to Level the Playing Field for Tenants Facing Eviction



Jared Brey, posted on October 18, 2017

For tenants facing eviction in cities across the United States, access to a lawyer can make the difference between safe housing or homelessness. But for many renters who struggle to keep up with rent, paying for a lawyer to fight an eviction is out of the question.

In many cities, legal aid groups help low-income tenants in eviction cases. But these efforts tend to be scattershot, often the pro-bono work of legal organizations or nonprofit groups with small budgets. Too often, landlords are represented in court by lawyers, while their tenants are not. In Washington, D.C., for example, some 90 percent of landlords have counsel in eviction cases while 90 to 95 percent of tenants go without, according to the District of Columbia Bar. Over the past few years, advocates have tapped into a growing sense that tenants' inability to secure legal assistance for housing issues is a structural injustice, and some cities and states are now trying to find ways to balance the scales.

Advocates give some credit to Harvard sociologist Matthew Desmond, who published his book *Evicted: Poverty and Profit in the American City*, in 2016, for bringing the obstacles faced by tenants threatened with eviction into focus (<https://spotlightonpoverty.org/spotlight-exclusives/how-housing-perpetuates-poverty/>). The movement to guarantee legal representation for low-income tenants—part of a wider push to create a right to counsel in civil cases like there is in criminal cases—has picked up steam since the book was published.

John Pollock, a staff attorney at the Public Justice Center and coordinator of the National Coalition for a Civil Right to Counsel (<http://civilrighttocounsel.org/>), says that the imbalance in representation for landlords and tenants is stark in every locality his group has studied. The imbalance lets landlords sometimes file evictions that they know aren't lawful, assuming that tenants won't have the wherewithal to fight them, Pollock says. Lawyers can help tenants avoid evictions on legal grounds, but even in cases where they can't prevent their ouster, they can help clients apply for public housing, rental assistance, or other services, Pollock says. And though many worry about the cost of guaranteeing a lawyer to every poor tenant in housing court, Pollock says cities are starting to realize that money invested to prevent evictions pays off in money saved on homelessness services.

"We like to make this argument as one of justice and one of fairness, but the cost is definitely part of the story," Pollock says. "I call this preventative legal medicine. We can either leave the problem untreated ... or we can treat the problem before it festers and becomes a serious one."

Right to Counsel in New York

In July, the New York City Council voted to approve a bill that would make New York the first U.S. city with a right to counsel for tenants facing eviction. The legislation (<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80>), which was signed by Mayor Bill de Blasio in August, establishes a program within the city's Office of Civil Justice to provide free legal assistance for all tenants who earn up to 200 percent of the federal poverty line. Tenants earning more than that would also get "brief legal assistance" under the terms of the bill. The program will be established over five years.

Andrew Scherer, policy director at the Impact Center for Public Interest Law at New York Law School, said a movement to establish a right to counsel in housing cases in New York has been in the works for more than thirty years. But the conditions to pass the law only fell into place in the last few years. De Blasio came into office on a new progressive wave in city politics, while a lot of attention in New York was focused on gentrification, housing, and homelessness, Scherer said. Desmond's book drew a fine point on the issue as well.

According to Scherer, the biggest obstacle in New York was the cost, or at least the perceived cost, of implementing a right to counsel. But the effort picked up steam after the New York City Bar Association published a report (http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_) in the spring of 2016 concluding that providing lawyers in eviction cases would actually save the city around \$320 million a year in costs that it was already spending on shelters and other homelessness measures. By February of this year, the mayor was signaling his support for the legislation, first introduced in 2014 by Councilman Mark Levine.

It never would have happened without a strong and active coalition of advocates building support for the policy at a grassroots level, Scherer said. Other cities can't expect to create a right to counsel if support seems to be coming only from one corner of the legal or political communities, he said.

"This is big," Scherer said. "This is a big deal, and I think that makes [politicians] anxious, so they need a lot of cover."

And it didn't hurt that New York, which likes to be first, saw the issue percolating in other cities as well.

Help for the poor in Philadelphia

In Philadelphia, where poverty is substantially higher and deeper (<http://www.philly.com/philly/news/philadelphia-census-deep-poverty-poorest-big-city-income-survey-20170914.html>) than any of the other ten biggest cities in the U.S., eviction rates are high and around 92 percent of tenants reportedly (<http://planphilly.com/articles/2017/03/16/to-reduce-unfair-evictions-tenants-need-lawyers>) go into court without a lawyer. Nonprofit groups like Community Legal Services help tenants with housing issues and evictions, but the need far outstrips the capacity. In the spring, the city council held hearings (<http://planphilly.com/articles/2017/03/21/council-hearing-examines-evictions-substandard-housing-and-possible-solutions>) on eviction issues, and ended up securing an additional \$500,000 in the city budget for legal aid to low-income tenants.

The city has so far stopped short of ensuring a right to counsel, but last month, Mayor Jim Kenney created a new task force (<https://beta.phila.gov/press-releases/department-of-human-services/mayor-announces-new-eviction-task-force/>) charged with reducing the number of evictions in the city. Its recommendations are due next spring. And the city issued a Request for Proposals for nonprofits "to develop or expand programs to reduce evictions in Philadelphia or buffer its effects" in September.

Public fund proposed in Baltimore

The burdens that tenants face in Baltimore's rent court have been documented (<https://nextcity.org/features/view/rent-court-baltimore-tenant-rights-cities>) for some time. In the spring, the *Baltimore Sun* began publishing a series (<http://data.baltimoresun.com/news/dismissed/>) on eviction, rent court, and unaffordable housing, and found that the city spends twice as much money to process evictions as

it does on homelessness prevention. Over the summer, a city councilman introduced legislation that would create a public fund to provide legal aid for tenants facing eviction. The details of the proposal—including the size of the fund, and where exactly the money would come from—have yet to be determined. But other council members have said they would support the legislation, and it could go before voters as a charter amendment in an election next year, according to the *Sun* (<http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-tenant-lawyer-20170717-story.html>).

\$4.5 million in Washington

In May, the Washington, D.C. Council approved a budget that sets aside \$4.5 million for a program (<http://wamu.org/story/17/05/18/need-lawyer-fight-eviction-new-d-c-program-provide-one-free/>) to offer free legal aid to tenants facing eviction. As in New York, residents earning up to 200 percent of the poverty line would be eligible. In a *Washington Post* op-ed (https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2017/05/18/low-income-tenants-in-d-c-may-soon-get-legal-help/?utm_term=.dca24b82aec6) published before the final budget vote, three D.C. Council members wrote that a smaller pilot program had shown that tenants with counsel in the District's landlord-tenant court were "more than six times more likely" to avoid eviction than those who didn't have a lawyer. The program will be administered by the D.C. Bar as part of its Housing Right to Counsel Project (<https://www.dcbar.org/pro-bono/about-the-program/right-to-counsel-project.cfm>).

Statewide action in Massachusetts

In January, Boston Mayor Marty Walsh announced a raft of measures meant to prevent residents from being displaced amid rising housing costs in the city. One of the measures, introduced in the state senate by Senator Sal DiDomenico, would "make legal representation in eviction proceedings a right, rather than an option," according to a press release (<https://www.boston.gov/news/mayor-walsh-unveils-anti-displacement-legislative-agenda>) from the city. The proposal (<https://legiscan.com/MA/bill/S831/2017>) was subject to a hearing before the Joint Committee on the Judiciary in the state house and senate last month. The committee has until February to take action on the legislation, according to a spokeswoman for DiDomenico.

In 2012, the Boston Bar Association Task Force on the Civil Right to Counsel issued a report (<http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>) on housing pilot programs, and found that, like in so many other cities, tenants with legal representation fared substantially better in court than those without. "The pilot studies have confirmed that, without full representation by counsel or an effective alternative, many vulnerable tenants forfeit important rights, lose possession they could have retained, and forego substantial financial benefits," the task force concluded. "With counsel, eviction proceedings have outcomes that are more just."

Jared Brey is a freelance journalist with a focus on urban and environmental policy and politics. He lives in Philadelphia.

« Back to Spotlight Exclusives