How Renters Are Processed in the Baltimore City Rent Court

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A report by the Public Justice Center
in collaboration with the Right to Housing Alliance,
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Right to Housing Alliance

Public Justice Center

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Contents

Executive Summary

Every year in Baltimore City, 6,000 to 7,000 renter households are judicially evicted for not paying the rent. These evictions result from a court system – known colloquially as "the Rent Court" – that is overwhelmed by landlord litigation, to the tune of 150,000 rent cases annually. The scale of this enduring crisis sets Baltimore apart from most rental housing markets in the nation. In fact, among metro areas studied in the 2013 American Housing Survey, Baltimore ranked second only to Detroit, Michigan, in the percentage of renters experiencing the threat of rent eviction.[1]

Many of these struggling renters feel that the public has tuned out their stories or flipped those stories against them. They face complex legal challenges on their own, without an attorney or even legal information to know their rights. At the same time, city leaders show little interest in understanding the cause of these evictions and their effects on community, family, employment, health, and education. There is a prevailing sense that rent evictions on this scale, year after year, just happen, as a logical consequence of poverty.

Baltimore ranked second only to Detroit, Michigan, in the percentage of renters experiencing the threat of rent eviction…. At the same time, city leaders show little interest in understanding the cause of these evictions and their effects on community, family, employment, health, and education.

This report tells a different story.

From July 2014 through July 2015, the Public Justice Center partnered with the Right to Housing Alliance to study the experiences and outcomes of renters who appeared at Rent Court to defend against rent eviction cases. This report is based on a survey of nearly 300 Rent Court renter-defendants, extended interviews, reviews of court records and data from Baltimore Housing and the Maryland Department of the Environment, and the Public Justice Center's experience in defending tenants in rent cases.

Our study shows that the court system prioritizes efficiencies which privilege the landlord's bottom line, and as a result, it decidedly ignores two predominating realities of poor renters and their housing.

First, renters lack access to timely legal advice and have insufficient knowledge to navigate the process.

Once inside the Rent Court, renters operate from undeniable knowledge deficits – 50 percent of surveyed renter-defendants knew virtually nothing about how to defend their cases. Worse, they encounter systemic obstacles that minimize their voices and participation. While most landlords are represented by an attorney or debt management agent, renters typically appear at court alone, so that the cards are stacked against them. Then, institutionalized customs of the court steer renters away from

[1] See table of American Housing Survey 2013 data on reported notice of eviction due to non-payment of rent on p. 58.

defending themselves, instead pushing them into agreements that have no effect on the considerable problems renters face at home – namely, overspending on insecure, unsafe, unhealthy housing.

Second, renters are poor, have few rental options other than Baltimore's crumbling housing stock, and look to the court to enforce housing standards.

Our data show that Rent Court defendants are among the most vulnerable people in the city. Most are Black women, living on $2,000 or less per month, without public housing assistance. To lower their housing costs, they resort to living in poorly maintained units. Shockingly, our study reveals that nearly 80 percent of surveyed renters were living amidst serious housing defects at the time they appeared at Rent Court. Over 70 percent of that group had notified the landlord about those defects. Startling, too, is that our study shows about half of landlords submitted invalid registration and licensing credentials to the court in order to get their law suit docketed. Worse, four of five landlords provided the court information about their mandatory lead risk reduction compliance that was incorrect, outdated, or otherwise unsupported by data from the state regulatory agency.

Even though these factors would form a legal defense for non-payment of rent, not even a third of respondents with a defense ended up contesting their cases before a judge. And even when they tried, in half of cases, judges failed to recognize or permit the renters' habitability-based defenses.

This report first answers the questions of who comes to Rent Court to defend themselves, and what are the circumstances in their lives, beyond the four corners of the landlord's rent complaint? Next, we present critical new information about tenants' pre-trial knowledge of their rights and defenses to eviction. In Part II, we detail how current law welcomes frequent, repetitive litigation that overwhelms all aspects of fairness in the Rent Court. Part III details the systemic roadblocks that renters face in the legal system. The report shows how renters, many of whom have legitimate defenses to nonpayment of rent, are diverted away from raising their defensive claims or simply are not fully heard when they stand before a judge. In Part IV, we turn to what many consider the more effective forum for renters to remedy substandard housing conditions: the affirmative rent escrow process. From new research conducted by the University of Baltimore, we present the significant barriers to justice that renters faced in 59 case studies of rent escrow cases.

Finally, our report concludes with five major recommendations for reforming the Rent Court system and protecting the rights of some of Baltimore's most vulnerable residents:

1. Cut Rent Court dockets in half and strengthen overall fairness of the process by requiring a pre-filing notice and waiting period that would ensure that renters receive documentation of the landlord's claims, time to remedy the dispute before litigation begins, and time to prepare a defense if necessary.

2. Level the playing field at court by expanding legal help for renters – increasing renters' access to legal information, assistance at court, and legal representation. This report demonstrates the dire need for expanding access to legal assistance for renters, as their fate in housing court depends less on the merits of the case and more on whether renters know how to navigate the court system and the law. For Rent Court defendants, who are among the poorest residents of Baltimore, expanding access to free civil legal services would help level the playing field and

reduce the number of renters who are wrongfully evicted because they did not understand their rights.

3. Demand that landlords and agents document their rent claims, as well as their alleged compliance with licensing and lead-risk legal requirements, and hold them accountable through a consistent application of existing legal standards and tenant protections.

4. Expand landlord licensing requirements that ensure annual health and safety inspections to all rental housing in Baltimore – not just multi-family dwellings and rooming houses.

5. Fund eviction prevention programs to meet the scale of the eviction crisis.

Baltimore's rent eviction crisis has serious ramifications for the human right to housing in our city. At the core of this right, recognized in more than one hundred national constitutions throughout the world and by the United States through its adoption of the Universal Declaration of Human Rights,[2] lies the notion of security of tenure: for all persons, the government must ensure adequate legal remedies to any attempted deprivation of housing, and moreover that no household is evicted without other shelter in place.[3]

Baltimore City Rent Court operates from an opposite concept. The data in this report illustrate that this broken system puts long-standing tenant protections and basic housing standards second to landlords' bottom line. Without intervention, it will only continue to function as a housed-to-homeless pipeline, a core disruptor of Baltimore's efforts to foster community, family health, childhood education, and neighborhood stabilization.

[2] *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 25 (Dec. 10, 1948) ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... housing."); *accord* International Covenant on Civil and Political Rights, Dec. 16, 1966, S.Exec. Rep. 102-23, 999 U.N.T.S. 171, at art. 17 ("[n]o one shall be subjected to arbitrary or unlawful interference with his ... home[.]")

[3] *See* U.N. OFF. OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT-BASED EVICTIONS AND DISPLACEMENT: ANNEX 1 OF THE REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, at paras. 17 and 43, A/HRC/4/18, http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf.

Methodologies

Tenant Survey

The Baltimore Rent Court Study was an in-person and by-phone survey of tenants appearing at the District Court of Maryland for Baltimore City at 501 E. Fayette Street between July 8, 2014, and August 2, 2015. During this period, 725 tenants who appeared in court were approached; of those, 297 were interviewed, resulting in a response rate of 41 percent. Eligibility to participate was limited to tenants appearing in court whose name appeared on a Failure to Pay Rent complaint and summons issued by the court.

Volunteers of the Right to Housing Alliance administered surveys to tenants who had appeared at the court to defend against a rent case. The volunteers were instructed to engage with any tenants before they entered the courtroom or after they exited the room from their hearing. In the initial encounter, tenants were asked, "Would you be interested in expressing your experience in rent court through a brief survey?" Volunteers were trained to speak neutrally about the court process, to avoid motivational engagement, and to inform tenants that participation in the survey would not impact the outcome of their court case. In the pilot phase of the survey, volunteers conducted surveys on-site in private meeting rooms located upstairs from the courtroom.

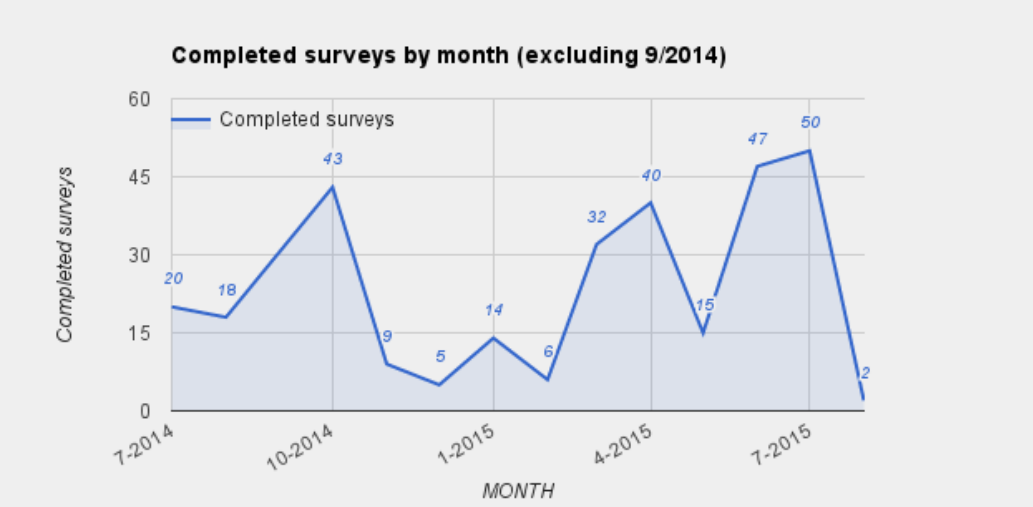
Tenants were asked about their current residence (i.e., rent, number of bedrooms), conditions of their case (i.e., responses to questions by the judge, their understanding of court statements), and their demographic information. Respondents were also asked about their household size (i.e., number of children living in the home, number of adults living in the home), as well as tenants' name and phone number to be contacted further. Although this survey encompasses a small fraction of the population facing eviction in Baltimore, it is a sample that is large enough for meaningful insights to be drawn from it.

Beginning in October 2014, the survey method changed so that tenants provided their names and contact information to allow volunteers to conduct the survey in a follow-up phone call. Volunteers attempted three calls within four days after the tenant's trial date. After the fourth day the tenant were ineligible to participate in the survey. High numbers of tenants were recruited by this method, but successful response rates were low. A large percentage cases timed-out within the four-day period. In addition, some tenants were given a flyer about the study at the court building while others were not. After February 23, 2015, tenants were offered an incentive – a McDonald's gift card of $5.00 value – for completion of the survey. Not every tenant-defendant at the court building was approached; volunteers engagement with tenants varied by their location in the building, opportunity to interact, and discretion to interact.

There were four waves of survey data collection:

Pilot Wave: 7/8/14 to 8/22/14
Wave 1: 9/29/14 to 11/22/14
Wave 2: 12/10/14 to 2/23/15
Wave 3: 02/24/15 to 08/03/15

Figure 1



The pilot survey included 60 prompts; there were 64 in subsequent waves and ultimately 65 in the final wave, which volunteers implemented in March 2015 (to include tracking of incentive offers). Because the survey used skip logic, the number of prompts answered by participants widely varied. Survey data was maintained on a web-based Survey Monkey tool. Survey collectors were instructed in following simple survey procedures and entered survey responses themselves as they spoke to the participants. Because Waves 1, 2, and 3 presented reordered prompts and, in some instances, presented new ones, the data from each set of surveys required consolidation and cleaning.

To ensure the modification in methodology of the survey collection did not skew the results of the project, comparisons were made at different points throughout the study to see if the underlying demographics of the respondents showed any substantial change. An example of this comparison can be found below[4]:

	Surveys: July 8, 2014 – Feb. 22, 2015	**Surveys: Feb. 23, 2015 – Aug. 2015**
Percentage on Public Assistance	56.9	38.5
Average Income on Public Assistance	$1,220	$1,259
Average Income for those not on Public Assistance	$2,020	$2,104
Average Age for those on Public Assistance	41.4	41.2
Average Age for those not on Public Assistance	39.7	39.5

[4] This distinction is made based on the date at which $5 gift cards began being offered as incentives for completing the survey and were mailed to tenants after their phone call was completed.

In Group 1, 56.9 percent of tenants stated that they received public assistance, while 38.5 percent recorded the same in Group 2. Even so, when the demographics of the public assistance and non-public assistance populations were looked at separately, the statistical descriptors were comparable. From these results, it was concluded that the underlying sampling population was constant and any changes in sampling methodology did not create problems for comparison.

Records Review

Collection of judgments corresponding to the case number and property address reported by survey respondents was attempted throughout the survey period. Of the 297 surveyed cases, copies of 202 judgments were obtained from the Rent Division of the District Court. Among the remainder were instances in which a judgment could not be retrieved because case numbers were incorrectly recorded or unavailable, case numbers and property addresses were found not to match, or the court could not provide a copy. Additionally, property data for surveyed properties was collected from the Maryland Department of the Environment's Lead Poisoning Prevention Program and Baltimore Housing's Code Enforcement Division.

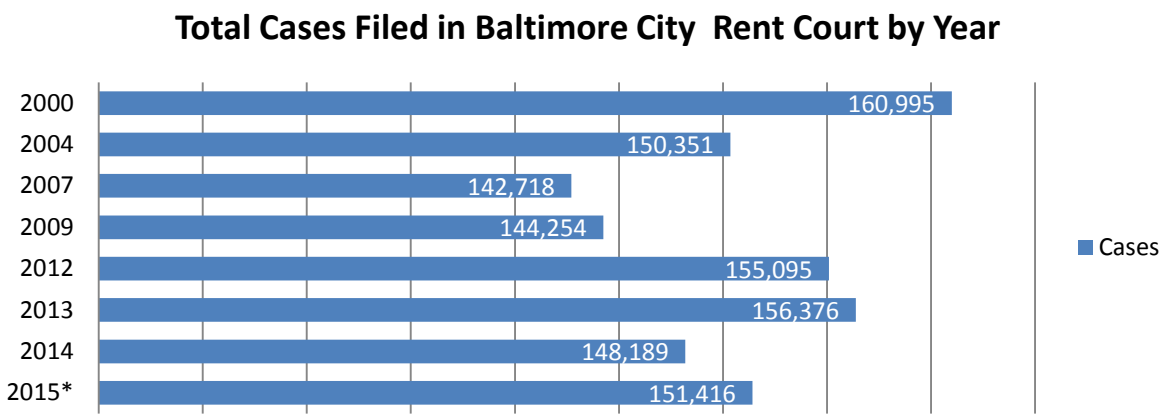
Qualitative Interviews

Between January and April 2015, five student researchers at the John Hopkins Bloomberg School of Public Health conducted 15 in-depth interviews with 13 tenant-defendants recruited from among clients of the PJC and customers of the Eviction Prevention office operated by the Maryland Department of Human Resources at the district court building. The researchers also conducted five observations in various locations throughout the court building. They developed a standard set of codes through an iterative process and coded transcripts using Dedoose, a web-based qualitative data analysis tool. Transcripts were anonymized and analyzed by main themes and subthemes.

Part 1: Introduction to Rent Court

Baltimore is a city of poor renters who have limited housing choices. Many will sign leases for units they cannot afford while others will move into substandard housing due to the lack of options. At the intersection of poor renters and lack of affordable housing choices is the District Court of Maryland for Baltimore City. In 2014 landlord-tenant cases composed more than half of the 278,809 filings in the city's District Court system.[5] Landlords bring nearly all of these actions. Some of them seek possession based on claims that the tenant breached the lease or held over after the lease expiration, but, far and away, the most common case is to evict the tenant for an alleged failure to pay the rent. These non-payment of rent cases are fast-tracked, proceeding along a "summary ejectment" scheme designed for easy use by a variety of players in the landlord industry – large companies, furtive shell corporations, the "mom and pops," or ubiquitous debt management outfits. Summary ejectment gives them a quick, informal way to evict a renter without resort to illicit lockouts, but also without having to retain a lawyer, file lengthy pleadings, expend much money, or wait for the opponent to prepare a defense. Unsurprisingly, these cases constitute the single largest docket of any type in Baltimore's courts – and Maryland's, for that matter. Given the enormous volume, and perhaps because of the subculture that has evolved within the court system to deal with the volume, the daily docket of non-payment of rent cases picked up a colloquial name: the Rent Court.[6]

Figure 2 [7]

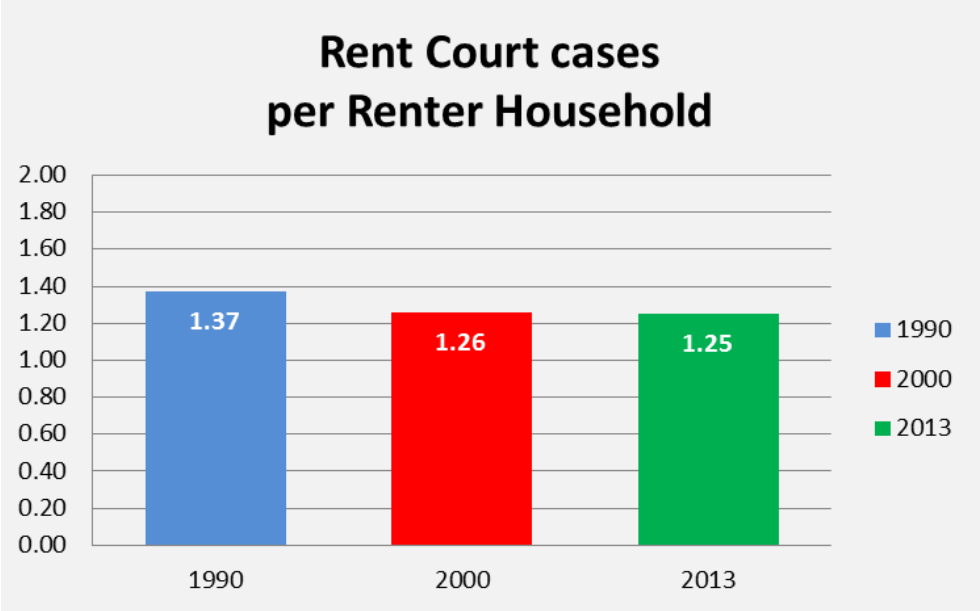


On average, the Rent Division of the District Court receives over 600 rent complaints each day.[8] Annually, it processes roughly 150,000 complaints and about 70,000 warrants to enforce eviction

[5] MARYLAND JUDICIARY, ANNUAL STATISTICAL ABSTRACT FISCAL YEAR 2014, Table DC-2, http://mdcourts.gov/publications/annualreport/reports/2014/fy2014statisticalabstract.pdf.
[6] The moniker persists despite the fact that the Court of Appeals of Maryland has made clear that there is no such court, only an administratively purposed distinction among civil cases. *Williams v. Housing Auth. of Baltimore City*, 361 Md. 143, 156 (2000). Similarly, many inside the District Court system use "Housing Court" to refer to comparatively miniscule dockets made up of habitability-related cases, namely affirmative rent escrow actions brought by tenants against landlords and criminal cases brought by Baltimore Housing against landlords.
[7] For data sources, see detailed tables on page 56.

judgments. While the end-of-year figures vary by year, the number of filed cases generally tracks with fluctuations in renter population. In the early 1990s the Rent Court saw upwards of 195,000 cases per year,[9] resulting in approximately 1.37 cases per renter-occupied household. In 2000, the city still processed 1.26 cases per renter household in the city, and by 2013 the ratio fell marginally to 1.25.[10] Among the city's housing-cost burdened population, the ratio is nearly three cases to one renter household.[11]

Figure 3



The summary process

The rapid, "summary" process of rent eviction is laid out in local and state statutes that have hardly changed since the 1970s.[12] They provide landlords an "expedited means of regaining

[8] Through the first six months of 2015, the average number of rent cases filed per month was 12,618. Divided by 20 business days, the average is 630.9.

[9] *See* Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 Hofstra L. Rev. 533, 542 n. 27 (1992)(citing the Judiciary's statistical data for fiscal year 1990-1991: "Each year in Baltimore, some 195,000 cases for summary ejectment are filed by landlords against tenants in district court.") The 1990 Census documented 142,060 renter-occupied housing units in Baltimore City. MARYLAND STATE DATA CENTER, 1990 PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS, http://planning.maryland.gov/msdc/census/Historical_Census/SF1_80-00/baci80-00.pdf.

[10] See detailed tables on page 56 for data sources.

[11] In 2013 there were 155,376 rent complaints filed, according to data provided to the Public Justice Center by the Baltimore Sheriff's Office. In the same year, the population of renter households that spent 35 percent or more of income on housing costs was 55,283. U.S. Census Bureau, 2009-2013 American Community Survey 5-Year Estimates, Table S2503, "Financial Characteristics."

[12] Summary ejectment for non-payment of rent in Baltimore City is governed by two statutes – section 9-3 of the Baltimore City Public Local Law and section 8-401 of the Maryland Code Real Property Article. Both statutes provide the same procedure, though with small variations. Where the statutes diverge, the local law controls. *Parkington Apartments, Inc. v. Cordish*, 296 Md. 143, 149 (1983).

possession of [the] leased premises" without expense, "procedural complexities[,] and delays"[13] To start the process, the landlord files a form complaint at court. Within the next three days the complaint and summons must be served on the renter, but, per the summary ejectment law, the papers need not be delivered to his or her person. Instead, the Baltimore City Sheriff's Office mails a white carbon copy of the landlord's complaint and summons by regular mail and posts an additional yellow copy at the property in dispute. Next, the law calls for trial by the fifth day after filing. However, given the extraordinary demands placed on both the court and the Sheriff's Office, most trial dates are scheduled seven to ten calendar days after filing. But that is still far fewer than the 15 days which defendants in regular district court civil proceedings have just to file a written answer to the complaint. In Rent Court, there is virtually no time for a renter to submit a written defense, let alone time to seek and receive legal advice and/or representation. Similarly, there is no time for, or even a right to, the discovery process, by which litigants have the legal right to preview the evidence which their adversary will use in court.

At any time before or at trial, the renter may make payment to the landlord. If the landlord continues to pursue alleged rent arrears at trial, the court may proceed to hear the claim and enter judgment. During the four days after entry of judgment, a party may appeal the case to the Circuit Court for Baltimore City.

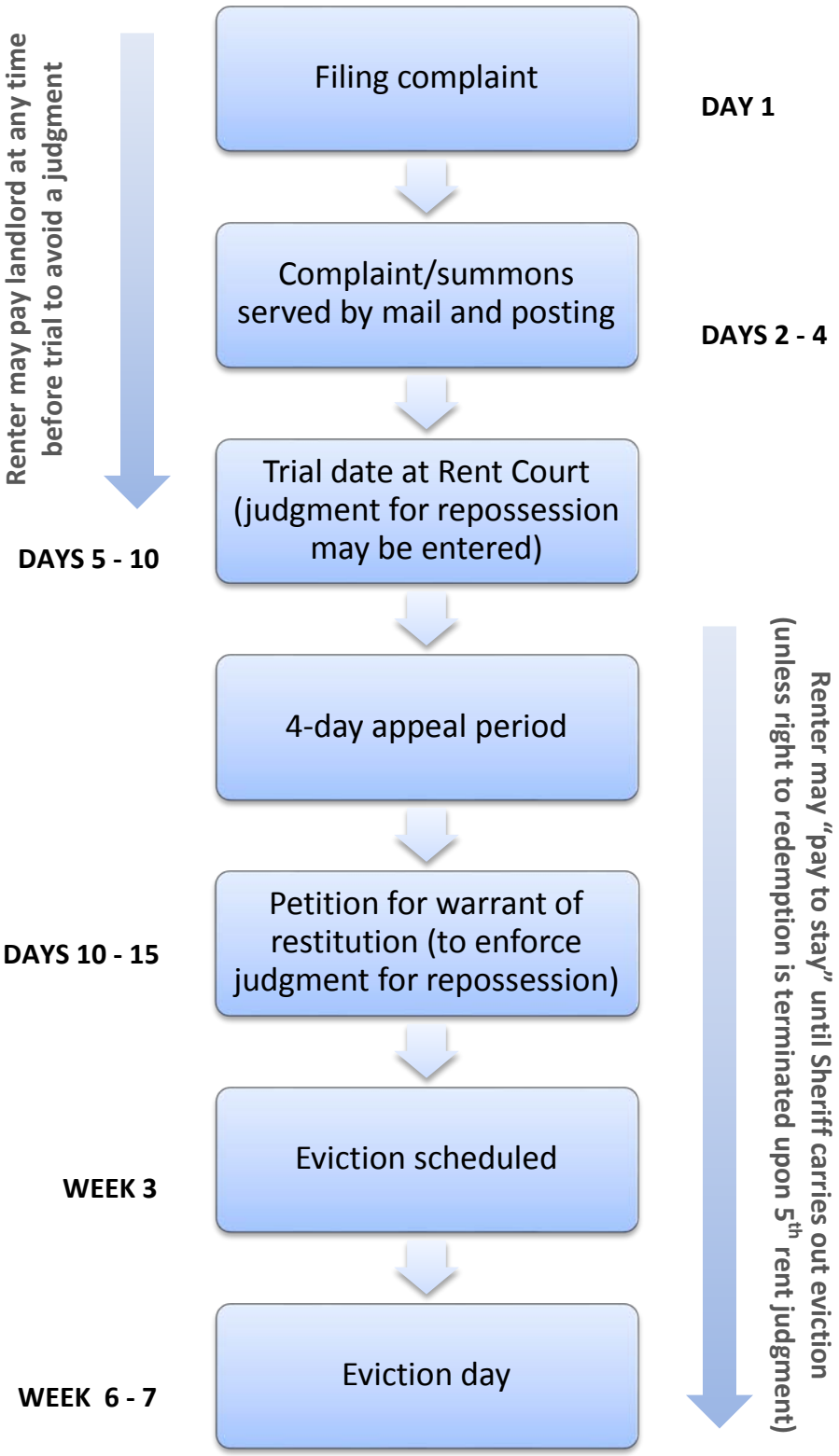
A judgment for possession gives the landlord legal grounds for eviction, but first the court must issue a warrant of restitution. If the renter has not appealed, or has appealed but not paid the appeal bond, then on the fifth day after entry of judgment the landlord may petition the court for the warrant, which, upon issuance, authorizes the Sheriff to carry out the eviction. Although at this point the law allows for eviction after a 14-day notice, given resource constraints, the Sheriff's Office schedules evictions approximately five weeks later.

Throughout the post-judgment stages of this process, the renter may "pay to stay," exercising her right to redemption. This right allows tenants to pay to the landlord the amount of rent and late fees which the court found due and owing, plus court costs, up until the time of eviction. However, after a tenant has had four adverse judgments in the previous 12 months, then on the fifth judgment the landlord may ask the court to terminate the right to "pay to stay."

As approximated in Figure 4 below, it takes but two to three weeks to move from filing a rent complaint to obtaining a warrant for eviction. Although many renters will use the ensuing weeks before eviction to redeem possession, they will likely be sued again for rent, fees, and other charges coming due during that time.

[13] *Shum v. Gaudreau*, 317 Md. 49, 59 (1989).

Figure 4


Filing complaint
DAY 1
Complaint/summons served by mail and posting
DAYS 2 - 4
Trial date at Rent Court (judgment for repossession may be entered)
DAYS 5 - 10
4-day appeal period
Petition for warrant of restitution (to enforce judgment for repossession)
DAYS 10 - 15
Eviction scheduled
WEEK 3
Eviction day
WEEK 6 - 7
Renter may pay landlord at any time before trial to avoid a judgment
Renter may "pay to stay" until Sheriff carries out eviction (unless right to redemption is terminated upon 5th rent judgment)

Economics of Rent Court

Baltimore's Rent Court mirrors the city's stratified, disparately resourced housing market. More than half of Baltimore's households are renting,[14] and the median household income among them approaches only $27,000 per year, with 60 percent earning under $35,000.[15] The majority of Baltimore renters fall within the category of "very low income"[16] while more than 40 percent fit the category "extremely low income."[17] More than half of city renters (56%) are housing-cost burdened[18] — spending 30 percent or more of their income just to cover the cost of rent and utilities.[19] Across the Baltimore metro area, one in four renter households are severely burdened, spending 50 percent or more of income for housing.[20]

Renters are strapped for real housing options. Most can barely afford to pay $700 in monthly rent, yet the prevailing fair market rent… runs over $1,200 for a two-bedroom unit.

These renters are strapped for real housing options. Most can barely afford to pay $700 in monthly rent,[21] yet the prevailing fair market rent (FMR) in the Baltimore metro area runs over $1,200 for a two-bedroom unit.[22] To afford such a unit, these households would have to bring in at least $49,000 a year in income, far above the median and undeniably out of reach.[23] In fact, only about one quarter (27%) of Baltimore City renters earn $50,000 or more annually.[24]

Baltimore's pervasive housing burden signals a chasm between what renters seek financially and what the marketplace provides. Although many cast Baltimore as a "low-cost" city,[25] its FMR is high among major U.S. metropolitan areas and exceeds that of almost every notable Rust Belt

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[14] U.S. Census Bureau, 2009-2013 American Community Survey 5-Year Estimates, Table DP04, "Selected Housing Characteristics." Of all occupied housing units (n=241,455), 51.68 percent are renter-occupied.
[15] *Id.*
[16] U.S. Dep't of Housing and Urban Dev., *FY 2015 Fair Market Rent Documentation System*, http://www.huduser.org/portal/datasets/fmr/fmrs/FY2015_code/2015summary.odn.
[17] *See* Urban Institute, *Mapping America's Rental Housing Crisis*, http://datatools.urban.org/features/rental-housing-crisis-map/ (last visited Oct. 21, 2015). Analysis of 2013 ACS data shows that 54,654 renter households are extremely low income. That figure represents 42.67 percent of 128,090 renter-occupied households.
[18] *Id.*
[19] HUD uses 30 percent of household income as the threshold for housing-cost burden. However, the U.S. Census Bureau uses 35 percent. Under the latter threshold, 47.3 percent of rent-paying households are housing-cost burdened; compare to 29.9 percent of mortgage-paying households.
[20] U.S. Census Bureau, American Housing Survey 2013, Table C-10-RO-M, Baltimore.
[21] The median income among Baltimore's renter-occupied households is $26,970 (ACS 2013). An affordable rent of 30 percent of median income is $674.25.
[22] *Supra* note 15.
[23] NAT'L LOW INCOME HOUSING COALITION, OUT OF REACH 2015 105, http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf (last visited Aug. 31, 2015). For calculation of fair market value, see HUD's FY 2015 Fair Market Rent Documentation System, http://www.huduser.org/portal/datasets/fmr/fmrs/FY2015_code/2015summary.odn.
[24] U.S. Census Bureau, 2009-2013 American Community Survey 5-Year Estimates, Table S2503, "Financial Characteristics."
[25] *See* Alec MacGillis, *The Rust Belt Theory of Low-Cost High Culture*, SLATE (Jan. 1, 2015), http://www.slate.com/articles/arts/culturebox/2015/01/cheap_high_culture_in_baltimore_buffalo_detroit_and_other_midsize_cities.html.

city. [26] Over the past five years Baltimore has experienced a 16 percent rise in rent.[27] In this same period the city has seen vigorous development of high-end apartments around downtown and the harbor as developers bet on the growth of "a new class of residents in Baltimore… made up of young college graduates in professional careers."[28] This trend has merely reproduced the steady rise in rent over the previous decade as several rapidly gentrifying areas pulled rents higher even in poorer neighborhoods.[29]

This housing market clearly does not meet the needs of most city renters. Parallel with back-to-the-city gentrification, the number of Baltimore households needing adequate, affordable rental units has risen 38 percent from 2000 to 2013.[30] Meanwhile, the availability of such units increased by only seven percent. Baltimore's shortage of affordable units hovers at 30,000, escalating from around 20,000 in the previous decade.[31] Public and subsidized housing only marginally allay this scarcity. In fiscal year 2015, the Housing Authority of Baltimore City provided fewer than 11,000 public housing units, of which 95 percent were occupied, and leased fewer than 16,000 units via voucher subsidies.[32] At this level of public investment, it is estimated that there are just 42 adequate, affordable, and available units for every 100 extremely low-income renter household in Baltimore.[33] Factoring out public and subsidized options, there is just 1 affordable unit for every 100 extremely low-income renter households.[34]

This system has led directly to 6,880 evicted households per year on average since 2012. Since 2000, the city's rent eviction rate has persisted at a rate of one in 17 renter-occupied housing units.

Against this backdrop, it is clear that the rental housing market itself drives the majority of

[26] Daren Blomquist, *Renting Less Affordable Than Buying in Most U.S. Markets But Not Where Millennials Are Moving Most*, *RealtyTrac* (Dec. 23, 2014), http://www.realtytrac.com/news/home-prices-and-sales/renting-less-affordable-than-buying-in-most-u-s-markets-but-not-where-millennials-are-moving-most/. As a percentage of median household income, Baltimore's FMR ranks among the top ten least affordable areas in the country, sharing that ranking with top-tier cities – New York, Philadelphia, Miami, San Francisco, Los Angeles – in which FMRs required at least 40 percent of median household income.

[27] Ryan Sharrow, *Baltimore-area rents rise 16% in last 5 years amid apartment market boom*, BALT. BUS. J. (Mar. 16, 2015), http://www.bizjournals.com/baltimore/blog/real-estate/2015/03/baltimore-area-rents-rise-16-in-last-5-years-amid.html.

[28] *See* Natalie Sherman, *As apartments boom in city, a new market reality emerges*, THE BALT. SUN (Feb. 27, 2015), http://www.baltimoresun.com/business/real-estate/wonk/bs-bz-apartment-bubble-20150227-story.html; *see also* Kevin Litten, *Renter's Choice: Young, educated city-dwellers are driving Baltimore's rental market*, BALT. BUS. J. (Sept. 13, 2013), http://www.bizjournals.com/baltimore/print-edition/2013/09/13/renters-choice-young-educated.html.

[29] Philip M.E. Garboden, *Preserving Affordable Housing in Baltimore: Addressing Small Low-End Rental Properties* 8, Thesis (M.A.) Johns Hopkins University, 2011.

[30] Talia Richman, *Rental housing supply lags behind demand*, THE BALT. SUN (June 20, 2015), http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-housing-gap-20150620-story.html.

[31] Garboden, *supra* note 27 (analyzing data from the 2007 American Housing Survey); *see also* Richman, *supra* note 26.

[32] Housing Authority of Baltimore City Moving to Work Agency, The MTW Annual Plan for Fiscal Year 2015 10-11, http://portal.hud.gov/hudportal/documents/huddoc?id=BALTIMOREFY15PLAN.pdf.

[33] Urban Institute, *supra* n. 13.

[34] *Id*.

Baltimore renters either to rent beyond their means or instead seek lower-rent alternatives. What, and where, are the alternatives? Low rents lie in a ubiquitous but mostly unregulated segment of the city's housing market: physically inadequate rentals of one to five units.[35] Thus, even before poor renters become entangled with the Rent Court, many face the predicament of paying all they can afford, or more, to rent an unhealthy home. This dilemma is particularly unforgiving for renting families already struggling with eviction and housing loss. They "often must accept conditions far worse than those of their previous dwelling."[36] Through tenant screening services used by prospective landlords, rent judgments and rent evictions haunt low-income renter applicants, who are "pushed to the very bottom of the rental market and often are forced to move into run-down properties in dangerous neighborhoods."[37]

Consequently, two mainstream realities converge in the Baltimore City rental market: the struggle to make the rent each month and the struggle to make do in poor housing conditions. The Rent Court is tasked with balancing these realities.

On one hand, the court works to ensure that landlords obtain rents from tenants who are almost always struggling financially. On the other, the court is called on to protect tenants from paying rent on demand even as property conditions deteriorate around them—thereby preventing certain landlords from taking advantage of the lack of affordable, habitable housing to profit off what is effectively slum housing. Indeed, this protective function is clearly inscribed in the law:

> [i]t is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation.[38]

Nonetheless, as discussed below, our study results show that the system prioritizes one task, expending substantial resources to function as the landlord industry's debt enforcement arm. In so doing, it falls well short of being an "effective mechanism" for renters. As the court pursues efficiencies to handle the flood of landlord litigation, it diverts and defangs tenant protections. As a result, the summary process ignores inequities in the housing market and effectively perpetuates housing destabilization.

From housed to homeless

This system has led directly to 6,880 evicted households per year on average since 2012. Since 2000, the city's rent eviction rate has persisted at a rate of one in 17 renter-occupied housing

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[35] SANDRA J. NEWMAN, LOW-END RENTAL HOUSING: THE FORGOTTEN STORY IN BALTIMORE'S HOUSING BOOM ix, 21 (2005), http://www.urban.org/research/publication/low-end-rental-housing/view/full_report ("[S]mall-scale properties [are] where the bulk of low-rent units (40–50 percent) and low-income renters are concentrated…. [O]ver three-quarters of the city's rental units with physical inadequacies are located in small-scale properties, and more than 60percent of its low-rent units are located in these smaller structures.").

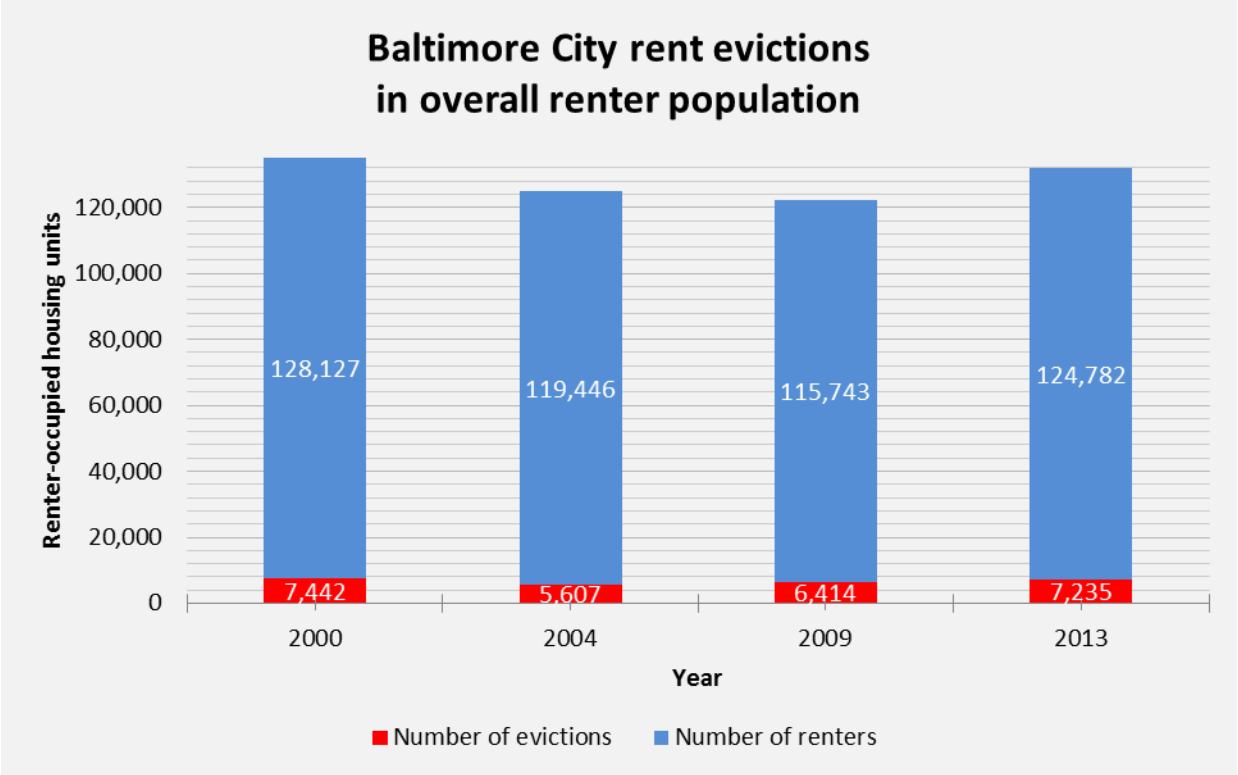
[36] Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. OF SOC. 88 (2012), *available at* http://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf.

[37] *Id*.

[38] MD. CODE ANN., REAL PROP. art. § 8-211(b).

units.[39] This rate barely fluctuated over that period and appeared to track with changes in the overall renter population.

Figure 5[40]



Many U.S. cities are challenged by unaffordable housing and eviction, but Baltimore's enduring rent eviction crisis sets the city apart. In fact, among all metro areas studied in the 2013 American Housing Survey, Baltimore ranked second only to Detroit, Michigan, in the percentage of renters experiencing the threat of rent eviction.[41]

This constant housing displacement takes an enormous toll on city renters and their communities. They are living a housing crisis on a scale as dire as the foreclosure-driven crisis of the past decade. In fact, rent eviction may be the worse of the two. In 2009, amidst the nation's housing market crash, Baltimore's rent eviction rate (5.52 evictions per 100 renters[42]) toppled the rate of

[39] See detailed table on page 56, showing that eviction rate in 2000 was 5.81 in 100 while in 2013 it was 5.80 in 100. By comparison, in Milwaukee, Wisconsin, one in 14 renter-occupied households are evicted through the court system annually. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, FAST FOCUS: INSTITUTE FOR RESEARCH ON POVERTY, No. 22-2015 (2015), *available at* http://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf.
[40] For data sources, see detailed tables on page 56.
[41] See p. 58 for table of 2013 American Housing Survey data on reported notices of eviction due to non-payment of rent.
[42] *Id.*

ratified mortgage foreclosures (3.25 per 100 mortgaged housing units[43]). This trend has continued year after year. In 2013, Baltimore's rate of actual evictions (5.80 per 100 renters[44]) exceeded even the rate of foreclosure *filings* (5.47 per 100 mortgaged housing units[45]). Still, unlike the foreclosure crisis, the story of Baltimore's struggling renters has failed to garner a sense of emergency. Our study set out to amplify that story, starting with data about who these renters are.

Who comes to Rent Court?

Baltimore renters are summoned to court in the thousands, but, for many reasons, few show up at the Rent Court. Our study surveyed nearly 300 of the renters who did come to court. Survey data yielded the following picture:

- **79%** of respondents identified as women.
- **94%** of respondents identified as African American/Black.
- **8%** of respondents identified as aged 24 or under; **6%** as aged 60 or over.
- **60%** of respondents reported having only a high school diploma/GED or lower educational attainment.
- **60%** of respondents reported a household size of 2-4 persons.
- **65%** of respondents reportedly housed at least one minor child in the rented unit.
- **75%** of respondents reported a monthly income of $2,000 or less; **41%** have a monthly household income of $1,000 or less.
- **51%** of respondents reportedly received some form of public assistance other than subsidized housing.
- **52%** of respondents reported having a monthly rent of $750 or more; **26%** have a monthly rent under $600.
- **85%** of respondents reportedly pay rent without any form of housing subsidy.

[43] Based on ACS 2009 3-Year Estimate of housing units with a mortgage, 85,819, against 2,789 ratified foreclosure sales in 2009, according to Baltimore Neighborhood Indicators Alliance, *Baltimore City Foreclosure Filings*, http://www.ubalt.edu/foreclosures/index.cfm (last visited Oct. 22, 2015).

[44] For data sources, see detailed table on page 56.

[45] Based on ACS 2013 5-Year Estimate of housing units with a mortgage, 83,036, against 4,380 foreclosure filings in 2013, according to Baltimore Neighborhood Indicators Alliance, *Baltimore Foreclosure Filings*, http://foreclosures.bniajfi.org/filings-ratified-sales.php (last visited Oct. 22, 2015).

Based on these numbers, the Baltimore rent court defendant tends to be a Black woman, neither young nor elderly, who has at least one child. She likely has only a high school education. Her limited income places her near the federal poverty line. She is more likely than not housing-cost burdened.[46] She likely benefits from some form of public assistance but most likely not subsidized rent or public housing.

Table 1: Compiled Demographic Data for Tenants in Rent Court

Variable	Women	Men
Black	208 (93.7)	54 (93.1)
White	11 (5.0)	4 (6.9)
Other	3 (1.4)	0 (0)
	Yes	No
Single Parent Household	93 (43.9)	12 (21.1)
Nuclear Family (2 adults with kids)	38 (17.9)	11 (19.3)
Multi-Adult with Children	16 (7.5)	4 (7.0)
Multi-Adult without Children	65 (30.7)	30 (52.6)
	Median	Min–Max
Age	38.5	20-69
Household income ($)	1,219	0-7,668
Education	HS or GED	
	Median	Std Deviation
Monthly rent ($)	750-900	
Rent and fees claimed ($)	1,650.30	1,992.45

Note. — Data in parentheses are column percentages

This picture is consistent with what researchers have found in the past. A seminal study of the Baltimore City Rent Court, published in 1992, found that "the great majority of defendants… are members of groups that are, relatively speaking, socially powerless. They are mostly women, mostly black, almost all poor, and tenants."[47] More recently, in-depth studies of eviction in Milwaukee revealed that Black women represented only 9.6 percent of the population, but accounted for 30 percent of court-ordered evictions.[48] In Baltimore, Black women make up 34 percent of the city population[49] but 79 percent of our surveyed renters at court. Similarly, African Americans compose 65 percent of city renters[50] but 94 percent of those surveyed at court.

[46] Income levels at or below $2,000 predominated in the survey population. At the same time, more than half of respondents reported a monthly rent of $750 or higher. Taking $2,000 as the annual income, it appears that more than half of respondents paid 37.5 percent ($750/$2,000 * 100) or more of income to cover the cost of rent.
[47] Bezdek, *supra* note 7, at 540.
[48] Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUNDATION 2 (2014).
[49] U.S. Census Bureau, American Community Survey 2009-2013 5-Year Estimates, Table B01001B, *Sex by Age (Black or African American Alone)* (showing 212,873 Black women in overall population of 621,445).
[50] U.S. Census Bureau, EASY STATS, http://www.census.gov/easystats (select "Maryland" and "Baltimore City"; then select "Housing" and then "Tenure"; finally, follow "Get Results") (showing 81,414 Black renter-occupied households among 124,782 overall, according to ACS 2009-2013 5-year Estimates).

Where do renter defendants come from?

Survey respondents resided throughout the city yet concentrated in neighborhoods with low home-ownership rates and high vacancy rates. Roughly two in three respondents reportedly resided in rowhouses, townhomes, or other scattered-site housing. The majority (61%) of these homes featured three or more bedrooms, and 20 percent of these three-plus-bedroom homes were being leased as rooming houses, according to the respondents.[51]

While less than a third of respondents said they resided in a complex or high-rise, over 40 percent of all respondents described living in a "multiple family dwelling" (MFD) – one with three or more units.[52] Partitioned rowhouses and other structures likely account for the discrepancy.

Under city law landlords must obtain a license to rent out a MFD or rooming house.[53] The licensing requirement goes beyond the non-owner-occupied registration required of all rentals; it requires an annual Baltimore Housing inspection for conditions that threaten health and safety. Yet most properties (58%) in our survey reportedly had only one or two units and were therefore exempt from the licensing and annual inspection requirements.

Incredibly, 78 percent of respondents (232 of 297) reported having at least one threat to health or safety existing in their home at the time they appeared at court. Respondents identified defects from a list provided in the survey; some respondents also provided additional descriptive comments. The list was composed of serious defects typically found by Baltimore Housing to be threats to health and safety.

Table 2: Top 10 Housing Defects among Rent Court Defendants

Housing Defect	All months	April-Aug	Oct-Mar
1. Insect or rodent infestation	58.25%	60.77%	52.34%
2. Peeling or flaking paint	41.08%	44.20%	36.45%
3. Plumbing leaks	37.04%	41.44%	29.91%
4. Mold	36.03%	38.67%	31.78%
5. Broken window/door	35.35%	37.57%	29.91%
6. Roof leaks	28.96%	27.62%	31.78%
7. Faulty electrical	27.61%	30.39%	22.43%
8. No heat/hot water	21.21%	18.78%	23.36%
9. Flooding	19.87%	19.89%	19.63%
10. Broken stove, oven, fridge	19.53%	20.99%	16.82%

Furthermore, of these respondents, 72 percent (168 of 232) had notified the landlord about the defect(s) prior to their trial dates. These results demonstrate that most Rent Court defendants –

[51] S*ee* Balt. City Prop. Maintenance Code § 202.2.14 (local definition of "rooming house" for code enforcement purposes).
[52] *See* Balt. City Prop. Maintenance Code § 202.2.6 (local definition of "multiple family dwelling" for code enforcement purposes).
[53] Balt. City Code art. 13 § 5.

57 percent of all survey respondents – have good cause not to pay at least some portion of their rents.

Survey responses also included free-form descriptions of housing defects. Descriptive words which appeared twice or more among all comments are illustrated below. The picture offers an unnerving glimpse into the homes of Rent Court defendants.

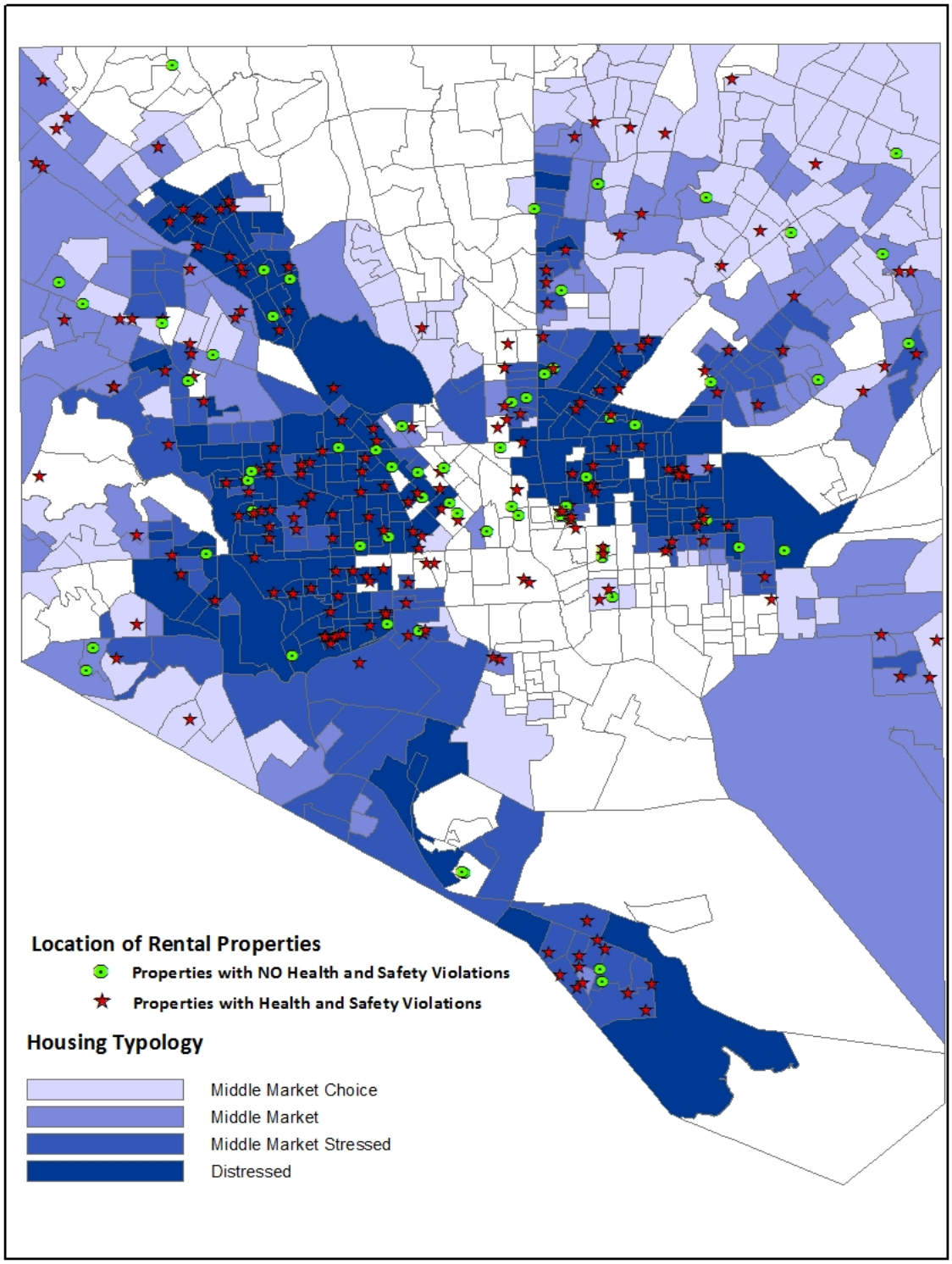
Figure 6

Respondents who cited health or safety threats reside predominantly in areas which Baltimore Housing has labeled "stressed" (formerly, "distressed") or "middle market stressed" (formerly "transitional") in its housing market typology. The market typology is a valuation tool used by the Code Enforcement Division to guide selective application of enforcement resources.[54] For stressed areas, the city favors large-scale interventions such as concentrated demolitions, rather than aggressive, "streamlined" code enforcement used in other areas.[55]

[54] *See* Baltimore City Department of Planning, Descriptions of Housing Market Typology, Map, http://archive.baltimorecity.gov/Government/AgenciesDepartments/Planning/MasterPlansMapsPublications/HousingMarketTypology/DescriptionsofHousingMarketTypologyMap.aspx.

[55] *See* Baltimore Housing, *Frequently Asked Questions*, http://www.baltimorehousing.org/vtov_faq. ("On transitional blocks where the housing market is generally healthy… new enforcement processes including Citation Warning Letter and the Vacant Property Citation will be sufficient to trigger rehabilitation. Code enforcement officers can now issue $900 citations… which will promote outcomes on a scale previously unattainable.")

Figure 7

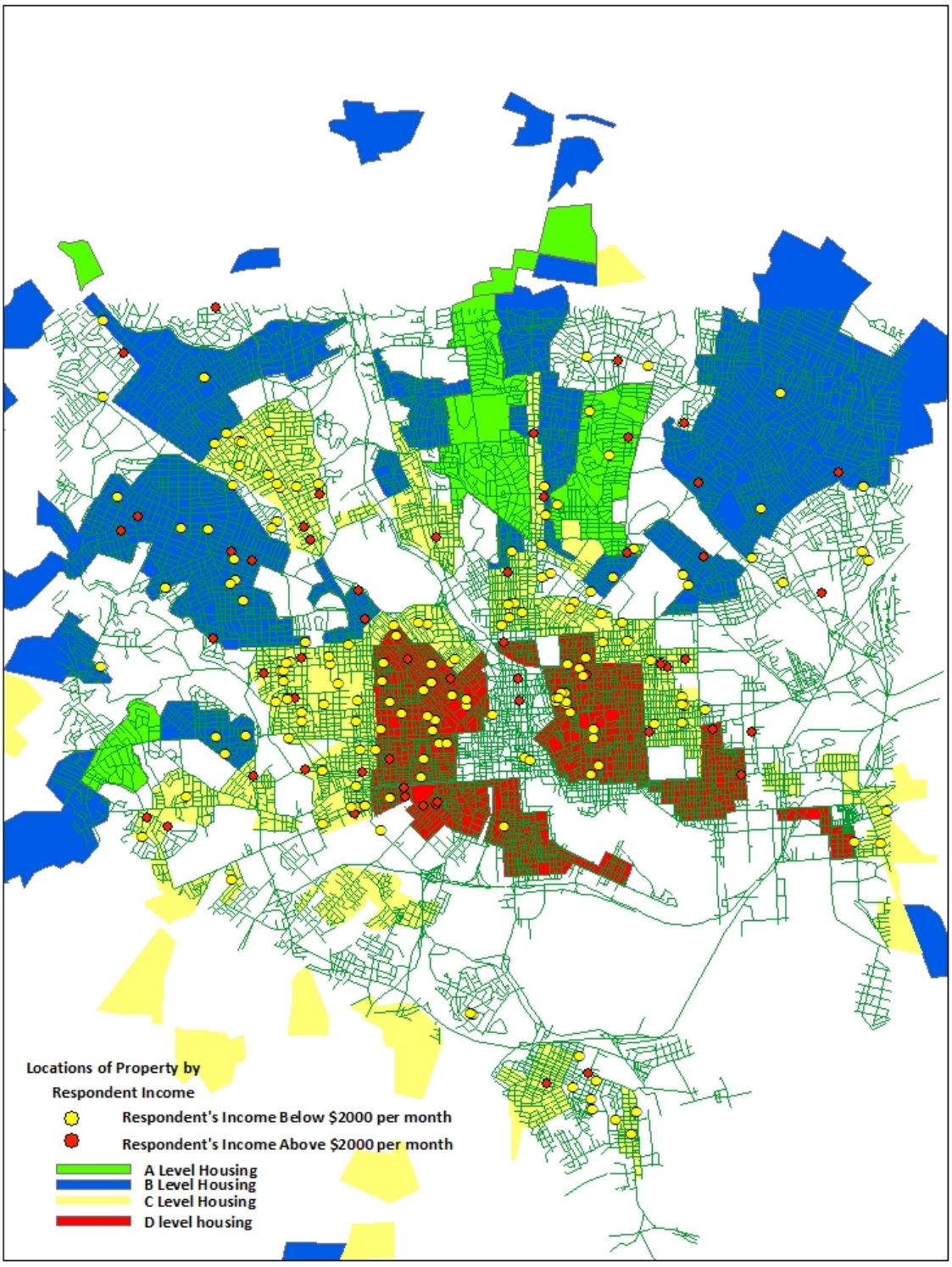

Location of Rental Properties
Properties with NO Health and Safety Violations
Properties with Health and Safety Violations
Housing Typology
Middle Market Choice
Middle Market
Middle Market Stressed
Distressed

The map in Figure 8 above shows that in "middle market choice" and "middle market" areas, respondents were somewhat evenly split between living amidst serious defects and not. In the transitional and distressed areas, defect-ridden properties are clearly dominant. The map makes apparent that landlords better maintain properties in neighborhoods which gain from more aggressive code enforcement activities aimed at home value stabilization or appreciation.

Generally, the market typology map differs only slightly from the racialized "redlining" of Baltimore. The map in Figure 8 below shows that the racial stratification implemented in the 1930s lives on, especially for poor renters. The majority of survey respondents – as a group, mostly Black and poor – were living in areas of the city that were "redlined" in the 1937 "Residential Security Map" produced by the federal quasi-agency Home Owners' Loan Corporation. In that scheme, Class "C" and "D" housing was "characterized by detrimental influences in a pronounced degree, undesirable population [or] an infiltration of it. Low percentage of home ownership, very poor maintenance and often vandalism prevail. Unstable incomes of the people and difficult collections are usually prevalent."[56]

[56] HOME OWNERS' LOAN CORPORATION, RESIDENTIAL SECURITY MAP OF BALTIMORE, MD. (1937), *available at* https://jscholarship.library.jhu.edu/handle/1774.2/32621?show=full.

Figure 8


Locations of Property by
Respondent Income
Respondent's Income Below $2000 per month
Respondent's Income Above $2000 per month
A Level Housing
B Level Housing
C Level Housing
D level housing

What do renters know when they come to court?

Renters who appear at the Rent Court are commonly misperceived as "repeat offenders." They come to court so often, the notion goes, that they have sufficient knowledge and experience to "game the system."[57]

The reality is starkly different.

Our survey reveals that almost half of respondents (48%) had no prior experience with the Rent Court. They had neither previously appeared as a defendant nor observed a friend or family member's rent case in the past. Of respondents who did have prior experience with the court, only slightly more than half reported having two or more such experiences.

Survey data also show that the presumption that all renters know and can leverage housing laws is equally far-fetched. Respondents who cited a serious defect in their property were asked the following questions about their pre-trial knowledge of certain habitability-based defenses to rent eviction:

a) Without filing your own lawsuit against the landlord, you may defend the rent case on the basis of the poor conditions you had previously complained about. Were you aware of that, before your recent trial date?

b) You may ask the judge, at trial, to allow you to pay any rent due or owing into a court escrow account until your landlord completes repairs. Were you aware of that, before your recent trial date?

c) The judge may reduce your monthly rent while the poor conditions continue to exist. Were you aware of that, before your recent trial date?

Half of respondents answered "no" to all three questions, revealing that they had no knowledge of the highlighted rights and defenses. Only ten percent of respondents showed "full" knowledge, answering "yes" for all three prompts.

Under a local statute known as the Rent Escrow Law, a renter may raise the existence of hazardous property conditions in the home "as a defense… in any complaint proceeding brought by a landlord to recover rent or the possession of the leased premises for the nonpayment of rent…."[58] Similarly, Maryland allows renters across the state to "refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense" to the landlord's rent action.[59] Baltimore local law also expressly provides renters a warranty against substandard housing conditions: the Implied Warranty of Fitness,[60] which exists at the start of any rental lease agreement and continues until move-out. The warranty law is another protection which renters may raise as a defense to the landlord's rent claims.

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[57] *See* Gretchen Purser, *The Circle of Dispossession: Evicting the Urban Poor* 20 (2010).
[58] Pub. Loc. L. of Balt. City § 9-9(c)(2).
[59] MD. CODE. ANN., REAL PROP. art. § 8-211(i).
[60] Pub. Loc. L. of Balt. City §§ 9-14.1 and 9-14.2.

These laws permit renters to file their own affirmative actions against landlords. But they do not require renters to do so. In fact, they explicitly allow the renter to raise serious defects as a defense.

Nearly three in four respondents reported that they did not know they could raise a defense based on serious housing defects. More than half reported that they did not know they could ask the judge, at trial, to allow payment of rent into a court escrow account.

As defenses, the rent escrow and implied warranty laws offer renters a powerful shield in the face of potential eviction, at least theoretically. They open up a wide array of relief for renters: court-ordered repair of the home, payment of rent into a court account during the pendency of the repairs, reduction (or "abatement") of current and future rent, and also monetary damages which reflect the diminished value of the unit while the landlord failed to repair it.

These laws have existed for decades, yet most respondents were unfamiliar with them on the day of trial.

Nearly three in four respondents (73%) reported that they did not know they could raise a defense based on serious housing defects. More than half (57%) of respondents reported that they did not know they could ask the judge, at trial, to allow payment of rent into a court escrow account. Eighty-six percent responded that they were unaware of the right to rent abatement.

Our data analyses offer possible insights into the traits of a knowledgeable Rent Court defendant. We find that greater knowledge of habitability-based rights correlated with three traits: (1) prior experience with the Rent Court, whether as a defendant or an observer; (2) higher educational attainment; and (3) higher income.[61] These traits point to a potential relationship between access to resources and knowledge of legal rights.

Beyond legal knowledge, Rent Court defendants also reported a murky knowledge of court processes. Qualitative interviews for this study revealed that knowledge of the court processes shaped participants' experiences in Rent Court.

Consistent with our survey data, the interviews showed that some individuals did not know much at all about court process while others had more detailed knowledge based on previous experiences or from informal networks such as friends and family. Several participants had encountered the Rent Court multiple times and, as a result, felt better equipped to navigate the process successfully.

Interview participants expressed frustration and exasperation with the logistics of the court because they did not know how to navigate the process effectively. They also reported that they drew their limited knowledge about court processes from a wide array of sources, many informal and potentially unreliable. Most participants mentioned informal networks such as neighbors,

[61] The correlation between prior knowledge and educational attainment is significant at a five-percent significance level. The correlation between prior knowledge and income level is significant at 10-percent significance level.

family, friends, and strangers as important sources of information. A 22-year-old female defendant said:

> [W]ithin those 3 hours [at the court building], I've sat, I've talked to multiple—not only workers—but other people, tenants that...may have had this similar case, [about] how they handled it so that I can handle mine in a professional manner....

Participants also referenced the Internet and entertainment, such as movies and *Judge Judy*, as their sources of guidance.

Instances reportedly arose in which court personnel – who are not authorized to give legal advice – offered counseling to defendants, potentially in recognition of unfairness in the system or compelled by empathy. Participants cited bailiffs, court clerks, Department of Social Services staff, and even judges as sources of information about navigation in the court system. A 53-year-old female defendant reported:

Well, the bailiff in the courtroom… he was the one that also told me, "You go up to that room [for on-site legal services] and talk to somebody… 'cause when I see you in here and every time you in here and they just got you in here like that...that's not right.'

Yet, even well-intended guidance of the court personnel can exacerbate what participants describe as a chaotic environment. Participants described experiences of waiting for hours at the Rent Court, interspersed with moments of rushing "back and forth" between offices. They noted that information differs from one official to the next. A 32-year-old female defendant described one of these situations:

> I went downstairs to speak with the ladies at the clerk's office. [T]hey gave me a paper and...told me [that] you are supposed to fill this out. I went back up in front of the judge, and the judge was like, "Well, you filled out the wrong paper."

Qualitative interviews additionally reveal that exposure to court processes often did not imply knowledge of formal legal language vital to a rent case. For instance, interview participants referred to distinct court documents vaguely as "papers." This vernacular tended to demonstrate a lack of knowledge about critical moments in the participants' rent cases – a "complaint," a "summons," a "warrant of restitution," and an "eviction notice" were indistinguishable terms. This suggests that participants and court officials do not have a common language with which to communicate about critical steps in the summary ejectment process.

INSIDE THE RENT COURT:

Laroyia's Story

Laroyia, child in her arms, asks rhetorically, "How would you explain this situation to my daughter?" Along with her sister and their three children, she had felt thrilled to find a space that would comfortably accommodate the needs of their patchwork family. The two sisters are incredibly close and, with growing kids, were ready to set out on their own. But with the rising cost of rent and general living expenses, their decision to find a shared space had as much to do with financial necessity as it did their familial bond.

In September 2014, Laroyia moved her family into a home that had languished months on the real estate market. The owner had been looking to sell, but after so many months without a bite she chose to re-advertise the property as a rental. She repeatedly assured Laroyia that the rental was officially off the market. Setting up the house, Laroyia saw the house filled in a light of stability, security, and hopes for the future.

So imagine her surprise when, days after moving in, Laroyia was notified that her family had to vacate the property at the end of the month. In fact, the landlord was also filing a rent case against Laroyia to ensure her expulsion from the house.

The sudden threat of eviction was a shock to the family. It was never an issue of payment. The landlord simply didn't want her money. She repeatedly refused Laroyia's rent payment and instead demanded that everyone simply pack up and get out.

Before Laroyia's tenancy, the property had sat unoccupied for 15 years, during which time it became overrun with mice and other vermin. Stained, flaking paint was peeling off the walls. Appliances were in various stages of disrepair. There was no kitchen sink. Still for all this, Laroyia fought tooth and nail to stay.

From October 2014 and through January 2015, she was routinely summoned to Rent Court. The reality of the situation, that Laroyia's landlord flatly refused payment month after month, was never disclosed in court. She tried to proffer the text messages on her phone to demonstrate the landlord's true motivation, but the judges consistently refused the evidence. Digital photos of mouse droppings and bite holes in her sock drawer were also excluded as evidence. When asked why she didn't fight harder to prove the poor living conditions and the landlord's duplicitous behavior, Laroyia finally acknowledges an underlying truth: she felt intimidated in the courtroom.

So it went, each month a judge ruling in favor of the landlord until the tenant's right to redemption was foreclosed. Now there was nothing to stop the eviction of Laroyia and her family. All the while, she had pleaded with her landlord to accept the money. But there was a buyer finally, and with all the rent court judgments in hand, the owner's 12-month lease agreement with Laroyia didn't matter.

Over the next couple of weeks Laroyia frantically searched for new housing between shifts at work and off-work hours or packing up. All the stability and security the rowhouse once embodied had vanished over night. The daunting task of rapid relocation began to wedge the sisters apart as they each juggled differing needs – proximity to school, public transit, jobs. Time was not on the family's side, and soon the swiftly diminishing timetable forced them apart, each fending for herself in the interest of their young children.

Part 2: The Cost of "Efficiency"

Slogging through hundreds of rent cases daily, the court system seeks efficiencies to hasten an already expedited process. For renters, however, the summary process and the intended efficiencies manifest as roadblocks to the substantive, fair trying of disputes which bear ultimately on (1) enforcement of laws meant to ensure safety in the housing market and (2) whether a person or family will lose their home.

Unfettered access

Former district court administrative judge Keith Mathews said in 2003, "It's easier to evict someone in Baltimore City than almost anywhere else in the country."[62] The ease is no surprise: there are virtually no barriers to landlords' utilizing the judicial eviction process.

The court complaint itself is a streamlined fillable form: ten prompts on one single-sided page. No additional documentation – such as an accounting statement or copy of the lease – is needed to file. Additionally, there is no waiting period. A landlord can litigate a claim for unpaid rent as early as the first day the rent has come due. Maryland is among a handful of states that allow landlords to begin litigating a rent dispute without any prior demand or notice to the renter.[63] In contrast, 41 states require some variety of "pay or quit" notice and a waiting period, ranging from 3 to 14 days, before a landlord may begin the court process.[64]

As shown in Figure 10 below, the form complaint prompts the landlord to present correct information about the rental property's compliance with Baltimore Housing's registration and licensing requirements (paragraph 2), as well as its compliance with lead risk reduction requirements with the state Department of the Environment (MDE) (paragraph 3).

Figure 9

FAILURE TO PAY RENT - LANDLORD'S COMPLAINT FOR REPOSSESSION OF RENTED PROPERTY
REAL PROPERTY §8-401

1. The property is described as: _____ (Property Name) _____ (Number Street Apt. City), Maryland.
2. Is the Landlord required by law to be licensed/registered in order to operate this premises as a rental property? ☐ Yes ☐ No. If so, is the Landlord currently licensed/registered ☐ Yes ☐ No. License/Registration number if applicable: _____
3. The property: ☐ is affected property under §6-801, Environment Article, its registration with the MDE is current and its registration has been renewed as required, and its MDE inspection certificate numbered _____ (Inspection Certificate No.), is valid for the current tenancy; or
   ☐ owner is unable to state Certificate No. because ☐ property is exempt ☐ tenant refused access or to relocate/vacate during remedial work.
   ☐ The property is not affected.

Providing this information is not only required, it is indispensable to the legal merit of the rent case. In the 2011 case *McDaniel v. Baranowski*, the Maryland Court of Appeals made clear that rental licensing, required by a jurisdiction for purposes of public safety and health regulation, is a critical element of the landlord's status as a claimant in court.[65] The high court determined that

[62] Laura Vozella, *In Baltimore, evictions are quick, common*, THE BALT. SUN (Oct. 19, 2003), http://articles.baltimoresun.com/2003-10-19/news/0310190081_1_eviction-baltimore-court-officials.
[63] Research gathered in 2013 and kept on file by HOME Line.
[64] *Id.*
[65] *McDaniel v. Baranowski*, 419 Md. 560 (2011).

landlords must "affirmatively plead and demonstrate" such licensing in order to use the courts for eviction.[66]

Yet, even for those properties that require regulatory credentialing, the court neither requires documentation of the landlord's compliance nor runs any independent verification of the information provided in the form. Instead, the Rent Court relies merely on the landlords' statement, signed at the bottom of the rent complaint under penalty of perjury or orally made in open court under oath, to verify that the landlord has met the *McDaniel* standard.

Unsurprisingly, landlords are able to exploit this lack of judicial review of the rent complaint. Even though they have not complied with basic housing regulations that protect public health and safety, their eviction cases are routinely docketed. Our study of municipal and state records related to the properties in our surveyed cases reveals rampant non-compliance among landlords who utilized the Rent Court, despite the fact that this results in perjury.

Combining inter-related data from surveys, court records, and Baltimore Housing in 103 cases, we found that, at the time landlords brought their rent actions, 22 percent left paragraph 2 of the complaint blank while 46 percent provided registration and/or licensing information unsupported by Housing's records. In other words, only 32 percent of the landlords entered valid information about their registration and/or licensing status on the court complaint.

Only 32% of landlords entered valid information about their registration and/or licensing status on the court complaint. The bar is even lower for lead risk reduction compliance…. 81% provided information about their registration and inspection status with MDE that was incorrect, outdated, or otherwise unsupported by MDE's registry.

The bar is even lower for lead risk reduction compliance. From 137 survey cases in which the rental property, by its build year, was presumptively affected by lead paint, we used MDE registry data to find that 47 percent of the properties had no registration on record with the state agency and 23 percent had no inspection certificate on record.

Moreover, combining those data sets with court records in 104 cases, we learned that while 8 percent of landlords left paragraph 3 of the complaint blank, a startling 81 percent provided information about their registration and inspection status with MDE that was incorrect, outdated, or otherwise unsupported by MDE's registry. Only 13 percent of landlords completed their rent complaints with valid information about lead risk reduction compliance. Through deeper inquiry, we found in some instances of invalid pleadings that the properties in question nonetheless carried valid MDE registration and inspection status. Yet, the overall compliance in 130 cases was only 21 percent, a number consistent with past studies of landlords at the Rent Court.

[66] *Id*. at 587.

Table 3: Landlords' Compliance with Lead Law at Time of Rent Action[67]

	2003	2005	2014-15
Non-compliant landlords	77%	74%	79%
Fully compliant landlords	22%	26%	21%

Insufficient notice of trial

Given the expedited schedule of rent cases, a delay or other defect in service of process can be costly to tenants, who may lose crucial time to prepare a defense, secure time-off from work, find child care, and so on. Moreover, housing advocates are all too familiar with the worst case scenario: when a renter receives no notice of trial, misses the court date, and learns of the dispute only after an eviction is scheduled. Because our survey targeted the population which comes to court, and therefore received some notice, our data do not fully address failures in service of process. But they do clearly show that, in practice, the "mail and nail" system is riddled by irregularities that raise the potential for delay or missing notice.

Fewer than half (46%) of all respondents received both the mailed and posted notices for their rent trial. In other words, more than half the time, service of process was defective, failing to meet the letter of the law and minimum due process. [68]

Furthermore, one in three respondents reported that they received no posted notice at all. Of respondents who did receive a posted notice, nearly a third found it posted somewhere on their unit door.[69] Thirteen percent of respondents noted that notice was posted outside their multi-unit building while for 15 percent the notice was posted in a common area or on a mailbox.

The Sheriff's Office readily admits that, when landlords fail to provide deputies interior access to multi-unit dwellings, the deputies frequently do not post the complaint to the door of the rental unit. Instead, the notice is posted to the exterior of the multi-unit building or in some accessible common area. This occurs despite the law's requirement that the notice be posted "conspicuously upon said premises"[70] and despite the state Attorney General's finding that deputies must post notice at the door of the unit that is the subject of the rent complaint.[71] The legal rationale for posting to the door of the unit is simple: it is more likely to inform the renter of the complaint within the expedited timeframe for a rent case.[72] Nonetheless, renters are accustomed to finding the yellow notice posted outside or taped to fixtures in a public common area, such as a bulletin

[67] Data from 2003 and 2005 come the "Report on Compliance of Affected Rental Property Owners with Maryland Reduction of Lead Risk in Housing Law Following Passage of HB 1245" issued in 2005 by the Coalition to End Child Lead Poisoning and the Public Justice Center. The 2003 study reviewed records for 1,000 affected properties. Similarly, the 2005 study reviewed 1,023 properties.
[68] *See* 86 Md. Op. Att'y Gen. 42, at *3 (2001).
[69] This number includes instances in which notice was posted to the exterior of a single-unit.
[70] Baltimore Public Local Law § 9-3 uses the phrasing "affix an attested copy of said summons conspicuously upon said premises," while the statewide statute Real Property §8-401 uses "affix an attested copy of the summons conspicuously upon the property."
[71] 86 Op. Att'y Gen. 42 (2001).
[72] *Id*.

board, mailbox, or the banister of the stairs. This practice of posting notice of trial where it "may well disappear quickly due to forces human or natural"[73] puts the renter in a position of overreliance on the postal system amidst a process in which every day counts.

Proxy participation

Although the summary ejectment scheme is designed for landlords' ease of use, many landlords opt to participate only by proxy. Since 1990, with an amendment to the state Business Occupations and Professions Article,[74] landlords have held the special advantage to use non-attorney agents to stand in as their representatives before the court. The amendment has essentially engendered an official role in the summary ejectment process for debt collector and debt management services. Charging a low fee and operating at high volume, these services file rent cases on behalf of landlords, represent the landlords on the day of trial, negotiate with the renter defendants at court, and even testify for the landlords before a judge, typically without any personal knowledge of the dispute. With their significant familiarity with the Rent Court process and its personnel, these "landlord agents" offer landlords a readily available "home field advantage" in the court system.

That advantage is amplified by renters' comparative disadvantage. Many renters, unable to appear at court, turn to family, household members, or friends to show up on their behalves. But only a renter named in the lease may appear as the defendant at trial. Other household members are not permitted to present a defense in the leaseholder's place, even if they might face eviction as a consequence of the leaseholder's absence. Furthermore, they cannot act as a proxy for the renters in the same fashion as an agent acting for a landlord.

Simply put, representation is hard to come by for renters. While some survey respondents may have received some legal advice before trial, none had obtained legal representation for their cases. Generally, it is rare that renters have the time or means before their trial dates to seek the aid of an attorney. As for non-attorney representation, renters have far fewer options than if they were a landlord.[75] The amendment which allowed for landlord agents provided a more limited, regulated version for renters. Other than a licensed attorney, only law students and trained paralegals may represent a tenant in a summary ejectment or rent escrow proceeding. Practically, however, even these exceptions are quite limited. The student would have to be working within an American Bar Association-accredited clinical law program and under the in-court supervision of a faculty member. The paralegal would have to be employed by a Maryland Legal Services Corporation (MLSC) grantee and have training, experience, and supervision by an attorney who has entered his or her appearance in the proceeding. Because of these limitations and the limited resources of MLSC grantees, it is very rare to see a renter represented by a non-attorney.

Our survey shows that 65 percent of respondents encountered a representative in place of or alongside the landlord at court. In 78 percent of these encounters, the representative did not

[73] *Sterling v. Environmental Control Bd.*, 793 F.2d 52, 56 (2d Cir. N.Y. 1986).
[74] 1990 Md. Laws 660, enacting House Bill 1186. The amendment also provided renters a far more regulated and less convenient version of non-attorney representation.
[75] MD. CODE ANN., BUS. OCC. & PROF. art. § 10-206(b)(2). By contrast, this statute places no limitations at all for non-attorney representatives of landlords.

identify as an attorney. In other words, roughly half of all respondents encountered a non-attorney representative of the landlord.

Hallway "resolutions"

At Rent Court the repeat player advantage of property managers and landlord agents plays out emphatically in informal hallway negotiations. The professionals engage renters prior to the court's session. Some stand in front of the courtroom entrance; others sit inside, off to the side of the gallery, as though a separate apparatus of the court. Even if a renter comes to court fully intending to contest her case, the informal negotiation process blocks the Rent Court doors. Often, clerks or bailiffs point disoriented renters in the direction of these agents, both out of helpfulness and an effort, again, to streamline the overwhelmed docket.

In our survey, 64 percent of respondents participated in pre-trial hallway negotiations with a landlord or landlord representative. Of these respondents, 60 percent reported they did so because court personnel instructed them via an announcement or other interaction. Similarly, 53 percent reported that they participated in pre-trial negotiations on account of a landlord agent's announcement in the gallery or the hallway.

Informal resolutions at the court building effectively divert would-be renter defendants away from asserting a valid defense at trial, toward some fashion of settlement – typically an unenforceable promise to make repairs without any reduction in the rent, a reduction of the arrearage sought in the complaint, or a payment plan. The negotiation frequently ends with a casual instruction to the renter: "you can go now" or "you're free to leave." Among 63 survey respondents who reportedly came to a pre-trial hallway agreement with a landlord agent, 70 percent were told by the agent that they could leave before seeing the judge. It is an effective tactic, as nearly one-third of survey respondents (101 of 297) were absent from the courtroom, presumably negotiating in the hallway or already departed for the day, when the judge began the docket.

Roughly half of all respondents encountered a non-attorney representative of the landlord… Among all respondents who negotiated before trial, 48% reported that they did so under the belief that they were legally obligated.

Importantly, the effect of court personnel's pre-trial announcements about hallway negotiations goes beyond the informational. Among all respondents who negotiated before trial, nearly half (48%) reported that they did so under the belief that they were legally obligated. Announcements by court personnel significantly correlated to respondents' belief that they were legally required to negotiate before trial.[76] Agents' announcements did not have the same effect, however.

Nearly two of three respondents who participated in a pre-trial negotiation came to an agreement – though agreement may be too strong a word. While many respondents described outcomes which were no more involved than to confirm whether or not a rent payment had been made,

[76] The relationship was significant at 10-percent significance level.

others commented on moments of inherent imbalance in the negotiations. One respondent described her experience:

> I tried negotiating. She didn't want to hear my side of the story but agreed to take my payments. Still, we have nowhere else to go. I didn't have a choice.

Another respondent described how pre-trial negotiations exacerbated her unfamiliarity with tenants' rights and defenses. The rent case revolved around part of the rent that she had withheld due to lack of hot water in the property. The problem was now repaired, but the landlord was still pursuing the rent in full in the court complaint. In pre-trial negotiation with a landlord agent, the renter agreed to pay the remainder of rent later in the week and to vacate the property within 30 days. She did not know to seek a rent abatement or damages, which she had the legal right to demand either in the negotiation or at trial. Accordingly, she got nothing from the negotiation but an adverse judgment.

For landlords, and especially landlord agents, this siphoning mechanism ensures that there are very few cases to present, few evidentiary burdens to carry, and little chance of losing to a motivated renter. For the Rent Court, too, this redirection of defendants from trial to ersatz alternative dispute resolution creates efficiency. It reduces time per case, as well as the potential for trials which might bottleneck the docket. It also means Rent Court judges hear fewer defenses, make fewer factual and legal findings, and participate minimally in the judgments.

Sticking to the script

Similarly, the court uses opening instructions to limit the scope of proceedings. Renters in the gallery are instructed that they may contest the amount of rent claimed in the complaint. Any other issues, they are told, should be directed to a different forum. If the judge specifically comments on poor housing conditions, the typical instruction is for the renter to file her own separate action against the landlord. At times the judge may mention that an escrow case may be combined with a rent case; still, in another variation, the judge does not mention this option at all. Ultimately, the message to most renters is that the only question before the court is whether the renter has paid all rent due and owing.

Our survey posed the following question to the 156 respondents who reportedly listened to the judge's opening statement: "[D]id you believe the only topic you could discuss in front of the judge was how much money you owed?" Over 75 percent of these respondents answered in the affirmative. One of these respondents summarized her impression of the opening statement:

> They try to keep it to a minimum. The judge said that he wanted to keep [what] tenants say to a minimum. He said, "All I'm focused on is rent being paid."

Additionally, nearly half (48%) of respondents who listened to the judge's opening statement reported that it discouraged them from bringing up to the judge any issue other than whether they had paid the specific amount of money the landlord alleged was owed. Our data analysis shows that respondents' reports of discouragement were independent of the specific presiding judge.

INSIDE THE RENT COURT:

Denise's Story

Between bus transfers and walk time, it takes Denise anywhere from one and a half to two hours commuting from her West Baltimore apartment to her job at the Under Armour facility in Silo Point. So she was helpless to do anything at all, stranded miles away, when she received a frantic call from home. Raw sewage was pumping up from the bathroom sink, her boyfriend said. There was a slow-rolling flood of sewage spewed across the bathroom floor into her kitchen and dining room.

The only thing Denise could think to do was call her upstairs neighbor. "I just told her, Stop! Whatever you're doing up there, just please stop until I get home" she explains months after the initial incident. In fact, the neighbor was in her kitchen preparing lunch, not using any part of their shared septic system. The cause of the problem lay elsewhere, and the sewage kept coming.

Finally at home, Denise noticed the acrid smell of waste even before she opened the back door, and then she found the sewage already soaked into the drywall. With rubber gloves, paper towels, and bleach, she took to the mess, picking up where her boyfriend left off hours before. "After a few days I could see dark spots creeping up the drywall over there," she says, pointing to the doorframe separating her bathroom from the dining and kitchen areas. "I tried painting over it but you can see there, it's still coming through."

On closer inspection there was little doubt that Denise had black mold growing up her wall. The door to her bathroom is closed but after a few minutes she opens it for the big reveal: a 4-foot-deep hole gored into the earth. It stretches halfway across the bathroom floor. Crowning the edges is all the rubble, mud, and shattered tile the workers hulled up from the ground. The site had been left untouched for the past five months.

Denise recalls her first visit to the property, when she responded to a flier posted outside Mondawmin Mall. Denise called the Washington, D.C. phone number listed on the ad and scheduled a walkthrough with her soon-to-be landlord. She didn't realize at the time this call would be one of their only personal encounters. For future concerns, she was told to contact an intermediary whose "office" was set up in the back of a west North Avenue hardware store.

On that nightmarish day when the sewage back-flowed, after Denise's repeated panic-stricken calls for help, the mysterious landlord remained out of sight. Following the initial (and most damaging) burst of sewage, lesser amounts bubbled up through her sink two or three times every day. Still no word from her landlord. "Every time I brought it up, she'd just say the same thing – 'I'll get someone taking care of it,'" she recalls. It wasn't until city housing inspectors issued a violations report that Denise's landlord sent out anyone to repair the plumbing. Months later, the landlord would finally visit the property and see the demolished bathroom and sinkhole left by his crew of unskilled workers.

By all accounts, Denise had a case to make in court to pay rent into escrow, but like so many Baltimore City residents she simply had no concept of the rent escrow law and how to use it. Instead, she tried to force improvements by withholding her $750 in rent. She is not one to take the easy way out, she says, but she had no other option. Consequently, Denise was summoned to the Rent Court.

Given the severe state of her apartment, Denise looked forward to having her day in court. She could finally make a public outing of her landlord, she thought, imagining a judge and presentations of both sides of the case and an order obligating the landlord to carry out the repairs.

At court, however, these hopes were dashed. As Denise stumbled over her words, the judge interrupted: "This is not a hearing – we are only here to discuss the amount of money you owe."

This refrain had become familiar to Denise while she sat in the rent court awaiting her case. But her case was different, she thought. It was clear as day, and she had the photographic evidence and had prepared her testimony. Yet, like hundreds of tenants on the docket that day, she ended up with an eviction notice and the choice to leave or to pay to stay in an unlivable home.

Part 3: Diverted Defenses

Baltimore City renters contest only five percent of the cases brought by their landlords.[77] Comparatively, nearly a quarter of contract and tort defendants contest their cases.[78] Within the number of uncontested rent cases, an untold but presumably significant portion are "resolved" prior to trial, usually by the renter's making a payment before or at trial. This type of resolution is an intended result, as landlords use quick-trigger litigation as a more consequential variety of delinquency notice. If the landlord then accepts payment in lieu of seeking a judgment for possession, the landlord should dismiss the rent case.[79]

But unexplained "failure to appear" is by far the most ubiquitous response to a rent action. When a renter-defendant does not appear upon the calling of the case, the court enters a default judgment in favor of the landlord for possession of the property. This outcome is virtually automatic, requiring just seconds of consideration, often performed by a clerk of the court without a judge's review of the individual complaints. Renters "fail" to appear for a variety of reasons. In qualitative interviews, study participants expressed that the value of answering a rent complaint at court was outweighed by the high cost of lost time and lost wages. Participants also cited as reasons not to appear their inability to advocate for themselves and their lack of understanding of the legal process. Many renters cannot take time off from a job or reschedule their shift, find or afford child care, or physically or financially manage the trip to the downtown court building. Some are struggling with illness or disability. Others simply distrust the court system and disbelieve that participating in a trial will change the eviction verdict.

One of the most startling results of our survey of renters… is that while they all came to the court building on their day of trial, barely one in four reportedly came before a judge and disputed the landlord's claims.

Still, when renters do appear at the Rent Court to defend themselves, they encounter a gauntlet of procedural and practical challenges. One of the most startling results of our survey of renters in court is that while they all came to the court building on their day of trial, barely one in four (24%) reportedly came before a judge and disputed the landlord's claims.

Likely due to the pre-trial hallway resolutions described in the previous section, roughly a third of survey respondents (101 of 297) were absent from the courtroom when the judge initiated the docket. For the remainder, a whittling down of defendants began, as demonstrated in Figure __ below.

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[77] In Baltimore City 4.9 percent of landlord-tenant cases were contested in each of FY 2006 and FY 2007, the last years reported by the Judiciary. MARYLAND COURTS, *Annual Reports, available at* http://mdcourts.gov/publications/annualreports.html.

[78] *Id*. Tort and contract cases in Baltimore City District Court were contested at a rate of 23.1 percent in FY 2006 and 22.8 percent in FY 2007, the last two years reported by the Judiciary.

[79] Still, it is common that the cost of the landlord's voluntarily dismissed rent action is added to the renter's rent balance, despite the absence of a court award of costs.

Table 4: Defendant Actions at Rent Court

Respondents	Action	Percent Change
297	Came to the court building	
196	Seated in courtroom at start of docket	-34%
165	Interacted with a judge	-16%
62	Disputed the case	-62%
31	Instructed by judge to negotiate	-51%

Notably, of 165 respondents who stood before a judge, only 62 disputed the landlord's claim. Nearly half (49%) of these disputants reported that the judge then instructed them to "step out into the hallway" with the landlord or landlord agent to further discuss the case. This detour may be intended to iron out contested facts and further the efficiency of the docket. Nonetheless, it removes the judge as trier of fact, a role which landlords and agents with repeat-player advantages proceed to assume. Worse, this secondary diversion toward informal resolution may reinforce the renter-defendant's doubts that the court will fairly try the case and hear a substantive defense.

The survey data demonstrate clearly that disputants more than likely had valid defenses. An overwhelming 85 percent (53 of 62) of this subset indicated that they had already complained to their landlord about the threats to health and safety existing on the trial date. Standing before the judge, these renters theoretically had the opportunity to discuss and raise a valid defense based on any of these defects which they most commonly cited in their surveys:

Table 5: Housing Defects among Surveyed Disputants

Insect or rodent infestation	72%
Peeling/flaking paint	56%
Plumbing leaks	51%
Mold	49%
Roof leaks	47%
No heat/hot water	32%

However, most disputants lacked knowledge of the implied warranty and rent escrow laws. Sixty-five percent of those who reportedly had a serious defect in their home (37 of 57) were unaware that they could raise a defense based on those defects. Half were unaware that they could ask a judge at a trial to allow them to pay any rent due or owing into a court escrow account until a landlord completed repairs. And over 80 percent were unaware that a judge could reduce the monthly rent while poor conditions existed.

No wonder then that, of disputants who could have raised a significant housing defect and prior notice to the landlord, fewer than half (25 of 53) even attempted, before a judge, to discuss the problems or expressly ask to pay into an escrow account.

A 34-year-old participant in our qualitative interviews described the common interaction with Rent Court judges:

> The only question they ask you is, "So you agree with the amount that's owed?" Like they don't, you know, take the time to get your side of the story or to see… why you haven't paid anything, or if there's anything wrong with the property.

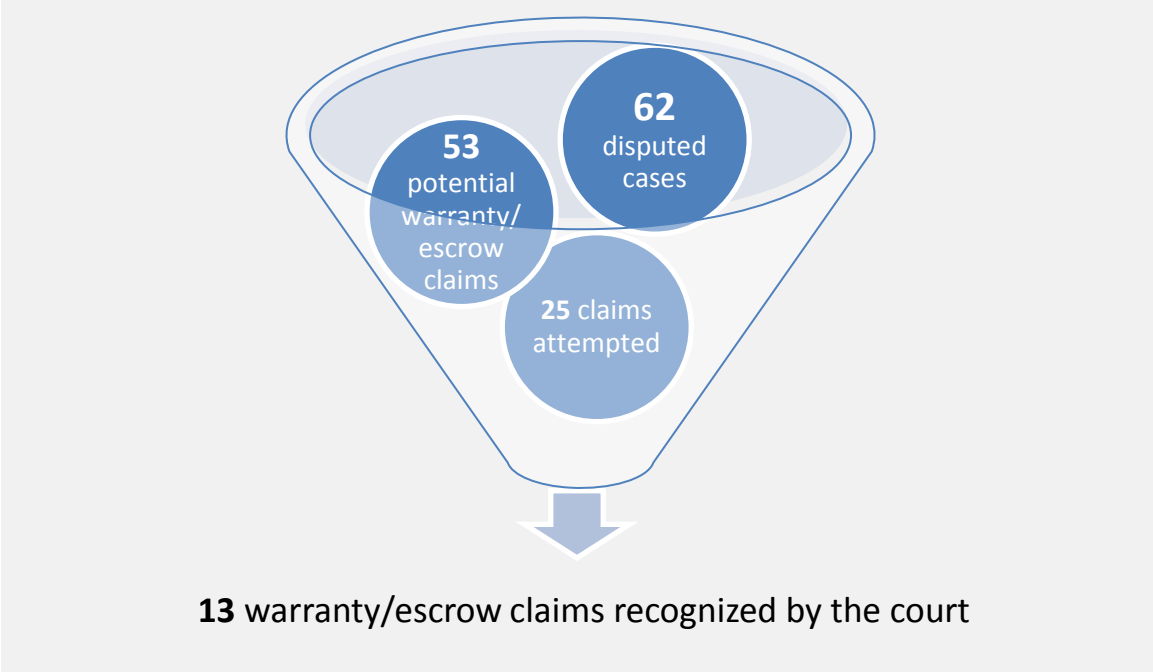
Qualitative interviews document the chilling effect of the court's limited questioning: these renters almost immediately felt that the judge was biased in favor of the landlord and uninterested in hearing about the dispute. Even if the renter answered "yes," that she agreed she owed rent, she expected an opportunity to explain why she had not paid. In contrast, judges expect to move on directly to the disposition of the case.

The 25 respondents who did manage to bring up housing conditions to the judge or sought to pay rent into escrow did not fare well. Two respondents had already filed affirmative petitions for rent escrow and, in Rent Court, were able to join their pending case with the landlord's rent action. However, among the other respondents, 65 percent (15 of 23) noted that the judge disallowed explanation or a showing of evidence about the poor conditions. Similarly, 43 percent (10 of 23) reported that the judge stopped them from talking about or showing evidence of poor conditions.

According to survey data, even when the renter-defendant attempted to discuss threats to health and safety in the property, the judge continued to drive toward the landlord's bottom line. In more than half of these cases (13 of 23), the judge reportedly responded to information about housing defects by returning to the question of whether the defendant had "all the rent due and owing" according to the landlord. In over 90 percent of these cases (21 of 23), respondents noted that the judge failed to ask about or discuss whether rent should be reduced because of the poor conditions in the property.

These figures highlight a disturbing lack of opportunity for unrepresented, mostly poor renters to articulate a defensive claim, such as a monetary set-off against the full rent, as provided under the implied warranty law. Recourse to the rent escrow defense fared only slightly better. Twelve of the 25 renter-defendants who raised poor housing conditions at trial (48%) were not able to pursue a rent escrow claim.

Figure 10



We reviewed judgments for 52 of the 62 disputed cases among survey respondents.[80] These verified outcomes fall into three categories: dismissals (25%), judgments for possession (52%), and rent escrow consolidations (23%).

Among the 12 verified rent escrow consolidations, we see that two cases involved a rent escrow action which pre-dated the Rent Court proceeding. In those instances, the court had little choice but to join the two matters, thereby postponing a ruling on the landlords' rent claims. However, in the other 10 cases, the Rent Court judge determined that instead of hearing the rent escrow claim as a defense to the rent action, the claim would have to be heard separately as an affirmative law suit against the landlord. The court achieved this conversion from defensive claim to affirmative claim by asking the renter-defendant to leave the Rent Court proceeding, file a petition and pay filing fees, and then quickly return to the proceeding for consolidation of the two cases.

Of the 12 rent escrow consolidations, nine of the cases proved, upon inspection by Baltimore Housing, to involve threats to health and safety while two cases did not proceed to inspection.[81] Nonetheless, seven of the consolidation cases resulted in judgments for possession – four of them with a reduction in amount of rent owing. Four of the cases resulted in the court's dismissing the landlord's claim altogether.

[80] Ten cases could not be found through the Rent Court's paper-based filing system.

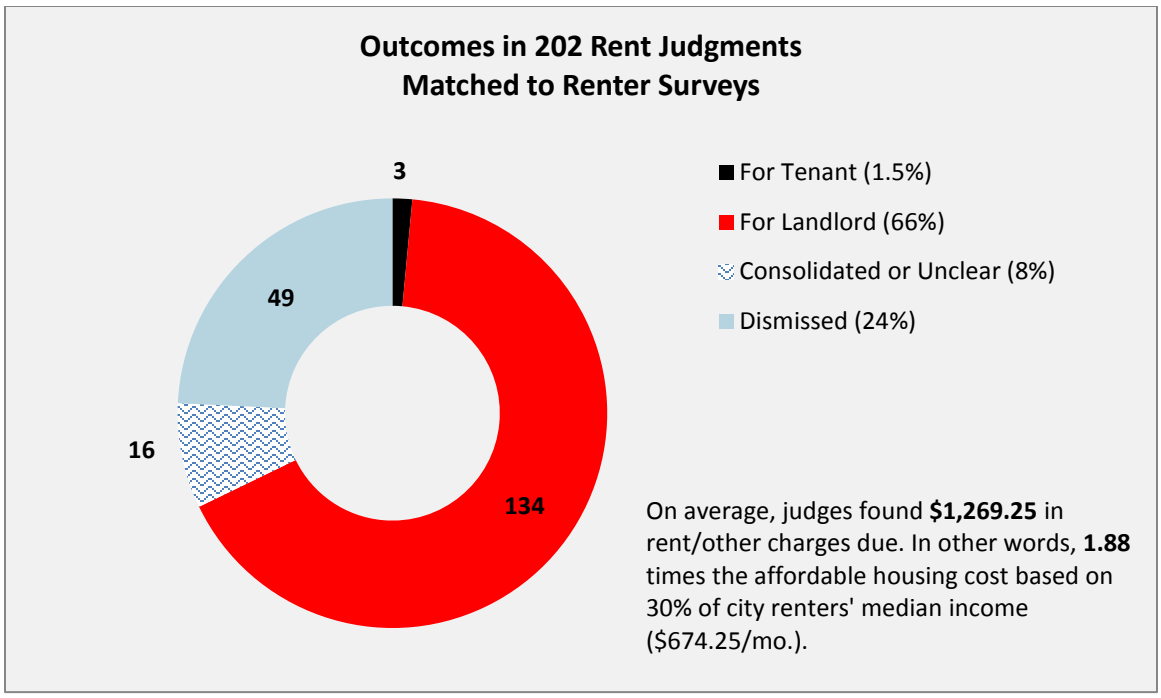
[81] We found in docket entries for the 12 rent escrow consolidation that 2 cases were dismissed without a court-ordered inspection due to the renter's inability to deposit all alleged back rent into the court's registry. In nine cases, the docket entries note health/safety violations. In the one remaining case, the docket entries show that an inspection was ordered but do not make clear the inspection results.

Instead of bringing forward 168 prima facie implied warranty or rent escrow defenses, renters were largely diverted to other outcomes. Barely a third of them attempted their available defenses, and only 13 succeeded – yielding an abysmal eight-percent success rate.

Among the other 40 disputed cases, there were 27 judgments for possession, 17 (63%) showing a reduction of the alleged back rent, and 13 dismissed – 10 by the landlord's request and three by the court's determination. Thus, in 75 percent of the disputed cases which did not convert into rent escrow actions, renters saw some limited success – reduction of back rent or dismissal of the rent claim. Yet, two-thirds of them ended up with a judgment for eviction. In total, inclusive of outcomes from the rent escrow actions, these verified disputed cases wound up as follows: 34 total judgments for possession, 17 total dismissals, and 1 judgment without a recorded disposition

Overall, the Rent Court process sifted out an incredible percentage of potential habitability-based claims against landlords. At the outset, 168 surveyed renter-defendants appeared at the court building having complained to their landlords about one or more existing threats to health and safety. Instead of bringing forward 168 prima facie implied warranty or rent escrow defenses, these renters were largely diverted to other outcomes. Barely a third of them attempted their available defenses, and only 13 succeeded – yielding an abysmal eight-percent success rate.

Figure 11



Unpredictable review

While the court demonstrates close scrutiny of tenants' defense, it customarily affords wide latitude to landlords, making it even harder for renters to defend themselves. Although by law plaintiff-landlords may present only the claims pleaded in their complaints, and must prove those

claims by a preponderance of evidence, judges enforce these standards with unpredictable variation. The inconsistency exacerbates the imbalance of power between renters and landlords and allows cases that should be dismissed or denied to end up in eviction.

Despite what renters hear about the court's dealing narrowly with "just the rent," landlords can easily expand the scope of their rent cases to include a broad variety of other charges – utilities, repair bills, security deposits, "added rent," illegal late fees, unawarded court costs – all under the catch-all "the rent." Some landlords annotate their complaints to specify the non-rent charges they are seeking. Others seek and obtain judgment on "the balance" of alleged charges. In our review of court records matched to our survey responses, we found such annotations in 22 percent of cases.[82] The federal District of Maryland has determined that the "purposeful conflation of 'rent' and other charges and fees" violates the tenant's right *not* to be summarily ejected except for failure to pay the rent.[83] The shortcut allows for a misallocation of the renter's rent payments to non-rent charges which the tenant had little to opportunity to dispute in the Rent Court process.

In half of surveyed cases in which tenants raised a dispute in court, the judge reportedly failed to ask the landlord or agent to offer testimony or evidence as to these key elements of the case.

Renter-defendants are also hindered by the court's inconsistent evidentiary standards. Although statewide statutes obligate landlords to maintain a ledger of rent charged and paid for each renter and to provide receipts for all cash payments or otherwise upon the renter's demand, few landlords or agents are asked to prove their claims with these essential documents. In half (50%) of surveyed cases in which tenants raised a dispute in court, the judge reportedly failed to ask the landlord or agent to offer testimony or evidence as to these key elements of the case. No review of the lease, the statutorily required accounting, or the receipts was deemed necessary despite the tenant's explicit and active dispute of the amount due and owing.

Survey respondents further noted that when the judge did request the plaintiff's testimony or evidence relating to these key elements, half the time the landlord or agent could not produce the needed response. In a quarter of those instances, the court allowed a postponement of the case so that the plaintiff could find and produce the missing evidence. In qualitative interviews, renters pointed specifically to instances of the plaintiff's having two bites at the apple as emblematic of landlords' distinct, systemic advantage.

Finally, while some judges apply a strict review of landlords' regulatory compliance, looking for missing registration or licensing information, others do not. Outcomes are equally unpredictable, ranging from automatic dismissal to on-the-spot amendment of the complaint to automatic postponement of the case so that compliance can be shown at a later date. From a sample of landlords confirmed via data from surveys and MDE be out of compliance with the agency's

[82] We reviewed 202 judgments which matched to the case numbers of survey respondents. Descriptions of money amounts were readable in 193 of these records. Of the 193, we found 19 instances in which utility costs were included in the rent and 24 instances in which the landlord sought an unspecified "balance" of charges.
[83] *Sager v. Hous. Comm'n of Anne Arundel Cnty.*, 957 F. Supp. 2d 627, 632-33, 636-67 (D. Md. 2013).

registration and/or inspection requirements, we retrieved matching rent judgments in 76 cases. These judgments reveal that the court entered judgment for possession to a non-compliant landlord in 61 percent of cases. Similarly, among 70 landlords found via survey and Baltimore Housing data to have submitted invalid information about registration and licensing in the rent complaint, 67 percent obtained judgments for possession from the court.

The court entered judgment for possession to a landlord non-compliant with the lead law in 61% of cases…. Among landlords who submitted invalid information about Baltimore Housing registration and licensing, 67% obtained judgments for possession.

By not verifying landlords' regulatory compliance, the court system flips the law on its head: instead of landlords and agents having to prove their "clean hands," renters must have the presence of mind, the time and the resources to obtain and produce evidence of dirty hands – that is, that the regulatory credentials on the complaint, intended to protect public health and safety, are outdated or falsified. Of course, renters are unlikely to have the knowledge and means to acquire such evidence, especially given how little time they have to prepare for trial.

Barred from appeal

The problems that renters face at the Rent Court are rarely if ever raised or considered in an appeal.[84] If a renter wishes to appeal an adverse judgment, she will find that her right to a review in the Baltimore City Circuit Court is more or less theoretical. During the four-day appeal period, she will find that the Rent Court usually needs three days just to make available a copy of the judgment. If she does file the appeal, she will learn that the court may set an appeal bond at virtually any amount, often up to three times the rent in dispute. Since most renters cannot overcome this financial hurdle, their appeals mean very little; landlords can move forward with eviction while the appeal bond remains unpaid. In nearly all cases, once a renter is evicted, her appeal becomes moot, meaning that the Circuit Court has no need to review the case.

The appeal process conditions low-income renters' rights on their ability to pay multiples of the rent in dispute. In this way, the law effectively prevents judicial review of renters' experiences at the Rent Court.

[84] *See* MARYLAND COURTS, *Annual Statistical Abstracts* (FY 2013 and FY 2014), *available at* http://mdcourts.gov/publications/annualreports.html. In FY 2013, the 345,321 case terminated in the District Court of Maryland for Baltimore City produced only 38 appeals to the Circuit Court for Baltimore City. Similarly, in FY 2014, only 35 District Court cases were appealed to the Circuit Court.

INSIDE THE RENT COURT:

Theresa's Story

When asked about her current situation and how it was she came to this apartment six years ago, Theresa doesn't mince words. "Pressure," she says, "another desperate situation, a worse situation than this actually."

She had moved to better the health and well-being of her children after a legal dispute in which her then-husband was awarded custody, only to then turn around and abandon the children in the street. The choice to relocate was a matter of family security, particularly with regard to Theresa's daughter, who had been continually harassed about her sexual identity in their West Baltimore neighborhood. Theresa feared her daughter might eventually be assaulted or even raped. "I found this place because it was in a predominantly gay area."

But from day one it was clear the apartment had problems. It is a typical Baltimore rowhouse – three floors, each with front and backroom apartments. Theresa unlocks the front door as we head inside. We make our way up to and past every apartment in the building. In each doorway Theresa turns this one key, and each time the door opens without issue. After a move that was largely motivated by a need for greater safety and security, Theresa now lives with a constant anxiety born of wide open exposure to anyone in the building. Then, she tells me, there is the broken street-facing window and the persistent draft.

Theresa was too intimidated to file a repair order, however. If she made any waves, she worried, it might jeopardize her voucher status.

She must also contend with a building manager who has made it a business practice to impose on his female tenants. In one instance, he entered Theresa's apartment unannounced and pretended he'd come by to apply pesticide. Another time, he came to her door with flowers. It wasn't long before his personal interest interfered with his professional obligations.

After a period of delinquency which caused Theresa to lose power to her apartment, she caught up on the bill and scheduled a visit from BGE to restore service. On arrival, the utility crew was met by the building manager who, whether out of spite or frustration, refused access to the utility room. "Sir, this woman paid her bill," one of the technicians said, showing the paperwork to the landlord. Unphased, he claimed there was simply no one on the premises with a key to the utility room. The impasse played out for 10 days, until finally Theresa had no choice but to call the Sheriff for assistance.

But the worst of the altercation came later when her landlord retaliated by refusing to make necessary repairs to the building, including floor board and window repairs. The

landlord also threatened to sue for full rent, despite the fact that Theresa is a voucher holder and unable to pay the unsubsidized amount on her own. These mounting tensions ultimately led the landlord to play his trump card – terminating the lease and suing Theresa in Rent Court.

"I was scared, I was afraid, I was prayed up… I had no representation because I can't afford it," she admits, recalling her day in court. Theresa could only hope the judge would hear her side of the story, that she was being unfairly punished by her landlord regardless of the fact she was in good standing.

At court, when a housing authority representative showed up to testify about the condition of the property, Theresa's landlord simply walked out of the courthouse before the case had even come before the judge. Still, the judge elected to postpone proceedings by a week, rather than toss the case out.

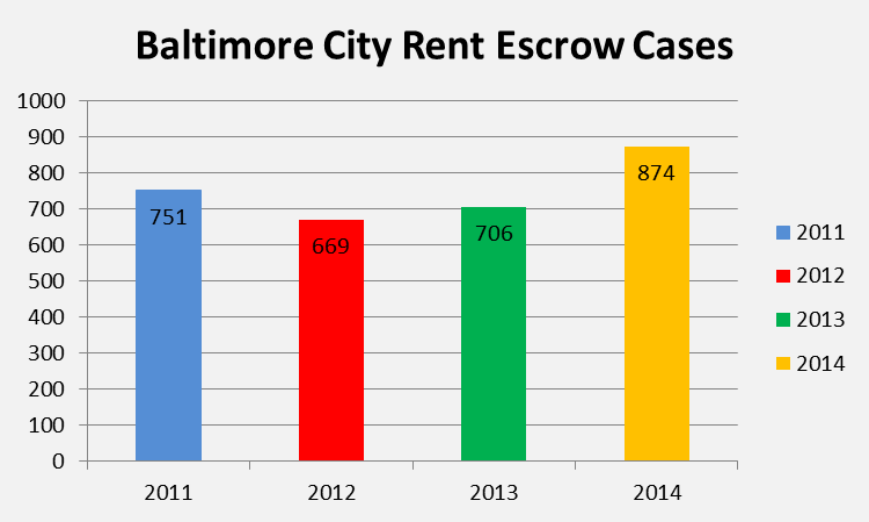
Though unable to pay for legal representation, Theresa used the extra time to consult a legal services attorney. She learned that her landlord did not have the proper licensing to operate a rental property and that she could raise the issue in her defense. But by doing so, she risked losing her apartment and potentially jeopardizing other tenants in her building, neither of which held any appeal. "I *do* love my apartment and I *do* love living here," Theresa says, despite months of managerial neglect and disrepair. "I don't really want to hurt my landlord. I just want him to do right by me."

Part 4: The Rent Escrow Experience

While the Rent Court deals with thousands of cases each month, the number of affirmative rent escrow cases in Baltimore City is quite low, ranging from 600 to 900 cases annually in recent years. Renters bring these cases in the district court largely as affirmative cases, separate from any defense to a landlord's claims for rent, to enforce the right to habitable housing. However, as discussed above, Rent Court judges often compel tenants with defensive rent escrow claims to file affirmative cases. New research by the University of Baltimore, based on 59 randomly-selected case studies from 2011 and 2012,[85] suggests that while renters almost always bring justified rent escrow claims, they encounter a rent escrow process that is largely ineffective in providing relief for poor housing conditions.

In an analysis of rent escrow cases in the Maryland Judiciary Case search database, researchers found that only two percent of cases involved no housing code violations. Similarly, in all but two case studies, court-ordered housing inspections revealed violations covered by the rent escrow law, usually several and sometimes many.[86] Most cases involved record evidence of neglect on the part of the landlord in making repairs.

Figure 12



Nonetheless, tenants still face an uphill battle in the legal system. To begin with, the legalistic rent escrow form, with its references to the "warranty of habitability" and the "covenant of quiet enjoyment," impeded renters from articulating their claims. For renters facing lack of heat in the winter, the court failed to expedite the hearing schedule according to local law,[87] forcing these households to wait 15 days in the cold. At court, renters faced judges who seldom elicited relevant facts. But by far the greatest impediment to renters' meritorious cases was the court's requirement that they deposit any alleged rent arrears in order to proceed.

[85] This section is adapted from the writing of Michele Cotton, J.D., Ph.D., with her permission. For full information about the case study methodology, and access to raw data, contact Michele Cotton at mcotton@ubalt.edu.
[86] In one case, no serious code violations were found by the inspector; in the other, the violations were evidently caused by the tenant.
[87] Balt. Pub. Loc. L. § 9-9(h).

Pay to play

In initial rent escrow hearings, judges generally required tenants to deposit any alleged rent arrears into escrow before allowing the case to proceed. Electronic case information indicates that such deposits were ordered in about 45 percent of cases. As one judge explained to a renter,

> Did you see the movie Jerry Maguire? ... In that movie, they said, Cuba Gooding, Jr., said, "Show me the money." So show me the money, okay? You gotta pay it into the court… This is not rent avoidance, this is rent escrow…. You can't have a case unless you have the rent.

When renters could not meet this precondition, their cases were summarily dismissed regardless of the seriousness of the housing code violations established by inspection. For example, in one case, where the inspector found 32 housing code violations, the judge gave the tenant a few additional days to deposit the full rent arrears, plus a late fee. When she failed to do so, the court dismissed the case.

The court's deposit requirement ignores that two key facets of the rent escrow process: (1) that renters may seek to deposit a reduced amount of rent based on the poor state of the home, and (2) they may also seek money damages based on the poor housing conditions, which would set-off against the deposit amount. The tenants in these case studies not only had the right to the remedies provided for under the rent escrow law but also claims for damages based on the statutory implied warranty of fitness, which allows for monetary compensation for defective housing going back to the date the landlord was first notified about the conditions. In theory, tenants are allowed to join a damages claim to the rent escrow action because it depends on much the same facts. Yet, in the case studies, renters seldom were allowed to present their well-evidenced damages claims because the court disfavored joinder of the claims.

In some cases, the court's approach left tenants "whipsawed." For instance, one renter explained in her rent escrow hearing that the Rent Court had entered judgment in favor of the landlord and instructed her to raise her conditions-based claims in a separate rent escrow action. But the judge in the rent escrow case would not consider any conditions-based claim for damages, despite evidence of eight housing code violations, five of which were threats to health and safety. The judge's reasoning was that the renter first had to deposit the very same rent arrears already reduced to judgment in the Rent Court. Given the impasse, the judge dismissed the rent escrow case, meaning that the renter was unable to raise her damages claims in either court process.

This deposit requirement is troubling not only because it impeded tenants from obtaining housing repairs but also because it may not reflect a correct interpretation of the statute.[88] Due

[88] The rent escrow law calls for the tenant to deposit the "amount of rent called for under the lease," see § 9-9(d)(2). However, this may refer to rent as it accrues rather than back rent. The warranty statute, which deals with the retrospective claim for damages, does not require any deposit. *See* § 9-14.2(c). The court generally dismisses the entire case – both warranty and rent escrow claims – if the tenant does not deposit alleged rent arrears, even though the warranty statute does not require a deposit. It wouldn't make sense for the legislature not to require a deposit for the damages cause of action, when damages would be directly relevant to back rent, but to require a deposit of back rent for the rent escrow remedies, when none of those remedies are retrospective.

process concerns arise here, too, because the court is requiring renters to deposit a disputed amount in order to get an adjudication of whether that amount is actually owed.

Delayed remedy

Under the rent escrow law, landlords get a "reasonable" amount of time to make repairs after being informed about defects, and a delay beyond 30 days is presumed to be unreasonable.[89] However, the case studies showed that judges routinely gave landlords 30 days to make repairs *from the date of the first court appearance* and ignored when the landlord had first been informed about the conditions. As a result, the court often gave the landlord more time for repairs than the law allows and awarded tenants less compensation for the conditions than the law provides for.

For example, in a case in which the housing inspection revealed 28 violations, ten of which were serious enough to result in Baltimore Housing's issuance of a ten-day notice to correct, the tenant offered to show the judge e-mails to the landlord about the conditions, the judge disregarded them and said to the landlord, "I'd be happy to postpone this and all the stuff will stay out of escrow if you can get it done in 30 days." In another case, in which there were 20 violations, seven of which were threats to health and safety, and where the tenant testified that the landlord's agent had been informed about the conditions more than five months previously with a list and walk-through, the judge still provided the landlord 30 more days to make repairs.

Ignoring the law's concern for when the landlord first found out about the conditions takes away any incentive for a landlord to make repairs when initially informed. And when the court calculates the amount of any monetary compensation from the first hearing rather than from the date of the earlier actual notice to the landlord, the amount awarded will be less than the tenant is legally entitled to. Thus, as currently interpreted in most cases, the rent escrow law simply provides no incentive for landlords to remedy dangerous defects before a renter files in court.

Similarly, the court often delayed establishing an escrow account or did not establish one at all. Among all case studies, escrows were set up less than half of the time at the first hearing where a prima facie entitlement to escrow was established on the record.[90] The court's rationale is best captured by one judge who declined to set up an escrow even after inspections more than three months apart showed that repairs had not been made. "I believe we should postpone this and see how things go," he remarked. In another case, in which the renter had particularly serious violations – an inoperable furnace (in winter), rat infestation, and overfusing of electrical circuits – the judge accepted the landlord's suggestion that the escrow be delayed, noting, "[W]e can do that and defer the decision on the escrow…. I mean, it will save everybody a lot of aggravation." Delaying escrow generally did not work to the advantage of renters, as either no repairs were made or the repairs were not completed by the next court date in half of those cases.

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[89] *See* Pub. Loc. L. § 9-9(d)(1), which includes "a rebuttable presumption that a period in excess of thirty (30) days from receipt of the notification by the landlord is unreasonable …." *See also* Pub. Loc. L. § 14.2(c).

[90] Such a case was indicated where the landlord had been properly served and had notice of the conditions, did not establish that he had a viable defense, and a housing inspection report established that serious housing code violations existed.

Limited relief

Among the 59 case studies were 33 cases in which tenants made out a prima facie case for abatement, damages, and/or return of some portion of the escrow.[91] This number probably represents an undercount of the total who had a right to relief, as well as an underestimation of the extent of the relief to which they may have been entitled, because the court often did not ask when the landlord first learned of the conditions, or ignored evidence on the record about the date of that notice (and also because some tenants seemed to give up on the case part of the way through).

Even though the law provides judges wide discretion to reach equitable outcomes in these cases, no monetary relief at all was awarded by the court in 19 of the 33 cases where the tenant established a prima facie case. In the 14 cases where some monetary relief was awarded to the tenant, the amount was usually small, with the landlord generally receiving 75 percent or more of the amount at issue.

Even though the law provides judges wide discretion to reach equitable outcomes in rent escrow cases, no monetary relief at all was awarded in 19 of the 33 cases where the tenant established a prima facie case…. Judges abated the amount of rent to be paid into escrow in only three of 59 cases.

The law states that the amount of rent paid into escrow should be reduced (abated) to reflect the lower value of the housing in its defective condition.[92] However, judges abated the amount of rent to be paid into escrow in only three of 59 cases. That was so even though most tenants established facts justifying abatement, and even though the rent escrow law puts the burden on the landlord to show cause why abatement should not be granted.[93] In only one case did the judge actually ask the landlord why the rent should not be abated, and judges usually ignored or refused renters' fairly frequent abatement requests. Typical was the case in which a renter pressed the court to take the housing code violations into account in deciding the amount to deposit, and the judge said, "I am not going to address any of that now. When the case is over with and the money is distributed, you can raise those issues then."

Judges set the bar high for tenants to receive monetary relief. For example, one judge denied any award to the tenant because the housing violations did not render the premises "unusable." That is a higher standard than what the law references, which is simply the reduced value of the

[91] In those cases, there was evidence of serious housing code violations and either notice was on the record or the matter was in court long enough that the presumptively unreasonable period of more than 30 days had elapsed between the time of inspection finding the serious violations and the time of ultimate repair. See Pub. Loc. § 9-9(d)(1) and § 14.2(c).

[92] According to the law, abatement should be in "such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist." Pub. Loc. L. § 9-9(f)(4).

[93] Pub. Loc. L. § 9-9(f)(4): "In all such cases where the court deems that the tenant is entitled to relief under this Act, the burden shall be upon the landlord to show cause why there should not be an abatement of the rent."

housing.[94] But even where evidence actually indicated that the conditions were dire, judges tended to think that the landlord still ought to get most of the rent. In one case, the tenant testified about a serious rodent infestation dating back three years. She showed the court an old violations report to prove it. The inspector testified similarly that there continued to be "a bad rat infestation in the property, a lot of openings … a lot of droppings throughout the property" and even opined that the dwelling was unfit for human habitation "if you have small kids," which the tenant did. For all of that, the judge awarded the tenant monetary relief in the amount of only one month's rent.

In a case involving 20 housing code violations, seven of which were threats to health and safety, the tenant indicated that the landlord had received notice of the conditions five months prior to the filing of the action, and the case itself took another four months – and six hearings – before the repairs were completed. When the tenant objected to the landlord receiving the entire escrow account, the judge responded, "This is rent money. You can't stay in a place for free. It's not your money – it's rent money."

No review

Despite the problems in the rent escrow process, a fraction of rent escrow cases are appealed. In a review of electronic records of 3,000 statewide rent escrow cases, from 2011 through 2014, just 17 appeals were filed, seven of them by renters.

Renters often do not realize that any mistakes have been made, and there is little record of these cases anyway. Although the rent escrow law states that "[t]he court shall make findings of fact on the issues before it,"[95] the form for such findings was left blank in each of the 59 case studies. Furthermore, judges typically gave no explanation for their decision-making in terms of the law, even on the rare occasions when tenants dared to press for an explanation.

Of 3,000 statewide rent escrow cases, from 2011 through 2014, just 17 appeals were filed, seven of them by renters.

Even on appeal, rent escrow cases virtually always evade review because "appeals" are heard as new trials in the circuit court.[96] Thereafter, the only available review of legal mistakes is by permission to Maryland's highest court, which is rarely granted. Because appeals by renters are rare, not only do trial court mistakes go uncorrected, but relatively little appellate guidance on the law is developed. Any resulting uncertainty about the law may be resolved against the less powerful party in the litigation, which in this situation is the tenant. Even where there is relevant precedent from the appellate courts, a court that has little chance of being appealed does not have to worry about accountability for not following it.

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[94] See Pub. Loc. L. § 9-9(f)(4) and Pub. Loc. L. § 14.2(d), calling for damages "computed retroactively to the date of the landlord's actual knowledge of the breach of warranty" in an amount reflecting "the reasonable rental value of the dwelling in its deteriorated condition."

[95] Pub. Loc. L. § 9-9(f).

[96] *See* MD. RULE 7-102(a) and (b), which provide for a de novo trial on appeal for District Court cases where the amount in controversy is less than $5000. From 2011 through 2014, only four on-the-record appeals were filed.

Conclusions: Responding to crisis

Baltimore City Rent Court is a public institution which impacts tens of thousands of lives each year. But today, as it has been for decades, it is an institution overpowered by the landlord industry's financial interests and unaccountable to the most vulnerable of city residents. Our study demonstrates that the Rent Court does not provide renters a full and fair opportunity to dispute their cases. As it prioritizes collection of rent and deals with the overwhelming number of cases, the court often diverts or ignores the enforcement of long-standing tenant protections. The rapid process, overwhelmed dockets, and unjust efficiencies conspire with renters' lack of legal knowledge and resources to render the court fundamentally ineffective in enforcing the landlord's duty to provide safe and habitable housing. Consequently, the current legal system looks far less like a forum for adjudicating disputes or balancing equities than it does taxpayer-financed collection agency.

The consequences of continuing to ignore this broken system are borne by the poor, who predominate in Baltimore's rental market. To ignore this issue is to ignore them. It is past time that city and community leaders intervene.

Based on the quantitative and qualitative findings of our study, we recommend five areas for targeted intervention in this broken system. We believe these changes, if implemented, will rebalance the court, reduce the number of rent court evictions, and, in turn, restore the institution's role in regulating Baltimore's rental housing market.

1. Cut Rent Court dockets in half and strengthen overall fairness of the process by requiring a pre-filing notice and waiting period that would ensure that renters receive documentation of the landlord's claims, time to remedy the dispute before litigation begins, and time to prepare a defense if necessary.

2. Even the playing field at court by implementing a robust program to increase renters' access to legal information, assistance at court, and legal representation.

3. Demand that landlords and agents document their rent claims, as well as their alleged compliance with licensing and lead-risk legal requirements, and hold them accountable through a consistent application of existing legal standards and tenant protections.

4. Expand landlord licensing requirements that ensure annual health and safety inspections to all rental housing in Baltimore – not just multi-family dwellings and rooming houses.

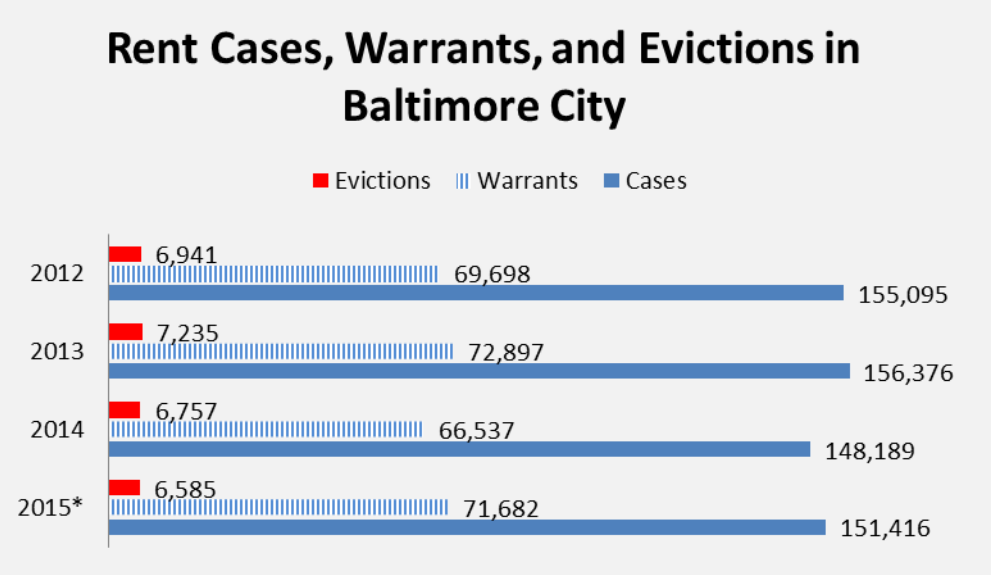
5. Fund eviction prevention programs to meet the scale of the eviction crisis.

Reduce filings to boost fairness

The starting point for reform must be a significant cut in the excessive volume of rent cases. With this crushing amount of litigation – approximately 150,000 rent complaints filed per year

and roughly 1000 cases scheduled on a day's docket – the system simply is not set up to fairly hear disputes about a person's housing.

Figure 13 [97]



* projected based on first seven months of the year

The court has reduced the size of the rent docket in the past: from about 3,000 per day-long docket in the 1990s[98] to today's 1000. Though an important step toward assuring due process, it merely shuffled the deck, leaving alone the bigger problem: the number of cases filed. Many consider 150,000 FTPR complaints per year an inevitability of the city's economics and, therefore, a permanent feature of the Rent Court.

But that figure is also a direct byproduct of the summary ejectment law itself.

Unlike many jurisdictions across the United States, the summary ejectment process in Baltimore City and across Maryland requires no pre-filing notice to the tenant that the landlord will resort to litigation to collect the rent. This facet of the law allows landlords to use the Rent Court as their first-resort tool of notice of delinquency and demand for payment.

Other states balance their summary repossession schemes with a pre-filing notice period. For instance, Illinois requires a 5-day notice to the renter, describing the rent dispute and demanding payment, before the landlord may file the rent complaint in court.[99] Michigan requires a 7-day notice; Massachusetts a 14-day notice.[100] These and other jurisdictions recognize the economic

[97] For data sources, see detailed tables on p. 56-57.
[98] *See* Michael Ollove, *Tenants face unfair fight in Rent Court, study say*, THE BALT. SUN (Aug. 16, 1992), http://articles.baltimoresun.com/1992-08-16/news/1992229003_1_bezdek-rent-court-tenants.
[99] 735 ILL. COMP. STAT. ANN. 5/9-209 (LexisNexis 2015).
[100] MICH. COMP. LAWS SERV. § 600.5714 (LexisNexis 2015); MASS. ANN. LAWS ch. 186, § 11 (LexisNexis 2015).

utility of a rapid repossession law but have also built in more balance than what Baltimore has adopted.

We recommend that legislators amend the summary ejectment laws – Baltimore Public Local Law § 9-3 and general law Real Property art. § 8-401 – to require a 14-day notice period prior to filing a rent complaint. This pre-filing notice should describe the amount allegedly due, demand payment, and advise of the additional cost of the rent complaint to the renter from a court complaint if the amount is not paid timely.

Additionally, the prerequisite notice should be accompanied by copies of any written document which the landlord plans to present as evidence at a trial of the dispute. This would usually be the landlord's ledger or statement of rent charged and paid for the tenant, which all landlords are required to have by law. Currently, neither District Court rules nor the summary ejectment law provide renters grounds for discovery, i.e., the right to see the plaintiff's evidence in advance of trial. Even this limited form of discovery will help ensure two improvements to the summary scheme: first, renters will better understand, before coming to court, the basis of the landlord's claims and recognize whether the dispute is resolvable prior to trial; and secondly, renters will not be subjected to surprises when they do appear at court.

What effect would a pre-filing requirement have on the overall size of dockets? Opponents might argue that that there would be no effect other than to slow down a process already riddled with delays. But the numbers speak for themselves:

The table below shows that, year after year, between 50 and 60 percent of rent cases never result in a warrant. In other words, more than half of landlord's legal complaints are resolved without the landlord taking even the first step toward enforcing a judgment for possession.

Table 6: Percentage of Rent Cases Resulting in Warrants of Restitution

Year	Cases resulting in Warrant
2015*	47.3%
2014	44.9%
2013	46.6%
2012	44.9%
Avg.	*46.0%*

*projected from first seven months

A warrant of restitution enforces the court's judgment for possession. It reflects that the dispute between landlord and renter continued from the filing of the FTPR complaint to a judgment in favor of the landlord and then through the appeal period – all along without a resolution. The total time to get from the renter's first receipt of the rent complaint to the landlord's petitioning for the warrant is approximately two weeks. In that brief time, roughly 54 percent of cases resolve.

In a similar amount of time, a pre-filing notice requirement could likely accomplish a similar rate of resolutions – just without the immense burden on the court system and added costs for poor renters. The Rent Court would likely docket less than half of today's case load, thereby freeing up administrative and judicial resources.

The key resource, of course, is time per case. Assuming the same contest rate of 5 percent, we project that the Rent Court would have between 14 and 15 minutes per case in a system which requires a 2-week pre-filing notice.

Level the playing field

Study respondents were like most Rent Court defendants – attempting to navigate the legal system without legal representation. Once inside that system, they witnessed the perils of proceeding alone. A 56-year-old female participant in our qualitative interviews told us, "When I was in court, it seemed like everybody that [wound] up being treated fair had an attorney." Several participants also expressed that even if they knew what they wanted to show and to say to a judge, they needed an attorney to act essentially as a medium in proceedings. Survey results confirm those sentiments as fewer than half of disputants who could have raised a meritorious habitability-based defense actually even attempted to do so.

"When I was in court, it seemed like everybody that [wound] up being treated fair had an attorney."

Tenants at the Rent Court clearly need the assistance of counsel, and we strongly endorse any effort to realize the civil right to counsel in Maryland so that renters who face the loss of housing stand a chance in court. There is substantial empirical support for providing free legal representation to renters to increases their chances of avoiding eviction. In Massachusetts, in a recent study of 129 participants, two-thirds of tenants offered legal representation successfully avoided eviction, compared to one-third for tenants offered only limited assistance.[101] In Washington, D.C., Legal Aid Society's on-site same-day representation program handled 645 clients in a given year, resulting in a range of successful interventions: 356 continuances, 105 filed pleadings, 40 stayed writs (equivalent to a warrant in Maryland), 21 dismissals, 40 default judgments vacated, and 122 settlements.[102]

Furthermore, numerous access to justice projects have shown that funding legal representation is cost effective.[103] For instance, in 1996 the Association of the Bar of the City of New York reported that the prevention of eviction through civil legal aid saved the city more than $27 million in homeless shelter costs.[104] A 2009 study by the Massachusetts Legal Aid Corporation

[101] *See* Boston Bar Association Task Force on the Civil Right to Counsel, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION (March 2012), http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf.
[102] *Budget Hearing – D.C. Access to Justice Initiative*, Comm. on the Judiciary, Council of the District of Columbia, (April 20, 2012) (testimony of Anna Purinton, Legal Aid Society of the District of Columbia).
[103] *See* Laura K. Abel, et al., *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, SEATTLE JOURNAL FOR SOCIAL JUSTICE 138 (2010).
[104] *Id.* at 149

showed that the state had similarly saved $8.4 million.[105] More recently, the San Francisco Right to Civil Counsel Pilot Program estimated that full- and limited-scope representation for 609 tenants who avoided judicial eviction potentially saved over $1 million in shelter costs.[106]

Aside from representation, our study participants also keyed in on the need, before trial, to obtain information about their rights and the court process. These renters cited a range of recommendations, such as easy access to legal information, assistance in navigating the court building, and electronic and mobile-friendly access to court notices and records.

Over two decades ago, the Public Justice Center pioneered a peer advocacy project at the Rent Court, deploying trained volunteers to help close the legal knowledge gap among tenants.[107] Today, we propose a more robust program, combining navigation, legal information, brief legal advice, and representation into a single stream of on-site services that would substantially help to even the playing field in Rent Court. As our study shows, renters are at a distinct, systemic disadvantage to landlords, who themselves have repeat-player advantages or who employ agents with even greater repeat-player advantages. Staffed by trained paralegal advocates and supervised by attorneys of a legal services organization, this "navigator plus" program could effectively triage cases to information and assistance services, advice and limited-scope representation, and referral to an attorney for full representation.

Vital interventions in this type of program could include the following:

- providing self-help assistance and materials, as well as describing the Rent Court and rent escrow processes, including potential defenses and relief and the elements which have to be established for each remedy;

- identifying complex cases or cases in which the renter has a distinct defense for an expedited referral to free legal assistance by an attorney;

- assisting renters with obtaining and completing court forms;

- representing renters during courtroom proceedings and out-of-court negotiations, assisting with organizing or submitting documents, and taking notes.

Additionally, we recommend that a navigation program incorporate an information hub to provide renters with on-site access to regulatory agency information via the Internet. Numerous agencies provide online look-up sites which can generate information crucial to renters' defenses. Renters should have on-site access to Baltimore Housing's Multiple Family Dwelling License Search and Violation Notice/Citation Search; MDE's Lead Rental Registry Property

[105] *Id.*
[106] John and Terry Levin Center for Public Service and Public Interest Stanford Law School, *San Francisco Right to Civil Counsel Pilot Program Documentation Report* 16 (May 2014), *available at* http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=49157.
[107] Kathryn Miller Goldman, *A helping hand through rent court*, THE BALT. SUN, Feb. 8, 1993, http://articles.baltimoresun.com/1993-02-08/news/1993039194_1_rent-court-tenants-evictions.

Search; and the State Department of Assessments and Taxation's Real Property Search and Charter Record Search.

Many renters may realize the need for an attorney only when they have consulted a paralegal/navigator and completely understood the complexity of their defenses. In that event, where the renter's case warrants full representation and case development, the court should afford near-automatic postponements for renters to obtain counsel.

Finally, public funds must be directed to upgrading the Rent Court's antiquated paper-based case information system. Using an array of folders and binders to maintain case information, the court is incapable of meeting today's information demands. The rent division clerks have no database for docket information. In qualitative interviews, renters described the resulting difficulties in asking clerks to find basic case information (case number, trial date, disposition) by party names or property address. Beyond frustration, the lack of electronic case information places renters at an unfair disadvantage, often unable to confirm past judgments, which is an essential step to defending against repetitive filings, requests to foreclose the right of redemption, and inaccurate petitions for warrants of restitution. Although the filing fee for rent complaints rose in 2015 to fund the Maryland Electronic Courts (MDEC) project, there currently is no clear plan or timeframe to bring non-payment of rent cases into the electronic filing system.

Demand landlord accountability

Our study uncovers both landlords' abuse of the court and lack of consistent enforcement of renter's rights within the current rent and rent escrow processes. Not only do landlords and their proxies routinely evade their burden of proof, they all too often utilize the court's summary process without having first complied with fundamental housing regulations. We recommend significant changes to hold landlords accountable in the court system.

The first step toward landlord accountability is consistency on the bench. Rent Court judges should apply a strict review to all rent complaints, even where the renter has not appeared to defend against the case. In any instance of missing, unclear, or unresponsive information in the complaint, the judge should dismiss the case without prejudice. The landlord would be able to re-file a properly pleaded complaint. Far from overly technical, this treatment takes seriously the principle that a plaintiff's complaint fully, accurately informs the defendant of the allegations and issues to be brought at trial.

In disputed cases, our study showed that judges offer landlords unwarranted leeway in prosecuting their cases, inconsistently asking for basic evidence such as a lease and accounting statement. We recommend that judges consistently and strictly require that landlords meet the plaintiff's burden of proof. In every case before the court, the landlord or agent must show the current lease agreement, relevant bookkeeping required by Maryland law, and any other relevant records which would support the landlord's claims.

Second, the court needs to provide tenants with a fair and reasonable opportunity to articulate their defenses. Engagement between judges and renter defendants was a key concern of renters interviewed in our study. A 54-year-old female participant described the impact this change would have on fairness in the courtroom:

> I mean, if the judge would listen to both parties, I think it could be a real fair process. I saw too many people leave, like, disgusted, just because the judge didn't give them the opportunity to prove… [why] they weren't paying their rent.

The disconnect between judges and renter defendants propagates more than frustration – it may effectively obscure the deficiencies in landlords' cases by silencing the countervailing facts and issues which defendants could have explained in a more conversive space. This effect is readily seen in our study, where in 85 percent of disputants reported having threats to health and safety but barely a quarter of them were able to elaborate about those conditions before a judge.

The silencing effect of the Rent Court is well documented[108] and has warranted calls for judicial intervention which not only elicits a self-represented litigant's narrative, rather than legal "magic words," but also takes on the task of

> (1) identifying narrative beginning and end points; (2) emphasizing facts which are more probative than others regarding the primary legal issues before the court; (3) specifying the harm suffered or the relief sought; (4) identifying corroborative facts; (5) constructing facts according to the legal elements required for relief; and (6) responding to the landlord's factual and legal claims or defenses.[109]

Primarily, Rent Court judges should use an approach to tenant defenses which goes beyond, "Do you agree that you owe the rent?" Further, we call on the court to ask defendants affirmatively whether serious housing defects exist in the property and to lead defendants' narratives through the essential elements of a habitability-based defense. We recommend that the judiciary devise and implement a uniform inquiry along such lines for both summary ejectment and rent escrow cases, and further, conduct regular training for district court judges on habitability-based claims and engagement with self-represented litigants. Finally, in light of the financial and practical barriers to appeals in these cases, the judiciary must take on the responsibility of monitoring outcomes and evaluating the court process.

Ensure safe, healthy housing

If the court employed an approach that fosters renters' ability to raise habitability-based defenses, the number of rent escrow and implied warranty of habitability cases would likely increase, necessitating an increase in judicial and housing inspection resources. Housing inspections are vital to these cases, but presently, the city staffs just three positions to service all court-ordered inspections. Both the city and the state must increase funding for staffing and other resources at Baltimore Housing and the District Court so that these institutions can tackle Baltimore's ubiquitous problem of unhealthy housing.

The court can go one important step further, ensuring that that only landlords with "clean hands" utilize the judicial eviction process. Nearly two in three landlords in our study presented the Rent Court with wrong or missing information about their registration and licensing with Baltimore

[108] *See* Bezdek, *supra* note 7.
[109] Paris Baldacci, *Assuring Access to Justice: The Role of the Judge in Assisting Pro Se Litigants in Litigating Their Cases in New York City's Housing Court*, 3 CARDOZO PUB. L. POL'Y & ETHICS J. 659, 684-685 (2004-2006).

Housing; nine in 10 landlords did the same as to registration and inspection status with MDE. These landlords gamed the system – and won, more than half the time. This has to change.

The onus of sifting out rogue landlords should fall neither on renters nor judges – ultimately, the burden is on landlords to demonstrate compliance with laws meant to safeguard public health and safety. Landlords should have, ready at trial, documentary verification of the registration and licensing information used in their complaints. Still, the court must play the important role of ensuring a true demonstration, requiring that plaintiffs submit their records before proceeding to hear their rent claims. Where those records show that the registration, inspection, or licensing information stated in the rent complaint is invalid or incomplete, the court should dismiss the case with prejudice if the landlord was not in compliance or without prejudice if it appears the landlord may be in compliance but errantly filled out the complaint.

Finally, Baltimore's rental licensing law is due for major change. The overwhelming majority of properties at issue in the Rent Court are of the one-to-two-unit variety, which is not currently required to have a Baltimore Housing MFD license and undergo a yearly health and safety inspection for license renewal. Consequently, this segment of the rental housing market operates essentially without regulation. To improve safety for all renters, we recommend broadening Baltimore City Code Art. 13 § 5 to require licensing for all rentals, regardless of the number of units.

Spend to prevent eviction

For each of 70,000 or more instances in which a Baltimore household needs financial assistance to redeem possession of their home or else must abandon the home, the city budgets no more than $1.60 – less than a one-way bus fare. City hall can do better and must begin to adequately appropriate funds to eviction prevention.

For the current fiscal year, Baltimore appropriated only $109,715 to assist just 500 families and other vulnerable populations facing a court-ordered eviction.[110] That comes to only $220 per grant; these grants are available to a household only once per year. The drastic underfunding of this safety net is shocking, but nothing new. In 2013, with nearly 73,000 warrants of restitution processed, the city provided eviction prevention grants to just 311 households.[111]

The city does not directly fund eviction prevention services, instead relying on a small portion of federal dollars (Community Development Block Grant, Emergency Solutions Grant), as well as grants from the state Department of Human Resources Homelessness Prevention Program.[112] State officials budget for prevention of only 4,899 evictions annually throughout all of Maryland.[113] This patchwork of funding is simply no match for city resident's enormous financial need. At a time when Baltimore has been working and investing to attract 10,000 new

[110] BALTIMORE CITY BOARD OF ESTIMATES, FISCAL 2016 AGENCY DETAIL, vol. 1, at 565-567, http://ca.baltimorecity.gov/flexpaper/index.php?mode=v&d=Agency%20Detail%20V1%20FINAL-FINAL#viewer.
[111] *Id*.
[112] *See* BALTIMORE HOUSING AND COMMUNITY DEVELOPMENT, CITY OF BALTIMORE ANNUAL ACTION PLAN – FINAL FFY 2014/CFY 2015, at 43, http://static.baltimorehousing.org/pdf/2015AnnualActionPlan.pdf
[113] BALTIMORE DEPARTMENT OF BUDGET AND MANAGEMENT, 2016 PROPOSED OPERATING BUDGET, vol. 2, at 381, http://www.dbm.maryland.gov/budget/Documents/operbudget/2016/Volume2.pdf

households into the city, our state and local leadership must recognize that the lack of investment in eviction prevention takes an enormous toll on the families and communities already residing here.

The city likely ignores the crisis of rent eviction in part because it has not measured it. In this regard, Baltimore is like many American cities. A foundational study on eviction rates found that the number of annual rent evictions in the United States could possibly range in the millions, "but we have no way of gauging even a modestly precise figure… because such data are simply not collected on a national basis or in any systematic way in most localities where evictions take place."[114] As a consequence of failing to maintain and leverage data, Baltimore lacks an "essential ingredient… for developing housing policies and programs that might decrease the incidence and negative impact of… a profoundly traumatic experience."[115]

Currently, the Sheriff's Office maintains paper records of monthly eviction statistics without any resources for retention, study, or dissemination. There is no system in place for tracking data about the households which are being evicted. Without one, the city cannot answer important questions about who is evicted, where, when, and why. It is essential that the city direct funds to creating and disseminating data on rent eviction so that homelessness prevention strategies and housing policies reflect the real indicators of city renters' hardship. Such data will be crucial for the city to meet its stated priority to "develop a system of services that prevents individuals and families from becoming homeless" by 2018.[116]

Conclusion

Baltimore needs to answer its rent eviction crisis, and change to the Rent Court system should be a major component of that answer. We need only look back a few years for a model response. Thousands of families in Baltimore and across Maryland lost their housing as subprime mortgages unraveled nearly a decade ago. At that time our policymakers and community leaders responded forcefully. They recognized the injustice of the economic milieu. They called attention both to the personal stories of families in distress and to the financial *and* legal roadblocks those individuals faced as they desperately attempted to defend themselves from loss of housing. Political and community responses led directly to bolstered services for teetering households, as well as meaningful reforms. Telephone hotlines, pre-foreclosure counseling, requisite and clear notices about the foreclosure process, opt-in mediation -- all are examples of lasting changes born of the mortgage foreclosure crisis, which still benefit homeowners today.

But Baltimore has not seen that kind of response to the rent eviction crisis. The city needs it.

The findings of our year-long study demonstrate that Baltimore's long-running rent eviction crisis is not the product of market conditions alone. Rather, our city and state laws, which imbue the Rent Court with the power either to evict or to protect, play a central role in determining how the rental housing market will ultimately bear on the lives of poor renters. The court is undeniably overrun by the pressure to collect for landlords. The resulting 6,000 to 7,000 rent

[114] Chester Hartman, et al., *Evictions: The Hidden Housing Problem*, 14 HOUSING POLICY DEBATE, 461 (2003).
[115] *Id*.
[116] BALTIMORE HOUSING, s*upra* note 110, at 43.

evictions reflect our leaders' inattention to the state of the court system and the magnitude of crisis.

It is time for those leaders to respond, just as they did only a few years ago. Examine the economics, the regulatory schemes, and the legal protections in Baltimore's rental housing market, and do so with due attention to the thousands of struggling households who deserve more than the silence. Whether in City Hall, Annapolis, or a monthly neighborhood association meeting, our discussions of housing and development must include an answer to the vicious cycle of financial struggle and housing loss which too many city renters live through each year.

Elaboration on Case Filings and Evictions among Baltimore City Renter-Occupied Households – 2000, 2009, 2015

	2000	2009	2013
Number of evictions	7,442	6,414	7,235
Number of renter households	128,127	116,136	124,782
Number of court complaints filed	160,995	144,254	156,376
Evictions per 100 renters	5.81	5.52	5.80
Complaints per renter household	1.26	1.24	1.25

All numbers for year 2000 are sourced from Abell Foundations 2003 report "System in Collapse." Numbers of actual evictions and rent complaint filings for years 2009 and 2013 are sourced from the PJC's archive of data received from the Baltimore City Sheriff's Office. The number of renter-occupied households is sourced from the American Community Survey 2009 3-year Estimate and 2013 5-year Estimate.

Elaboration on Rent Cases, Evictions, and Warrants

Rent Complaint Filings by Year in Baltimore City

Year	Cases	Source
2015	151,416	PJC archive of data received from Baltimore City Sheriff (projected from first 7 months)
2014	148,189	PJC archive of data received from Baltimore City Sheriff
2013	156,376	
2012	155,095	
2009	144,254	
2007	142,718	Maryland Judiciary, Annual Statistical Abstract FY 2006-2007
2004	150,351	Maryland Judiciary, Annual Statistical Abstract FY 2003-2004
2000	160,995	Abell Foundation, "System in Collapse" (2003)
1990	195,000	Barbara Bezdek, "Silence in the Courtroom" (1992)

Warrants of Restitution in Rent Cases by Year in Baltimore City

Year	Warrants	Sources
2015	71,682	PJC archive of data received from Baltimore City Sheriff (projected from first 7 months)
2014	66,537	PJC archive of data received from Baltimore City Sheriff
2013	72,897	
2012	69,698	

Actual Evictions for Non-Payment of Rent by Year in Baltimore City

Year	Number of evictions	Source
2015	6,585	PJC archive of data received from Baltimore City Sheriff (projected from first 7 months)
2014	6,757	PJC archive of data received from Baltimore City Sheriff
2013	7,235	
2009	6,414	
2000	7,442	Abell Foundation, "System in Collapse" (2003)

American Housing Survey 2013: Metro areas ranked by percentage of renter households reporting "threatened with eviction notice" for failure or inability to pay rent in last 3 months