

Home Court Advantage

How Landlords Are Winning and Tenants Are Losing in Brooklyn Housing Court



A Report By Make the Road New York

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Executive Summary

Every year, hundreds of thousands of cases go before New York City's housing courts. In Kings County, both landlords seeking evictions and tenants seeking necessary repairs must bring their cases in Brooklyn's Housing Court. Unfortunately, they are compelled to use an overburdened system that struggles with the sheer volume of cases it receives. And problems due to the high volume of cases are exacerbated by problems with facilities, services, and legal procedures at Brooklyn Housing Court.

One unifying feature of the myriad problems at Brooklyn Housing Court, however, is that they disproportionately affect tenants. From the outset, tenants are disadvantaged by the fact that most landlords have attorneys while the vast majority of tenants do not. While this disparity is beyond the scope of this report, it is compounded by problems with the physical environment, the lack of services and information, and the need for greater respect and impartiality.

When Brooklyn tenants go to Housing Court, they face a confusing system and a lack of clear signs and information to help navigate that system. They deal with overcrowding both inside and outside the courtrooms, aging infrastructure, and substandard facilities. The confusing layout, the lack of space, and old facilities all result in a disorienting and unpleasant experience. People with limited English proficiency, parents obliged to bring small children with them to court, and people with disabilities all face additional challenges because of inadequate multilingual services, the lack of childcare, and the limited accommodations for people with disabilities.

Furthermore, tenants encounter disrespectful treatment by court staff and legal proceedings that are arguably biased against unrepresented tenants. Landlord attorneys are granted special privileges and a culture of disrespect towards tenants has been allowed to permeate Brooklyn Housing Court. What is on the line is something as fundamental as the roof over our heads, and yet unrepresented litigants, most of whom are tenants, have a difficult time accessing justice at Brooklyn Housing Court.

Key Recommendations

Physical Environment

1. When the current lease expires in May 2014, New York City should move Brooklyn Housing Court to a more appropriate facility.
2. In the meantime, measures should be taken to reduce overcrowding and capital improvements should be made to the building.

Accessibility

3. Clearer information should be provided to unrepresented litigants, including information mailed to litigants ahead of time, improved signage and access to information within the court, and the judges giving an address at the commencement of each session.
4. Improved language access, including more consistent access to interpretation services, clearer standards for the court's interpreters, and translation of signs and forms into the six languages most commonly spoken in Kings County.
5. Increased services for unrepresented litigants, including childcare and up-to-date technology.
6. Improved disability access, including improved physical accessibility in the court and accommodations made within court procedures for people with disabilities.

Respect and Impartiality

7. A Code of Conduct outlining how court staff are to treat litigants and the redress available to litigants if those standards are not met.
8. There should be no special treatment or privileges for landlord attorneys.
9. Judges should ensure that litigants fully understand stipulations before approving them and should not approve stipulations that are patently one-sided.

About Make the Road New York and this Report

Make the Road New York (MRNY) is a 10,000 person-strong membership organization that builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services.

MRNY provides extensive housing-related legal services to hundreds of low-income tenants each year. The impetus for this report came from our experience representing tenants in Brooklyn Housing Court, and observing the struggles they and other, unrepresented tenants face in trying to use the Court and its services.

MRNY is also part of Brooklyn Tenants United, a coalition of tenants, community organizations and legal services providers across Brooklyn which has come together to address tenant concerns about Brooklyn Housing Court.

Although there is broad consensus among housing attorneys and housing policy advocates that Brooklyn Housing Court has problems that can and should be addressed, as far as we are aware, significant action and specific recommendations have yet to be made in this regard. This report identifies a number of key challenges at Brooklyn Housing Court and offers a series of recommendations regarding opportunities for improvement.



Background

How Does Housing Court Work?

The Housing Part of the Civil Court of the City of New York, commonly known as “Housing Court,” was created in 1972 so that all housing-related cases would be heard in a single court. Cases may be brought by both landlords and tenants. There are two types of cases landlords can bring against tenants:

- Nonpayment cases: a landlord claims the tenant owes him or her rent and is suing to collect the back rent and evict the tenant if he or she cannot pay it.
- Holdover cases: the landlord wants to evict a tenant for reasons other than nonpayment of rent.

There are three types of cases that tenants can bring against landlords:

- Illegal Eviction proceedings: a tenant asks the court to order that he or she be allowed to move back into an apartment after being illegally evicted.
- Housing Part (“HP”) proceedings: the tenant asks the court to order the landlord to make repairs in the apartment or building and/or to stop harassing the tenant.
- 7A proceedings: one-third or more of the tenants in a building ask the court to take control of the building away from the landlord and give it to a court-supervised administrator.

A tenant’s first point of contact with Brooklyn Housing Court will usually be the Clerk’s Office on the Second Floor. There, tenants can commence their own cases and they can also file their responses (“answers”) to eviction cases brought against them by their landlords.

When a landlord-tenant case is filed at Brooklyn Housing Court, it is first assigned to a Resolution Part. This is a courtroom where the landlord and tenant discuss and try to settle the case. The Resolution Part has a Housing Court Judge, court attorneys, a court clerk, and a court officer. The Resolution Part oversees settlement negotiations, pre-trial motions, and enforces settlement agreements that were ordered by the court.

If a case is not settled or decided in the Resolution Part, then it will proceed to trial. The case will first be sent to Part X, where it will be allocated to a trial judge. The trial will then take place in a different courtroom, called a Trial Part.

Who are the Stakeholders at Brooklyn Housing Court?

The Office of Court Administration

The entity with the most power over what takes place at Brooklyn Housing Court is the Office of Court Administration (OCA). The OCA is an agency of the New York State government responsible for overseeing the administrative operation of all of New York State's courts. The OCA determines how to allocate the Court's budget, meaning that it decides which services to cut when budgets decrease or what to add when more resources become available. The OCA also has several divisions which are highly relevant to the problems at Brooklyn Housing Court, such as a Court Facilities Unit, Court Interpreting Services, and the Division of Professional and Court Services, which is responsible for ensuring access for people with disabilities. Judge Ann Pfau is the current Chief Administrative Judge of the Courts for the state of New York, meaning that the OCA operates under her direction. Judge Pfau will be stepping down on December 1, 2011, and will be replaced by Judge Gail Prudenti. Judge Fern A. Fisher is currently the Deputy Chief Administrative Judge.

The Supervising Judge

The local judges at Brooklyn Housing Court also have significant decision-making power. Judge John Lansden is currently the Supervising Judge of Brooklyn Housing Court. He sits as a judge in landlord-tenant cases, but also oversees the day-to-day operation of the Court and potentially has the power to make some important changes.

Other Stakeholders

In addition to the OCA, there are several other groups which play an important role at Brooklyn Housing Court. One of these is a statutorily-created Advisory Council for the New York City Housing Court. This Advisory Council is comprised of three members representing landlords (including one representative for the New York City Housing Authority, which is a landlord) and three members representing tenants. On the Advisory Council there are also members representing civic groups and members from the public at large, as well as one Mayoral appointee, and the Commissioner of Housing and Community Renewal. The Council is supposed to meet at least four times a year and create an annual report to be submitted to both state and city government officials, but it does not always meet these goals.

Another group of note is Housing Court Answers (HCA). HCA runs a website with a great deal of legal information for unrepresented litigants and advocates, as well as information tables at each city housing court and a hotline for unrepresented litigants to ask questions and receive referrals to legal services providers. HCA provides assistance to approximately 800 unrepresented litigants in Brooklyn every month.

A Hard Road for Tenants

Although Housing Court allows for both tenant-initiated and landlord-initiated proceedings, Brooklyn Housing Court's primary function is to process evictions against tenants. Brooklyn Housing Court has approximately 10 courtrooms devoted to landlord-initiated evictions and only one courtroom devoted to tenant-initiated proceedings. In Brooklyn Housing Court between January and March 2011, for example, landlords filed 11,536 Notices of Petition (which begin the eviction process) while tenants filed only 1,049 first papers in HP Proceedings (where a tenant sues a landlord to obtain repairs). [1]

Most tenants at Brooklyn Housing Court face a fundamental disadvantage because of their lack of representation. The vast majority of tenants arrive at Housing Court without a lawyer, meaning that they are unrepresented litigants and must advocate for themselves. Almost all landlords at Brooklyn Housing Court, on the other hand, have legal representation. It is estimated that approximately 85% of landlords are represented in court, while 90-95% of tenants are not. [2] This creates socio-economic and racial disparities within the Housing Court system since large numbers of unrepresented tenants are low-income people of color, while represented landlords are more likely to be white and are frequently much wealthier than their tenants. Furthermore, a large proportion of unrepresented tenants have limited English proficiency and interpreting services at Housing Court are limited and usually strained by high demand. As a result, limited English proficient tenants face additional barriers to justice in the Housing Court system.

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Brooklyn Housing Court is located at 141 Livingston Street, a high-rise office building in downtown Brooklyn that houses the Kings County Civil Court system. Brooklyn's Housing Court is the second busiest in New York City, with only the Bronx surpassing it in the number of annual cases. [3] For the number of cases it handles, however, Brooklyn's facilities are grossly inadequate. Queens Housing Court, despite the smaller number of cases it handles, has amenities that Brooklyn does not, including a large 300-seat landlord/tenant courtroom.

Brooklyn Housing Court also has fewer judges per case than some other boroughs. For example, in the first three months of 2011, 12,585 cases were filed in Brooklyn Housing Court, while only 10,029 were filed in Manhattan. Despite the fact that Brooklyn handled over 2,000 more cases, it has only two more judges, resulting in an average caseload of 839 cases per judge in Brooklyn, compared to only 771 per judge in Manhattan. [4] Furthermore, at Brooklyn Housing Court there were 1,049 HP cases filed by tenants to obtain repairs in the first 3 months of 2011, whereas in Manhattan 459 such cases were filed. [5] Even though Brooklyn had 590 more HP cases filed in that period than Manhattan, both courts only have one HP judge each.

The large number of cases and comparatively small amount of space and staff at Brooklyn Housing Court means that there is insufficient judicial supervision of cases. Unrepresented tenants can frequently be found negotiating with landlord attorneys in the hallways. These negotiations are weighted heavily against unrepresented tenants and as the interactions are not subject to any court supervision, tenants can more easily be persuaded to accept agreements that disadvantage them. When tenants do enter a courtroom, they often receive minimal judicial attention.

Even when compared to other overburdened courts in New York City, then, it is clear that Brooklyn Housing Court faces serious problems. Tenants and advocates have long complained about their experiences at Brooklyn Housing Court, citing everything from judges giving landlords preferential treatment, to insufficient space in the courtrooms, to an excessive emphasis on settling cases. One story clearly illustrates just how extensively tenants have been disadvantaged in Brooklyn Housing Court. For years, Room 508 at the Court was informally called the “Gutman Mintz Room,” named after one of the largest landlord law firms practicing in Brooklyn Housing Court. Housing Court judges would regularly send tenants to this room to settle their cases with Gutman Mintz attorneys, creating the impression that the law firm was part of the court system, when in fact it is a private firm that should receive no special privileges. In 2007, when Judge Lansden was appointed Supervising Judge, he converted Room 508 into an open space where all tenants and landlords may meet. While this change represents an important step forward, this report will show the many ways in which landlords continue to enjoy a “home court advantage” in Brooklyn Housing Court.



The open space that was formerly Room 508, the “Gutman Mintz Room.”

Physical Environment

Pinned Against the Wall: the Lack of Space at Brooklyn Housing Court

Lack of space is a perennial problem at Brooklyn Housing Court, both inside and outside the courtrooms. This has a disproportionately negative impact on unrepresented tenants.

The courtrooms at Brooklyn Housing Court are so small that *The New York Times* once called them “outsized closets.” [6] As a result, litigants often do not have a place to sit. Judges and court officials have the discretion to order anyone standing to leave the courtroom, but those people who are asked to leave may be at risk of defaulting if their case is called and they are not present. The court has a check-in system, but tenants are not informed of this in advance. As a result, many tenants simply sit in the courtroom without checking in. If a tenant has not checked in and they are sent out of the courtroom, they will be at risk of being defaulted if their case is called. At the very least, they will have to wait much longer if they are not in the courtroom when their case is called. In the experience of MRNY attorneys, court officials routinely tell tenants to wait in the hallways when courtrooms become full. “The rooms are very small,” said Maria Cortes, a Brooklyn tenant and member of MRNY. “Not everyone can fit, but then people have to leave because you’re not allowed to stand up in there. If they call your case and you’re not there, they go on to the next case. I saw that happen to a lot of people.”

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This problem impacts tenants more than landlords because at Brooklyn Housing Court, unlike other Housing Courts in New York City, attorneys sit separately from others inside the courtrooms. While non-attorneys sit on benches in the gallery of the courtroom, there is separate seating reserved for attorneys closer to the judge’s bench. Landlord attorneys, therefore, almost always have space to sit. Even if a landlord is forced to stand outside, he or she will not miss the case being called because the lawyer will call the landlord back in. Unrepresented tenants, on the other hand, are frequently forced to stand outside due to the lack of seating, and often miss their case being called because they do not have a representative inside the courtroom.

Furthermore, much of the activity at Housing Court takes place outside of the courtrooms – negotiations between parties, lawyers consulting with their clients, tenants discussing their plans with family members, people waiting for their cases. On most days, Brooklyn Housing Court is overcrowded. Its narrow hallways, lack of open spaces and limited seating mean that it is poorly adapted for all this activity.



A crowded hallway outside one of the courtrooms at Brooklyn Housing Court

The problems associated with a court system overburdened by a high volume of cases are exacerbated by this lack of physical space. As one legal services attorney said, “A system geared toward high volume automatically puts tenants at a disadvantage; it’s not about justice or finding out what’s going on, but churning through the cases. Everyone is funneled out to the hallways where the landlords’ attorneys have a lot of power.”

The fact that most negotiations take place in the cramped and crowded hallways – primarily between landlords’ attorneys and unrepresented tenants – means that these cases are often settled with a lack of judicial oversight and with tenants literally pinned against the wall.

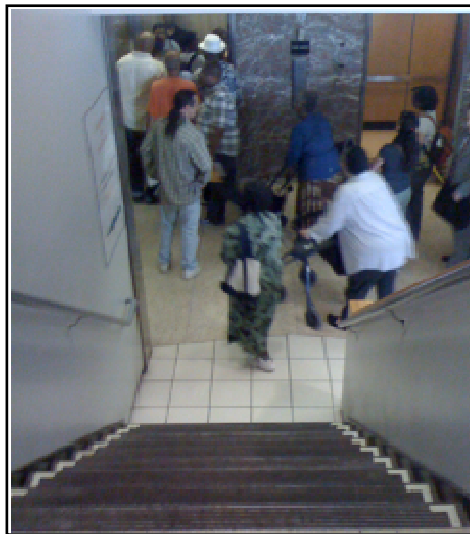
Aging Infrastructure and Inadequate Facilities

Brooklyn Housing Court is also plagued by aging infrastructure. The elevators, for instance, are so slow that many choose to take the steep, dark, dirty staircases instead. Those who are unable to climb five or six flights of stairs are forced to wait their turn for the small, slow elevators, often having to wait for two or three other groups to take the elevator first. This can mean a significant delay for litigants and sometimes makes the difference between checking in for a case on time or being defaulted. For many tenants with disabilities, taking the stairs is not an option.

Broken air conditioners, bad ventilation, and old, dirty bathrooms are also common at Brooklyn Housing Court, something not true of housing courts in New York City's other boroughs. The Queens Housing Court, for example, is located in a building that was completed in 1997, at a cost of \$67.7 million. [7] The Kings County Civil Courthouse at 141 Livingston was built in 1959, almost 40 years before either the Queens building and seems to have had minimal updating. [8]

New York City is responsible for providing the facility that houses the civil court (which includes Housing Court) in each borough. In Kings County this facility is not owned by the city, but rather, is a leased premises. At the time of writing this report, there was still approximately 2 years and 6 months remaining on the City's current lease of the premises.

The lack of modern facilities in Brooklyn Housing Court might represent only a small inconvenience if visits to Housing Court were short, but tenants are frequently required to be at Housing Court for hours at a time on multiple occasions.



Elevators in the lobby of 141 Livingston, too small and slow to fit all who need them

Accessibility

The fact that 90-95% of tenants arrive at Housing Court without a lawyer means that not only are most tenants disadvantaged inside the courtroom, but also that they are probably unfamiliar with the court and its services. Unlike the 85% of landlords who have representation, these tenants have no one to guide them through the Housing Court process. Brooklyn Housing Court's extremely confusing system of facilities and services, many of which are substandard, compounds this problem, making it even more difficult for tenants to make their way through the court system.

Lack of Signs and Clear Instructions

The lack of clear information is a key factor in making Brooklyn Housing Court such a difficult experience for tenants. There is not sufficient information available to ensure that unrepresented tenants will be able to navigate the Court effectively. Signage directing people to the proper floor or courtroom is inadequate, and it is frequently unclear where an unrepresented tenant should ask for help if confused.

The layout itself of Brooklyn Housing Court is confusing because the floors it occupies are not consecutive. The Landlord/Tenant Clerk's office is on the 2nd floor, as are the computers and copiers available for tenant use. However, courtrooms for both resolution and trial parts are located on the 4th, 5th, 6th and 9th floors, skipping the 3rd, 7th and 8th. This can be very confusing for someone who has never been to Housing Court before. Signage in the lobby to indicate which floors offer which services is extremely limited and the area where signs are located is often quite crowded, making the few signs that do exist difficult to see. Thus, a unrepresented tenant arriving at Brooklyn Housing Court for the first time is likely to be immediately confused by a question as simple as where to go.



One of the printouts outside of a courtroom



A sign indicating that a lettered part has switched

Once a unrepresented tenant finds the right floor, the next step in this confusing process is to locate the correct courtroom. Cases for each courtroom are listed on computer printouts posted on the walls in narrow hallways near that courtroom. A copy of each printout also hangs on the 2nd floor near the Clerk's office, indicating in which part each case will be heard. Even after a tenant manages to find these printouts, however, they can be difficult to understand. They are printed in light ink and frequently covered with handwritten notes that were scrawled after printing. After deciphering which lettered part a case is in (Part O or P, for instance), finding that part will not necessarily be easy. While the courtrooms are numbered, the parts are lettered, and the lettered parts frequently switch numbered rooms. It is not uncommon to find a handwritten sign taped to a door saying something like "All Part O cases in room 408 today," meaning that Part O has moved from its usual spot to a different room or even a different floor.

Another confusing aspect of this printout system is that litigants are required to look at the printouts not only to find out what room their case will be heard in, but also to get their case number. They then need to enter the correct courtroom, wait in line, and use the case number to check in. Information about this system is not provided to litigants before their court date. As a result, few, if any, unrepresented litigants are aware of this system until they reach the front of the line inside the courtroom. Some unrepresented litigants do not even

realize they need to check in and they simply sit down in the courtroom (if they are lucky enough to find a seat) and wait for their case to be called. Unrepresented litigants who fail to find their number and check in correctly run the risk of having their case defaulted. During a recent site visit to Housing Court, MRNY observed dozens of tenants enter courtrooms without case numbers, only to be told to go back outside and check the printout again. In none of these cases did the court clerk or officer help a tenant find the correct courtroom or case number.

Before unrepresented tenants even enter a courtroom or speak to a judge, initial disorientation and the lack of publicly available information create a disparity. Represented landlords have the advantage of an ally experienced with the ins and outs of Brooklyn Housing Court’s confusing system. Unrepresented tenants, on the other hand, must figure it out on their own, without sufficient signage or help from court staff to guide them. Brooklyn tenant and MRNY member Gladys Puglla said, “My landlord took me to court because he said I owed him rent. I went to Housing Court by myself. When I got there, I didn’t know where to go and there’s no one there to help you, to tell you where to go or what to do. There should be someone there to give people information.”

Language Access

MRNY members, many of whom are monolingual Spanish speakers, have consistently noted that language access is a problem in Brooklyn Housing Court. Although there are signs on each floor indicating that the court will provide language access services, the reality is that the availability of interpreters and the lack of information in languages other than English are extremely limited. This means that any Limited English Proficient (LEP) tenant who goes to Housing Court without an English-speaking friend, family member or advocate is likely to have a frustrating and intimidating experience. According to Ms. Puglla, Brooklyn Housing Court “is not an easy place to find justice” for non-English speakers.

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Spanish-English interpreters are supposed to be present in the courtrooms at all times, but since each interpreter is often assigned to more than one courtroom, they must move between rooms. This means that, at any given time, one room is without an interpreter. It is even harder to obtain interpretation services at the clerk’s desk, because Spanish-English interpreters are not permanently stationed there. Court staff can call interpreters from their offices, but there is no guarantee that an interpreter will be available.

Even more egregious is the situation an LEP litigant faces outside of the clerk’s desk or a courtroom, such as a hallway negotiation or finding a location inside the courthouse. During a recent visit to Housing Court, a MRNY advocate observed a monolingual Creole-speaking tenant sitting in the hallway. She was approached by her landlord’s attorney and instructed to sign something. The woman signed the document. Shortly thereafter, the case was heard by the judge. Through an interpreter, the tenant was asked by the judge if she acknowledged not paying rent for three months. The tenant responded that this was not true at all and began to pull her rent receipts from her purse. The judge verified that it was indeed the woman’s signature on the document. The tenant then protested that she had no idea that the person who had approached her in the hallway was the landlord’s attorney and that she had no way to read the document she was being asked to sign but felt pressured to sign it anyway.

While interpreters are theoretically available for situations such as this, the reality is that it would be almost impossible for an LEP individual to find an interpreter. Signs that direct LEP litigants to an interpreters’ office

say “We speak your language” in over 20 different languages, but say “For Court Interpreter Information Go to Room 201” in English only. An LEP tenant who does go to Room 201 is confronted by a sign that states (in

English) “Interpreters’ Office, Employees Only.” During a recent visit to housing court, when a staff person emerging from the office was asked if an advocate could enter the office to make an inquiry about interpretation services, the staff person replied “What’s the question?” and responded in the hallway rather than inviting the advocate into the office. By all appearances, that office is not accessible to the public.



Sign on the door to the interpreters’ office, stating that access is for “employees only”

The situation is even more daunting for LEP tenants who speak a language other than Spanish. Interpreters for languages other than Spanish are not available at Brooklyn Housing Court every day. Mandarin interpreters, for example, are only available two days a week, but it is not clear how a Mandarin speaker would know this ahead of time. When asked what would happen if a Mandarin speaker arrived at Brooklyn Housing Court on a day when Mandarin interpreters were not present, staff at the clerk’s desk confirmed that the person would simply have to go home and return another day. For tenants who must file answers by a deadline or seek Orders to Show Cause to prevent eviction, this is a dangerous situation.

Another problem with language access at Brooklyn Housing Court is that most signs are not translated into any language other than English. Some are only partially translated into Spanish and almost none are translated into languages other than Spanish. The signs that do contain a partial Spanish translation, such as the sign directing individuals to the NYC Housing Court website, are not even the signs with the most relevant information for unrepresented tenants.

The signs with some of the most important information are only in English. These include:

- signs with instructions about where to file an answer and where to pay court fees
- signs that point to the daily part calendars, which tell unrepresented tenants in which room and at what time their case will be heard
- signs that explain how to use the numbers on the part calendars to check in at the correct courtroom
 - signs that say which floors have public restrooms and explain how to get to the Housing Court’s one changing table
 - each part’s rules, which are posted outside the door to the courtroom



English-only signs directing unrepresented litigants to important services

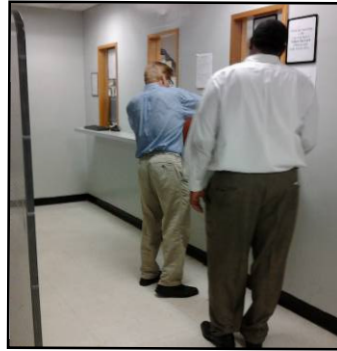
There is also a notable lack of forms available in languages other than English, meaning that an LEP individual must rely on the help of an interpreter to file answers and fill out other documents. The Help Center’s informational booklets are available in Spanish upon request, but there is no signage to inform Spanish speakers of this.

For someone who does not speak or read English navigating Brooklyn Housing Court as a unrepresented tenant is a daunting task. Ms. Cortes advised, “You should always go to Housing Court with someone who speaks English because it’s hard to get information in Spanish. The few employees who speak Spanish are always busy because there are so many people.”

Unequal Access to Information and Services

At Brooklyn Housing Court, lawyers have much easier access to needed information and services than unrepresented tenants. This is ironic, since lawyers generally have less need for assistance than unrepresented tenants.

An example of this disparity is access to the Clerk's Office. Unrepresented litigants must wait in a long line to get the information or services they need. Attorneys, on the other hand, can skip this line and go to a separate window, where they only have to wait a few moments or not at all. Although it is reasonable for attorneys to be able to file papers and access information quickly, the fact that unrepresented litigants have to wait in a long line and attorneys do not translates into a disparity between tenants and landlords, since landlords are almost always represented by an attorney and tenants usually are not.



Left: the unrepresented litigants' very long line for the clerk's desk Above: the attorneys' line, with only one per-

Inadequate Attention from Court Staff

Another challenge for unrepresented tenants needing information is that they are often treated poorly by court officials. This leaves tenants feeling intimidated and disempowered, discouraging them from seeking the information they need from the people who have it. Even if a unrepresented tenant is able to find a staff person who is willing to help them, there is no guarantee this help will be efficient or effective. Tenant advocates regularly experience instances where court staff are not knowledgeable about the laws with which they are dealing. MRNY attorneys, for instance, have observed staff refusing to file answers that are legally allowed, and our office regularly receives reports of clerks refusing to mark relevant defenses when helping tenants fill out unrepresented answer forms. One tenant advocate interviewed for this report attempted to file an answer with a unique defense. The clerk told him that he could not file the answer, despite it being clearly permissible by law. The clerk suggested that the advocate speak to a lawyer at the Help Center. Ultimately this advocate was able to speak to a supervising clerk and file his answer. However, he wondered if a unrepresented tenant – especially one with limited English proficiency – would have had the same success.

Mistakes like these can wreak havoc for the many tenants who come to Housing Court without a lawyer and with little or no knowledge of court procedures.

Technology and the Help Center

Brooklyn Housing Court has a Help Center which offers litigants free legal information and assistance. The Help Center has free brochures, pamphlets, and booklets on various legal topics; computers with free internet for legal research and do-it-yourself legal forms; videos and community seminars; and information about legal help, rental help and social services.

The Help Center at Brooklyn Housing Court is a valuable resource for unrepresented litigants but could be improved in several areas. One problem is that it is difficult for unrepresented litigants to get actual legal advice. Although the Help Center has court-employed attorneys on staff, these attorneys cannot offer legal advice because that would violate the neutrality required of the court. The Help Center also has volunteer attorneys who can offer advice, but these attorneys are rarely available. According to the Brooklyn Housing Court's website, for example, there were only three days in the month of July 2011 when a volunteer attorney was available at the Brooklyn Help Center. The difficulty in accessing free legal advice at the Brooklyn Help Center has a disproportionate impact on tenants, as it is predominantly unrepresented tenants who most desperately need this help.

A second problem is the lack of informational materials for unrepresented tenants. The court has produced two useful informational guides for unrepresented tenants: the Tenants' Rights Guide and the Tenant's Guide to New York City Housing Court. However, a site visit by a MRNY advocate found that on that particular day, there was only one ripped copy of the Tenants' Rights Guide available, and no copies of the Tenant's Guide to New York City Housing Court. On the other hand, there were numerous copies of the Landlord's Guide to New York City Housing Court available.

Another problem at Brooklyn Housing Court is the lack of up-to-date technology. For instance, the available photocopiers throughout the court facility are old and in poor condition. If a photocopier is not working or is out of paper, court staff cannot do anything to remedy the situation. Multiple signs around the photocopiers state that they are "privately owned" and that if they are not working, copies should be obtained from a private snacks vendor on the first floor. It is not uncommon for there to be one or more copiers out of order, long lines at the remaining working copiers, and tenants roaming from floor to floor in search of a working copy machine. Signs posted in the Help Center make it clear that in order to receive assistance with filling out legal forms, one must make copies first, making the questionable quality of the photocopiers a significant barrier for unrepresented tenants.

Childcare

Free childcare in courts is essential to ensure that parents are able to properly participate in their cases. The lack of childcare means that many parents must care for children at the same time as engaging with complex legal processes that have life-changing consequences. This is especially the case for unrepresented litigants, who have no one to guide them through the legal system. Many of the unrepresented tenants in Housing Court are low-income parents who cannot afford to pay for childcare even while in court to protect something as fundamental as their housing. It is therefore particularly concerning that Brooklyn Housing Court does not offer childcare.

Until last year, when the state budget reduced the Court's funding and the OCA cut childcare services, all the other Housing Courts in New York City except for Brooklyn and Staten Island provided childcare. Free childcare is still provided in the Brooklyn Family and Criminal courts. Brooklyn Housing Court, on the other hand, has never provided childcare. Children can be found inside the courtroom and trying to play on the floor of already overcrowded hallways. Furthermore, there are no changing tables in the restrooms. In fact, there is only one changing table in the entire Housing Court, and it is quite difficult to find. It is located inside of a courtroom, in a small adjacent space that cannot be accessed without going through the courtroom first. For unrepresented tenants who must wait for hours and who are worried about what will happen if they are not in the correct courtroom when their case is called, this is grossly inadequate. On a recent site visit, a MRNY advocate observed one mother changing her child's diaper on a bench in a courtroom.

The lack of childcare creates significant obstacles. As unrepresented tenants attempt to negotiate with landlord attorneys, they are often distracted by children who are vying for their attention or crying and asking to go home. There is a lack of seating and children cannot stand all morning. This makes it even more difficult for a unrepresented tenant to get a fair chance in hallway negotiations, and it is not uncommon to see tenants with children agreeing to deals that disadvantage them just to get their children out of the court building more quickly. Some landlord attorneys threaten to keep tenants waiting there all day if they do not agree to a particular deal, putting tenants with children in an almost impossible situation and forcing them to agree to things they know are to their detriment.

Disability Access

Brooklyn Housing Court is an inhospitable place not just for LEP individuals and litigants with children, but also for people with disabilities. For a person with a disability, the space at 141 Livingston is extraordinarily difficult to navigate. The inadequate elevator service means that a person unable to climb stairs will likely take a long time to move between floors, a problem exacerbated by the fact that the Court's rooms and services are split between many floors. Maria Elena Khochaiche, a Brooklyn tenant and member of MRNY, noted that while she was in housing court recently: "So many people were trying to get into the elevator that they were falling on top of a woman in a wheelchair who was also trying to get in the elevator. We eventually took the stairs, but people in wheelchairs and elderly people using a cane have no choice but to wait for the elevator." The floors themselves are difficult to navigate, especially for a person in a wheelchair. The hallways are so narrow and crowded with people that it is nearly impossible for a wheelchair to pass through them. Although there are disability restrooms available on each floor, they are locked and cannot be opened without the assistance of court staff, who are difficult to find and often too busy to provide assistance.

In addition to the physical inaccessibility, tenants and advocates note a consistent lack of sensitivity displayed by court officers towards litigants with disabilities. One legal services attorney recounted how judges often do not want to grant adjournments, even if a tenant suffers from a mental disability and needs a Guardian Ad Litem to protect his or her housing. Even in cases where it is clear that a disabled litigant requires certain concessions, it is common for those needs to be ignored in favor of churning through cases more quickly. When a MRNY advocate requested information on accommodations made for litigants with disabilities, or the possibility of expediting the case of a disabled person unable to remain in court all day, she was told that the disabled litigant should simply show up on her court date and request to be placed first on the schedule at the clerk's office. Arrangements could not be made in advance.

Although court staff persons indicated that accommodations could be made when requested at the clerk's desk, anecdotal evidence shows otherwise. Take, for instance, the case of Marguerite Dingle, who receives Social Security Disability benefits. Because of her medical condition, the lack of proper ventilation in Brooklyn Housing Court makes her hyperventilate. After one visit to the Court, Ms. Dingle ended up in the emergency room. She returned later with a doctor's note stating that her medical condition requires her case to be heard immediately. Despite this note and her numerous trips to Housing Court, she has never felt that her medical situation was taken seriously. "There is no consideration given to the fact that disabled patients have conditions that need to be addressed," said Ms. Dingle. "We should be expedited. Concessions are given in other situations; why not in Housing Court?" When MRNY interviewed Ms. Dingle, she had been trying to resolve her non-payment court case for weeks. On the day MRNY spoke with her, Ms. Dingle arrived at Housing Court at 8:30 am. She did not have a lawyer. After waiting for over an hour to speak with a Help Center attorney, she was told to call another number for assistance. She was finally told to go to the fourth floor, where she approached the clerk twice, but the clerk refused to look at her paperwork. The general attitude of the staff at Housing Court, Ms. Dingle said, is: "Sit outside and wait your turn." When MRNY spoke with her at 11:30 am, she was sitting on a bench in the hallway of the fourth floor. "I'm sitting here indefinitely," she said.

"There is no consideration given to the fact that disabled patients have conditions that need to be addressed"

Respect and Impartiality

Tenants as well as tenants' advocates and attorneys who have spent time in Brooklyn Housing Court consistently acknowledge that there is a culture of disrespect towards tenants. Tenant advocates report that court staff frequently use curt language with unrepresented tenants and that it is not uncommon for clerks to lose patience with tenants who make mistakes or fail to understand something. Ms. Khochaiche described an incident that occurred while she was in housing court recently. "A woman was in the hallway looking for her name on the list. She couldn't find her name because the letters are so small. She asked a staff person for help and the staff person yelled at her, 'Your name is right there, can't you see it? What's wrong with you?' She treated the woman like she was stupid and she was so rude that the woman started to cry. It was a real shame." MRNY advocates routinely see court staff shouting at unrepresented tenants, including yelling at them at close range and shouting commands at them across rooms and hallways. There is an observable lack of respect for unrepresented tenants that seems to permeate the culture at Brooklyn Housing Court. This underlying bias can make an already difficult experience for a unrepresented tenant even more disempowering.

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Judges in Court

Judges are responsible for guaranteeing impartiality in their courtrooms and should be held to the highest standard of neutrality. And yet, tenants' experience of judges in the Brooklyn Housing Court is often one of bias against them as tenants coupled with preferential treatment of landlords and their attorneys.

Judges are legally obliged to ensure that all litigants understand the stipulations to which they are agreeing. When judges approve stipulations or settlement agreements between landlords and tenants, however, they rarely ask questions or investigate the facts to ensure that the stipulation is fair. Rather, they simply read the agreement to the tenant, sometimes in slightly simplified language, but often not. They will then ask the tenant if he or she understands. An exhausted, intimidated, unrepresented tenant is likely to answer affirmatively, whether they actually understand or not. Oftentimes these stipulations contain unconscionable clauses that give the landlord a clear and unfair advantage. Many judges, however, do not bother to acknowledge or pursue such issues, taking the tenant's "yes" at face value and moving on to the next case.

A related problem is that orientation speeches, which are meant to be given by judges at the beginning of each session to explain the process that is about to take place, are not always given. This has little effect on a represented landlord, but it could have a significant impact on a unrepresented tenant's understanding of the legal proceedings.

Finally, some judges are seen as dismissive or condescending to unrepresented tenants. Some judges assume that all litigants will understand legal language and then become visibly frustrated when unrepresented tenants do not. According to Ms. Puglla, "Many of the judges tend to look down on tenants. As a tenant in Brooklyn Housing Court, the judges make you feel like the landlords are more important than you." From the point of view of a unrepresented tenant, this kind of treatment is further confirmation that they are not receiving the same "justice" in the Brooklyn Housing Court as their landlord.

Greater Delays in Tenant-Initiated Cases

The system of trial allocation in the HP Part, where tenants bring cases rather than landlords, also disadvantages tenants. When they are ready for trial, cases brought by landlords may go to one of five trial parts in the Brooklyn Housing Court. Cases brought by tenants in the HP Part, on the other hand, must remain in that part, where the court also has a long list of new cases on its calendar most days. This has created significant delays in the HP part and it means that tenants must sometimes wait for months for their HP case to finish trial, even when the case involves dangerous or unsanitary conditions or ongoing harassment.

Treatment of the Landlord Bar

Despite tearing down the walls in Room 508 and making what was once informally designated space for a landlord law firm into an open seating area, the judges and staff at Brooklyn Housing Court continue to treat landlords' attorneys differently than tenants and tenant advocates. For instance, landlord attorneys have laid claim to space in court that should be decidedly neutral, receiving permission to settle cases in back rooms behind judges' benches. Legal Services attorneys from South Brooklyn Legal Services complained about this issue in a letter to Judge Lansden approximately two years ago, and, as a result, this privilege was formally withdrawn. In practice, however, it is still common to see landlord attorneys sitting in side rooms, receiving tenants as if the room was their office. Another example is the fact that lawyers are given special seating inside of the courtrooms. Since landlord attorneys far outnumber tenant attorneys, this functions as a privilege given to landlords and not tenants.

As previously described, Housing Court has a check-in system for all cases. When parties do not check in by the cut-off time designated by the specific rules of each courtroom, they will be defaulted and will lose their case. In practice, however, this rule is not enforced equally against both landlords and tenants. Tenants who fail to check in on time are almost always defaulted right away, including in situations where the tenant does come to court but arrives late. In the experience of MRNY lawyers, however, landlord attorneys who do not check in on time are given privileges including reminder calls by court officials to see where they are; court officials may mark them as having checked in because they saw them earlier that day; and court officials will give them extra time by allowing them to check in after the cut-off time. This disparate treatment grossly disadvantages unrepresented tenants. Tenants may face eviction from their homes as a result of lateness, whereas landlords usually face no consequences.

When landlord attorneys receive special privileges in Housing Court, it also gives the impression to many tenants that those attorneys are in some way part of the court apparatus. Special seating and special offices are usually reserved for members of court staff, not the private bar. And since these privileges are not clearly labeled (unlike, for example, the office assigned to the Legal Aid Society, which is clearly labeled), the role of the people receiving these privileges remains unclear to tenants. Unrepresented tenants who think that landlord attorneys are part of the court apparatus and do not realize that they represent the interests of their landlord are much more likely to enter into agreements with those attorneys that are disadvantageous or one-sided. The use of pre-printed stipulation agreements by landlord attorneys compounds this problem. When a pre-printed stipulation is used, unrepresented tenants are more likely to think that the language included is “standard” or that the agreement is a court pro forma. Thus, they will more readily agree to things that are to their own detriment.

The fact that landlord attorneys are given special privileges compounds the many other inequalities that unrepresented tenants face. As long as the landlord bar receives special treatment, however informal, tenants will not be receiving the fair treatment they deserve.

Conclusion

The power differential between landlords and tenants is one of the defining dynamics at Brooklyn Housing Court. As this report has demonstrated, unrepresented litigants, almost all of whom are tenants, face a myriad of obstacles and inequalities at Brooklyn Housing Court, including problems with the physical environment, inadequate access to information and services, and disrespectful treatment of tenants. “I know how to stand up for myself, but tenants who don’t know how to defend themselves, their rights get trampled,” said Ms. Cortes. Tragically, this sentiment is all too common. MRNY’s experience working with tenants, both represented and unrepresented, has made it clear that their primary experience at Brooklyn Housing Court is that it is simply unfair. The irony, of course, is that a court is designed as a place where justice is to be served and yet, for tenants, justice is hard to come by at Brooklyn Housing Court.

“I know how to stand up for myself, but tenants who don’t know how to defend themselves, their rights get trampled”

Recommendations

Given that the vast majority of tenants do not have access to legal representation, there is a systemic disadvantage in Housing Court that has not been addressed here, as it is beyond the scope of this report. Nonetheless, there are measures that could be taken to improve unrepresented tenants' experience of housing court and lessen the effects of that systemic disadvantage without requiring legislative or systemic change. In addition, while most unrepresented litigants are tenants, unrepresented landlords face some of the same challenges as unrepresented tenants, and would benefit from many of the recommendations suggested in this report.

While the struggle to achieve justice for low-income people in the civil court system will be a long one, the first step is to treat all parties with the same respect and provide them with the same opportunity to be heard. Simple changes to the environment and day-to-day practices at Brooklyn Housing Court would make it more accessible, respectful, and fair. If implemented, the following recommendations would lessen the massive disadvantage unrepresented tenants currently face at Brooklyn Housing Court and give them a fairer chance at obtaining justice.

PHYSICAL ENVIRONMENT

1. When the current lease expires, Brooklyn Housing Court should be moved to a modern space that is appropriate for a court facility. The OCA should require that the City provide a contemporary, well-suited facility for Brooklyn Housing Court.
2. While the existing space remains in use, the OCA should take the following measures:
 - a. Reduce the overcrowding in hallways by allocating more space for people who are waiting and negotiating.
 - b. Eliminate the overcrowding in courtrooms by capping the number of cases in each courtroom on a given day. All people with cases in a given courtroom should be able to be seated within that courtroom.
 - c. Capital improvements should be made to bring the facility up to date. In particular, the elevators should be repaired so that all are in working order and the bathrooms should be modernized.
 - d. More seating should be installed in the hallways and waiting areas.

ACCESSIBILITY

Information for Unrepresented Litigants

3. Before the first court date in their case, all litigants should be provided with written information telling them the location of their courtroom and explaining the calendar and check-in system, defaults, and court resources.
4. The signage at the court should be improved so that it adequately shows the location of the various parts and clearly explains court processes.

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5. There should be a clearly-signed information desk on the first floor, staffed by court-personnel who can direct people to the appropriate court rooms and court resources. There should also be an informational directory posted by the elevators.
 6. Clerks, in particular those taking unrepresented Answers, should be trained and equipped to provide accurate information and to record all defenses raised by respondents, including recording all details of such defenses that are provided by respondents. All clerks should be trained in court systems and procedures and the Court should ensure that systems and procedures are implemented consistently throughout the Court.
 7. Unrepresented respondents should be provided with the Answer form while they are waiting to speak with the clerk to file their Answer.
 8. A high standard should be consistent throughout all the court's sample forms. The forms should be audited and those that fail to provide direction to unrepresented litigants should be improved.
 9. All judges should give an address at the commencement of each session, informing litigants of the rules of the part, where they can obtain assistance, and providing other relevant information. This address should be the same in all courtrooms and should be developed in collaboration with community members and organizations.

Language Access

10. Training should be provided to all court interpreters regarding what is required of an interpreter in the court context and what conduct is inappropriate. All court interpreters should be made aware that they must interpret everything said to and by a litigant, that they must not provide legal advice, and that they must not influence a litigant to sign or not sign an agreement.
11. Interpreters should be provided with a card explaining their role and responsibilities as an interpreter which they should hand to each person for whom they provide interpretation services.
12. All persons attending the clerks' office who require interpreters should be informed of their right to have an interpreter and provided with an interpreter whenever requested. On-site interpreters should be made available as soon as possible, taking into account case deadlines. In the event that an on-site interpreter who speaks a litigant's language is not present, the court should use a telephone interpreter to provide the person with preliminary information, including informing the person when they can return to be assisted by an on-site interpreter.
13. Clerks should be trained to recognize when an interpreter is required and should apply the standard liberally so as to promote equal access to justice.
14. All signage in the court building should be translated into the six languages most commonly spoken in Kings County.
15. All court forms and informative materials should be translated and available in the six languages most commonly spoken in Kings County.

Services for Unrepresented Litigants

16. The court should provide free childcare.
17. The Help Center should have attorneys who can provide legal advice and interpreters available for LEP litigants every day of the week.
18. Technology available to litigants should be improved. The court should ensure that all public photocopy machines are in working order. The number of computers available to unrepresented litigants should be increased and staff should be appointed to explain their operation to litigants.

Disability Access

19. All physical spaces at the court should be made accessible to people with disabilities.
20. Handicap accessible bathrooms should be unlocked, or instructions for easy access should be posted on each door. These bathrooms should not be reserved for staff use.
21. Court procedures should accommodate people with disabilities. In particular, cases should be scheduled to accommodate people's access-a-ride needs. The cases of litigants with disabilities, as well as elderly litigants and those with small children, should be given priority.
22. There should be a procedure for homebound litigants to answer and participate in their cases so that defaults are not entered for failure to appear in person. Notice that this accommodation is available and the procedure for accessing it should be included in the standard language of the Notice of Petition.

RESPECT and IMPARTIALITY

Treatment of Tenants in Housing Court

23. The court should adopt and enforce a Code of Conduct which outlines how court staff are to treat litigants and the redress available to litigants if those standards are not met. The Code of Conduct should be visible in all court rooms and hallways.
24. Court staff should receive ongoing professional development opportunities that emphasize cultural sensitivity and respectful service provision.

Judges

25. All judges should allocute stipulations by explaining the legal language contained in the stipulation and also the consequences of the agreement. Judges should ensure that litigants understand the stipulation before approving it.
26. When allocuting pre-printed stipulations, judges should confirm that tenants realize that the stipulation is not a court-authorized pro forma and that none of the terms are "standard" or non-negotiable.
27. Judges should not approve stipulations that are patently one-sided or disadvantageous to unrepresented litigants.

Impartiality

28. The court should eliminate all arrangements that privilege landlord attorneys or that give the impression that landlord attorneys are part of the court apparatus. This includes the practice of allowing landlord attorneys to base themselves in rooms to the rear or side of the judge in order to negotiate with tenants.
29. All litigants and attorneys should be treated equally in the check-in process. Tenants should not be defaulted with greater frequency and court officials should not record “check in’s” for landlord attorneys who have not actually checked in.
30. The division of seating, whereby attorneys may sit in the well while non-attorneys must sit in the gallery, should be eliminated. Attorneys should sit in the gallery with other litigants while waiting for their cases to be called.
31. HP cases that are ready for trial should be sent to the Court’s trial parts, rather than keeping them in the HP Part where there are significant delays.
32. Judges should give equal time and attention to developing their relationship with the tenant bar as they do with the landlord bar.
33. The Administrative Judge should take tenant advocacy organizations’ requests into account when choosing the three tenant representatives on the Judicial Advisory Council.

Endnotes

1. New York City Civil Court System Statistics (2011), available at: <http://www.nycourts.gov/courts/nyc/housing/statistics.shtml>
2. Harvey Gree, From Hallway Corridor to Homelessness: Tenants Lack Right to Counsel in New York Housing Court, 17 Geo.J. Pov.L.P'ly 87, 88 (2010).
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4. Id.
5. Id.
6. Clyde Haberman, "For Housing: Civil Court, Chaos Part," N.Y. Times, 5/30/97, at B1.
7. New York City Civil Court Housing Part, "Queens Civil Court," <http://www.courts.state.ny.us/courts/nyc/housing/queenshistory.shtml>
8. DCAS Managed Public Buildings, "Brooklyn Civil Courthouse," http://www.nyc.gov/html/dcas/html/resources/brook_civilcourt.shtml