
DETROIT CODE ENFORCEMENT AND THE HOUSING COURT DEBATE

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Judicial and administrative enforcement of housing codes in Detroit is similar to the pattern found in other major American cities. It is therefore not surprising that Detroit is carefully evaluating the strengths and weaknesses of housing courts as a possible answer to its current enforcement problems. This Article will attempt to outline the existing enforcement situation, assess the probable effect of a housing court and sound a call of caution to those rushing headlong into housing court reform.¹

I. JUDICIAL CODE ENFORCEMENT IN DETROIT

In Detroit, as in many other cities, housing codes are enforced in three different ways in three different courts. The three courts involved are the traffic and ordinance court which hears city ordinance violations brought by the building department; the County Circuit Court, the general trial court with equity power which hears injunctive suits to

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1. There appear to be two types of courts generally referred to as housing courts. In the first instance, a division of a court system will hear all housing cases. The landlord-tenant court discussed below is an example of such a "housing court." The second type refers to a court which holds civil, criminal and equitable powers and is mandated to hear nearly all housing-related cases. This latter type of unified court is usually the kind envisioned as a "housing court," and it is this definition of the term "housing court" that is used throughout this Article.

enforce the code, applications for receiverships and the like; and the landlord-tenant court which hears eviction cases.

The City Ordinance Court

This court is formally known as the Traffic and Ordinance Division of Recorder's Court. The division hears minor criminal and ordinance violations, mostly traffic cases. It consists of three elected judges and nine referees appointed by the judges. The referees generally hear the case initially, with an appeal by a trial *de novo* before a judge. The housing cases are heard one day per week by one referee and the referees assigned that task rotate on a fairly regular basis.

In 1968 the state legislature eliminated criminal penalties for violations of the state housing code and, instead provided for enforcement through injunctive actions, receiverships and city-operated rent escrow accounts.² The change did not deter municipalities, including Detroit, from relying upon the traditional criminal fine approach, however. Cities simply charge the owner with a violation of the city housing ordinance which is almost identical to the state code except that it contains criminal penalties. Thus, they have continued business as usual, relying upon voluntary cooperation, with criminal sanctions and fines if all else fails.

Over the past ten years several task forces and citizens' panels have studied the enforcement system and each has pointed to the same roadblocks:³

2. See MICH. STAT. ANN. § 5.2891(14), (16) (1976), which authorize preliminary and temporary injunctive relief during the pendency of the action and permanent injunctive relief for an occupant for correcting conditions found to be in violation of the code.

The Michigan Housing Law authorizes the court in its discretion to appoint a receiver. The purpose of the receivership is to repair, renovate and rehabilitate a building so as to make it comply with the standards as set forth in the act. MICH. STAT. ANN. § 5.2891(15)(3) (1976).

The provisions of the housing law also require that any rent due during the period in which the court has ordered the payment of rent to be suspended be paid into an escrow account. The funds go to defray the cost of repairs made on the building. MICH. STAT. ANN. § 5.2891(10)(4) (1976).

3. The *Report on Housing—Urban Renewal*, by the Commission on Community Relations, published in 1967, noted that the problems "all generally revolve around the length of time between initial discovery of a violation and the abatement of it, or prosecution in court." The report referred to studies and city statistics demonstrating prolonged delays before cases were referred to court, concluding:

It is clear that cases of actual violations go unabated and unprosecuted for periods many times greater than that specified on the violation notice which threatens court action. . . .

- a. excessive reinspections and delays before a case is referred to court
- b. lengthy adjournments granted by the courts
- c. failure of the court to use variable fines or imaginative sentencing to secure compliance and deter violators.

Recent studies of the building department reveal the same difficulties. The studies reflect, for example, that on the average it takes eighteen months before a case is referred for court action. The city, in a recent proposal seeking funds to study the feasibility of a housing court, noted that once a case goes to court, it "routinely" took two months to be placed on the docket and another eighteen months before final adjudication. The proposal also noted that the amount of the fines imposed has been steadily decreasing for several years.

In summary, the problems with the current enforcement procedure, which relies upon the ordinance court, stem from administrative and judicial delays and a failure to use current sentencing powers in a constructive manner. It is important that these conclusions be kept in mind when evaluating the benefits of a housing court.

County Circuit Court

The circuit court for Wayne County, which includes Detroit, consists of twenty-seven judges. As the trial court with equitable powers, it hears injunctive suits requesting repair orders, receiverships and repair and deduct orders. No judge is assigned specifically to hear housing cases, and all are assigned on a "blind draw" basis.

The "blind draw" system assures that no single judge hears so many cases that he or she becomes hardened to the plight of tenants. However,

This situation stems from (1) the number of reinspections made on a dwelling, and (2) the lack of absolute maximum limits on the time a case can be held before court prosecution is initiated.

Id.

Later studies included in the Mayor's Development Team Report to Mayor Cavanaugh, after confirming the earlier conclusions, also found that court action was "both inadequate and ineffectual," hampered by delay in scheduling, ineffective fines and failure to use fines to coerce compliance. The report recommended:

that the Common Council adopt an ordinance that requires prosecution of all code violations within a specified number of days after serving of the violation notice. Fines to be levied should reflect the severity of the violation, the number of dwelling units involved, the length of time after the "grace period" the violation has persisted and the property owner's previous record.

Id.

For a thorough review of the present system, see Dick & Pfarr, *Detroit Housing Code Enforcement and Community Renewal: A Study in Futility*, 3 J. LAW REF. 1 (1968).

the benefit of this system is more than offset by the lack of expertise in housing problems and the absence of staff to assist in such cases. Various judges have, in addition, admitted that they do not wish to be involved in landlord-tenant cases; such cases should not waste their time, but should be heard in the lower court. Very few cases are actually brought in circuit court because affirmative relief is time-consuming and difficult to initiate. Tenants find it easier to withhold rent in order to force repairs or get a rent reduction, or to use the city escrow account if the building has no certificate of compliance.⁴ Similarly, the building department finds it far easier to initiate a criminal action.⁵ Thus, the only cases generally brought are those where utilities have been cut off and where interim injunctive relief is required.

Landlord-Tenant Court

Eviction cases in Detroit are heard by the common pleas court, landlord-tenant division. The common pleas court consists of nine judges who hear damage cases of under \$10,000, replevin actions and eviction actions. Two judges sit for a month at a time on a rotating basis in the landlord-tenant division. The judges sitting in this division are located in a separate building from most other judges, and the division has its own docket and clerks. The average daily docket is in excess of one hundred cases and includes possessory actions arising out of tenancies, land contracts and mortgage foreclosures, trespass actions and actions by estates.

The landlord-tenant division, like other lower level courts with huge

4. State law provides that where a building is seriously substandard, the city shall revoke the certificate of compliance and all rents must be paid to a city escrow account until repairs have been completed. See MICH. STAT. ANN. § 5.2891(10) (1976).

This remedy has not been publicized and the city discourages its use. When used, however, it has been extremely effective. Reform in this area, creating internal administrative enforcement powers, is beyond the scope of this Article, but presents a more important tool for code enforcement than reliance upon a cumbersome judicial approach.

5. Rather than go through the cumbersome process of initiating an injunctive or equitable remedy, Professor Grad points out that it is much easier to go by the way of a criminal action because of the ease with which a complaint may be drawn up. In many jurisdictions a form for a criminal complaint is available with an established coded system referring to possible violations which facilitate further the filling out of the complaint. See Grad, *New Sanctions and Remedies in Housing Code Enforcement*, 3 URB. LAW. 577, 580-81 (1971).

caseloads, has not avoided criticism.⁶ The criticisms are not unlike those of other courts handling eviction cases: judges who favor landlords, quick hearings, and a high level of defaults. Where there are code violations, rent reductions provided by state law are given in only a small percentage of cases since most tenants fail to appear or, if present, fail to raise an appropriate defense. In some cases the court, lacking clear authority, requires repairs to be made yet, given the high rate of defaults and the failure of unrepresented tenants to raise proper defenses, the number of cases where landlords are called to the carpet for code violations is extremely small. In short, many people view landlord-tenant court as an "eviction mill," providing neither careful consideration of each case nor an aggressive approach to code enforcement.⁷

II. THE CALL FOR A HOUSING COURT

Given the ineffectiveness of the ordinance court, the non-use of injunctive remedies by tenants and the building department, and the apparent failure of the landlord-tenant court to seriously affect code enforcement, it is not surprising that several groups have called for establishment of a unified housing court. The general outline of the proposed court calls for county-wide jurisdiction for all housing cases, including eviction actions, code enforcement suits, condemnation cases, and the like.

The court would consist of one or more judges, perhaps several hearing officers, and an experienced staff of housing experts to assist the court in its deliberations. The court would be able to combine cases of different tenants in the same building, join code enforcement cases with eviction cases, expand pending cases into building-wide inquiries, appoint receivers where necessary and provide technical assistance to landlords.

The plan, commendable in scope, has been attacked by several persons as unrealistic and impracticable. In general, although the concept of a housing court looks fine on paper, it simply will not work in reality. Any solution to housing code enforcement must, of course, be practicable or

6. See Mosier & Soble, *Modern Legislation, Metropolitan Court, Miniscule Results: A Study of Detroit's Landlord-Tenant Court*, 7 J. LAW REF. 9 (1973); Rose & Scott, "Street Talk" *Summonses in Detroit's Landlord-Tenant Court: A Small Step Forward for Urban Tenants*, 52 J. URB. LAW 967 (1975).

7. For a thoughtful discussion of why rent withholding will not be a major factor in code enforcement, see Rose & Scott, *supra* note 6, at 979-86.

great amounts of time and energy will be wasted, and the call for reform placated, without any significant change in the code enforcement process.

III. THE NEED FOR LOCAL ASSESSMENT

The apparent success of some housing courts, particularly the Boston Housing Court, has led many to hope that such courts would solve present enforcement problems. However, even Judge Garrity of the Boston Housing Court cautions that local needs must first be assessed.⁸ Certainly it is hard to resist a call for massive reform when a system is as ineffective as the present one, but several factors in Detroit indicate that an alternative solution is needed. These factors are delineated here as an example of the type of local assessment that should be undertaken. They involve an analysis of the underlying assumptions in the proposal, the practical problems and the degree to which the proposal actually meets current problems.

Underlying Assumptions

There are two interrelated assumptions painfully evident in all discussions of the proposal for a housing court. They are first that current problems result from the lack of judicial power to coerce compliance, and second, that given those powers, the judges would use them. In fact, judges and referees have the ability, through the use of suspended sentences and probation conditioned on compliance, to achieve the desired result. In the past, one Detroit referee approached cases in just such a manner and was highly successful. Thus, the assumption that lack of injunctive powers is a serious cause of inadequate judicial enforcement is suspect. Similarly, there is reason to doubt the assumption that judges will use expanded powers far more readily than they use the powers presently possessed.

There is also an assumption underlying the proposal for a new housing court that once a judge sits on the housing court he or she will act in a more enlightened, aggressive and forceful manner than those now hearing housing code cases. The truth, of course, is that judges are human, and anyone hearing an unending stream of housing cases can become deadened to repetitive statements of substandard conditions.

8. Garrity, *The Boston Housing Court: An Encouraging Response to Complex Issues*, 17 URBAN L. ANN. 15 (1979).

Moreover, it is unlikely that overworked judges will affirmatively try to expand cases, join parties, and assume added work. They are far more likely to simply try to handle the cases presented to them as best they can.⁹

Finally, there is no apparent validity to the assumption that the presently perceived court bias in favor of landlords would be altered by changing the name of the court. A change in the court system does not necessarily mean a change in attitude. The court should be viewed, therefore, in terms of what current judges hearing similar cases *would* do, not what they *could* do.¹⁰

Practical Problems

Placing the house court concept in a more sobering light regarding its potential does not mean the idea is without merit, but particular problems that may arise at a local level need to be considered. First, the inclusion of summary eviction proceedings as a part of the court appears to be an error. These proceedings tend to swamp the court in a crush of individual cases frequently having no relation to code enforcement, thus detracting from the court's purpose.¹¹ This had been the experience elsewhere.¹²

Second, because Michigan judges are elected, the financial resources of landlords and real estate investors will be directed at the election of a "sympathetic" housing court judge. Past experience of past judicial elections indicates that financial advantage is of immense importance. Thus, advocates of strong code enforcement are likely to find not a traditional judge, but an antagonistic one. This result is minimized where a large number of rotating judges are used, or where referees appointed by a panel of judges hear the cases.

Third, the present proposal calls for a county-wide, court, since the

9. See Rutzick & Huffman, *The New York City Housing Courts: Trial and Error in Housing Code Enforcement*, 50 N.Y.U. L. REV. 738 (1975).

10. It has been noted that the New York Court operated in practice "decidedly different from that envisioned by its academic architects." See Rutzick & Huffman, *supra* note 9, at 758.

11. Moreover, the goal in non-payment cases, the only cases generally relevant to code enforcement, is often a rent abatement which by taking repair money away from the landlord, is antagonistic to the court's perceived function of securing code enforcement.

12. See Comay, *The City of Pittsburgh Housing Court*, 30 U. PITT. L. REV. 459 (1968); Rutzick & Huffman, *supra* note 9, at 770-72. To add to this problem, once elected, judges run with an incumbent designation.

present court of equity acts county-wide. This has generally not been the jurisdiction of other housing courts, and for good reason. Such a court would have to enforce different codes from various municipalities; there are forty-four in Wayne County. Judges and juries selected county-wide may reflect a far different racial and economic background from that of inner-city residents. And difficulties of traveling to court from the far reaches of the county discourage many from using the court, and increase the already high rate of defaults.

Finally, the complexities of creating a new, specialized court mandate the enactment of state legislation, a process which is certain to be lengthy in such a controversial area. An alternative solution which can be fashioned locally in a far shorter period of time would clearly be a more desirable approach to initially employ.

Meeting the Real Problem

Aside from the theoretical and practical difficulties with the idea that a unified housing court will solve the problems of judicial enforcement, there is also reason to believe that the proposed court really does not address the underlying problems with the present system. For example, it does not avoid the delays in the building department before cases are referred to court, nor does it deal with the large number of adjournments which the courts easily grant. Also, the creation of such a court does not assure that adequate technical staff will be available to work on housing problems.

Moreover, it does not assure that the court will use its expanded powers any more than the present ordinance court uses its alternatives of probation and suspended sentences. That is, it does not assure that the reticence or indifference of judges to strict enforcement of the code will be altered. Finally, if eviction cases are also heard in the court, there is nothing inherent in the concept which would reduce the high level of defaults and the lack of representation of those who appear.

In retrospect, all this may seem overly critical. The point to be emphasized, however, is that reform, even massive reform, is of little value unless based on the realities and practicalities of the local situation. The housing court proposal may simply imply a reshuffling of the current judges and powers, and may in fact be more subject to pressures from special interest groups than the system now existing.

IV. RECOMMENDATIONS

In the end, criticism, of the establishment of a housing court would probably be unheeded if no alternative proposal was put forth. There are some changes which can be made in the present system. These are based on three important considerations: proposals for change should address the actual problems in the current process; they should make the enforcement process as simple to initiate and adjudicate as possible; and they should be capable of enactment, if at all possible, without legislative action. Perhaps the changes should also reflect the fact that no proposal will solve the problems of housing code enforcement, nor will any plan completely eliminate the slums of Detroit and other cities.

In the landlord-tenant court, there will always be a large number of defaults and tenants without a defense. Tenants should not, however, default or lose because they did not know they were to appear in court, or did not know they had a defense. In Detroit, after evidence that persons with limited education could not understand the antiquated language of a summons, the court adopted new simplified forms. Use of the forms has reduced defaults and improved the presentation of defenses to eviction actions.¹³ Though the number of defaults remains uncomfortably high, at least they are more likely to be based on the defendant's "free choice" rather than ignorance.

Except for the summons, the forms are not mandatory; however, the court should direct that they be used in all cases. In addition to improving the fairness of the proceeding, this change will increase defenses based upon failure to comply with the housing code, and thus assure the landlord-tenant court an important though not pivotal place in the enforcement process.

With regard to ordinance court procedures,¹⁴ four steps could be taken. First, all pending violations uncorrected after sixty days should automatically be referred to court. As noted earlier, this recommendation has repeatedly been made by various students of the present system. If adjournments are to be given, they should not be granted after a dozen or more already have been granted by the department, but should be granted only after judicial scrutiny in a public

13. Ross & Scott, *supra* note 6.

14. I have not addressed changes in the circuit court since actions in this court are rare and should be even rarer if other courts function well. Injunctive actions, while theoretically important, are cumbersome and unlikely to be used. Changes in this court, while helpful, are of secondary importance.

forum. Second, one referee should be assigned to hear only housing cases. For the first time, this will assure that adequate time and consideration are given to all cases. Third, the staff from the building department should be assigned to the court to provide technical assistance and up-to-date inspection reports. In Detroit, the building department has already indicated an interest in this staffing plan. This procedure should reduce the number of reinspections before court referral, thus freeing enough staff to provide the important technical assistance to the referee. Finally, the referee should be instructed and encouraged to use probation and suspended sentences to coerce compliance. Publicity regarding the strengthening of the ordinance court, and the creation of a citizens' panel to periodically review case dispositions should help to enforce this critical step.

These proposals for strengthening the present system can be accomplished internally with minimum effort and finances. In addition, they address the problems currently existing and will result in a court whose sole responsibility will be housing code enforcement. In the end the proposals may not produce the desired results, and a second look at a unified housing court may be needed. They do, however, serve to avoid the difficulties in the unified housing court concept and attempt to resolve the underlying roadblocks to effective enforcement.

While the factors balanced here may not be appropriate in other municipalities, they serve as an example of the kind of careful and realistic analysis of code enforcement that should be undertaken before communities attempt massive, and perhaps unproductive, reform of their present system.

NON-JUDICIAL RESOLUTION

