CHICAGO'S EVICTION COURT:

A TENANTS' COURT OF NO RESORT

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This Article is based upon *Judgment Landlord,* a 1976 study of the eviction process of the Circuit Court of Cook County, Illinois.[1] The Chicago Eviction Courts,[2] like those in other large urban centers,[3] are

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1. J. BIRNBAUM, N. COLLINS, A. FUSCO, JR., JUDGMENT LANDLORD: A STUDY OF EVICTION COURT IN CHICAGO (1978) [hereinafter cited as JUDGMENT LANDLORD]. The study is a joint project sponsored by the Legal Assistance Foundation of Chicago, The National Lawyers Guild (Chicago Chapter) and the Chicago Council of Lawyers. The authors directed and coordinated all aspects of the project, copies of which are on file with the library of the Legal Assistance Foundation of Chicago. Copies of the complete study may be obtained for $7.00 (free of charge to legal services attorneys) from the National Clearinghouse for Legal Services, 500 North Michigan Avenue, Chicago, Illinois 60611 (request Clearinghouse ¶24,133).

2. While eviction court represents the ultimate legal mechanism for legal resolution of tenant-landlord disputes, these disputes are often resolved by unlawful means. Landlords have used several extra-judicial methods to accomplish the same end, including lockouts, removal of personal property or doors, utility shutoffs and threats to do any or all of these to cause the tenant to move. Traditionally, a tenant's only legal recourse aginst his landlord's illegal eviction activity was to seek an emergency injunction in the Circuit Court of Cook County, Chancery Division, and to be prepared to enforce the injunction with contempt proceedings. This remedy of necessity requires assistance of counsel, making it generally unavailable to persons who could not afford an attorney, and it is often wholly

characterized by a high volume of cases, overcrowded conditions and an inadequate allocation of court resources.[4] The purpose of the study was to examine the administration of justice in Chicago's landlord-tenant court, the operation of which affects the lives of thousands of Chicago residents each year. By observing a large number of cases which passed through the eviction courts,[5] the study sought to identify and analyze the practices of the parties and the court against the framework of Illinois

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ineffective with absentee landlords. In September 1978, the Chicago City Council passed an anti-lockout ordinance prohibiting, under penalty of fine, landlords from engaging in the conduct described above. Chicago, Ill., Municipal Code § 193-11 (1978). However, this ordinance applies only to buildings of seven or more units and has only recently been implemented by the police. Chicago Police Department, Special Order 79-1 (Jan. 3, 1979). It is too early to tell whether this ordinance will be vigorously enforced against illegal evictions or will be successful in assisting tenants who have absentee landlords.

Two other forms of informal dispute resolution may be available to tenants. The first is the City of Chicago Department of Human Services housing unit which will attempt telephone mediation of problems, a service not widely publicized. The second is a planned Neighborhood Justice Center for the Uptown-Edgewater community of Chicago. This center uses mediation and arbitration to settle minor civil and criminal cases, including tenant-landlord disputes. For a more detailed description, see *National Housing Justice and Field Assistance Program,* Q. INFORMATION BULL. 8 (1978).

In addition to the above remedies for illegal evictions, there are several other legal mechanisms for resolution of other kinds of tenant-landlord disputes. These include suits for injunctive relief for building code enforcement under the Cities and Villages Act, ILL. REV. STAT. ch. 24, § 11-13-15; intervention pursuant to the Civil Practice Act, ILL. REV. STAT. ch. 110, § 26.1, in code enforcement actions brought under that Act by the City of Chicago against non-complying landlords; complaints to the City of Chicago Department of Buildings regarding code violations, Chicago, Ill., Municipal Code § 41-6, 7, § 13-27; and damage actions for breach of the implied warranty of habitability. The latter may present difficult proof problems because, *inter alia,* Illinois does not have a clear standard for determining damages for breach in implied warranty of habitability cases. The authors proposed a standard in Fusco, Collins, Birnbaum, *Damages for Breach of the Implied Warranty of Habitability in Illinois,* 55 CHI.-KENT L. REV. 337 (1979). *See* Moskovitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues,* 62 CALIF. L. REV. 1444 (1974).

3. *See* Mosier and Soble, *Modern Legislation, Metropolitan Court, Miniscule Results: A Study of Detroit's Landlord-Tenant Court,* 7 U. MICH. J.L. REF. 8 (1973); Court Study Group of The Junior League of Brooklyn, Report on a Study of Brooklyn Landlord-Tenant Court 20-21.

4. In 1977, 64,748 lawsuits to evict persons from either their homes or their commercial premises were filed in the Circuit Court of Cook County, Illinois, First Municipal District. This figure rose to 69,233 in 1978, an increase of 6.9% and an increase of more than 49% from the year 1970, when 46,268 such actions were filed. Clerk of the Circuit Court, Cook County, Illinois (1978).

5. This Article limits its discussion and analysis to the 1,061 cases discussed in JUDGMENT LANDLORD wherein the tenant filed an appearance in the case. *See id.* at 42-48.

law and procedure. Moreover, given the immense volume of cases heard in these courtrooms[6] and the large number of defendants unrepresented by counsel,[7] the sponsoring organizations sought to ascertain, in general, the extent to which the court safeguarded the rights of all parties to a full and fair trial and, in particular, the rights of defendants to raise the full spectrum of legal defenses guaranteed under Illinois law.

This Article will discuss and analyze the treatment of contested cases in the eviction courtrooms of Chicago. The Introduction will discuss the eviction process, the characteristics of the eviction courts, and recent developments in Illinois landlord-tenant law expanding tenants' rights. Part II of the Article will discuss the data and observations of the study. Part III will discuss the conclusions of *Judgment Landlord.* Part IV will discuss the recommendations of the study and update the response by the court and the local bar, including developments in implementing the reforms recommended therein. The data sample and methodology of the study are set forth in the Appendix to the Article.

I. *INTRODUCTION*

Eviction actions in Chicago annually affect an estimated nine percent of the rental units in the city.[8] Furthermore, the eviction process either threatens or results in the yearly dislocation of more than 250,000 people.[9]

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6. *See* note 4 *supra.* While more than 69,000 eviction cases were filed in 1978 in Chicago's First Municipal District, only two courtrooms were assigned to hear all such cases.

7. JUDGMENT LANDLORD, *supra* note 1, at 60-64. As the study indicates, only seven percent of those tenants appearing in court during the study were represented by counsel. *See* text accompanying notes 109-22 *infra.*

8. According to DEPARTMENT OF DEVELOPMENT AND PLANNING, ANNUAL HOUSING REPORT, CHICAGO 1975 3 (1977), there were 688,600 renter-occupied units in Chicago in 1975

9. Assuming that 97% of the 69,233 lawsuits filed in 1978 involved residential premises (three percent of the cases observed during the study involved commercial premises) and that the average tenant-defendant family consisted of four persons, the total number of persons either threatened or actually dislocated equals 268,624. This figure represents approximately eight percent of Chicago's total population of 3,366,957, according to the 1970 census. U.S. CENSUS BUREAU, U.S. CENSUS OF POPULATION AND HOUSING: 1970 1 (1972).

Information is not available concerning the number of tenant-defendants moving out of their residences after a judgment for possession is secured by their landlords. However, sources in the Cook County sheriff's office indicate that approximately 20% of all eviction actions result in writs of restitution being issued. Approximately 60% of these writs are executed by the sheriff—forcibly removing tenants and their possessions from the premises.

To evict a tenant in Illinois, a landlord must first bring a forcible detainer action and secure a favorable judgment from the circuit court.[10] In Chicago, during the term of the study, only two courtrooms were assigned to hear eviction actions and issue such judgments. The *de minimus* allocation of court resources was exemplified in both courtrooms by a single eviction trial call per day, beginning at 9:30 a.m. and

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In 1977, according to records of the Cook County sheriff's office, there were approximately 7,800 forced dispossessions in Chicago in which sheriff's deputies removed people from their homes and placed their belongings on the street. This figure increased to 8,308 for the year 1978.

10. Governed by ILL. REV. STAT. ch. 57 §§ 1-22, and local rules of court, an eviction is intended to be a summary proceeding in which contests over the possession of apartments, homes and other real property are speedily resolved. The Forcible Detainer Statute provides that matters "not germane" to the issues of possession and/or rent may not be considered. ILL. REV. STAT. ch. 57, § 5.

An eviction action may be commenced by the landlord as a single action for possession alone or coupled with a claim for unpaid rent in a "joint action." ILL. REV. STAT. ch. 57, § 5. The tenant's response to a Forcible Detainer summons and complaint is governed by rules of the Illinois Supreme Court, ILL. REV. STAT. ch. 110A, §§ 101(b)(2), 102(b). Pursuant to these rules, the return day, the day on which a defendant must respond to summons, is from 7 to 40 days after filing of the complaint. ILL. REV. STAT. ch. 110A, § 101(b). The summons must be served on the defendant at least three days prior to the return day. *Id.*

In Chicago, the return date on a Forcible Detainer action is generally set for 14 days after filing the complaint. If the tenant has been served with summons, the eviction trial in the Circuit Court of Cook County will take place seven days after the return day. Pursuant to Rule 10.5 of the Circuit Court of Cook County, effective June 1, 1979, the "return day" has been eliminated and forcible detainer trials are now held fourteen days after filing of the complaint.

To comply with the Forcible Entry and Detainer Act the complaint in a possession action need only describe the premises, allege that the landlord is "entitled to possession" and allege that the defendant "unlawfully withholds possession thereof." ILL. REV. STAT. ch. 57, § 5. The factual circumstances underlying the landlord's claim to possession need not be pleaded. In a joint action the amount of rent claimed must be stated. ILL. REV. STAT. ch. 57, § 5. The court papers do not inform the tenant of the basis for the termination of the tenancy as this is not required under the statute. The Illinois rules of practice do not require the tenant to file an answer to the complaint. ILL. REV. STAT. ch. 110A, § 181(b)(2). No response, other than an appearance, is required unless ordered by the court. *Id.* The appearance serves, in lieu of an answer, as a general denial. Thus, in the overwhelming majority of cases, the facts and defenses must first be brought out at the eviction trial. If the plaintiff prevails, a judgment for possession (and/or back rent) will be entered and the writ of restitution will be stayed for a period determined by the court. ILL REV. STAT. ch. 57, § 13. If the defendant prevails, he should have judgment and execution for costs. ILL. REV. STAT. ch. 57, § 16.

generally ending before noon.[11]

During the past ten years, the number of evictions filed per year has increased dramatically[12] while the number of courtrooms assigned to hear them and the time allotted for the trial call have remained constant.[13] Moreover, all cases where an appearance was filed by the tenant[14] were tried in a single courtroom. On the average, this consolidation resulted in approximately seventy cases set for trial during a two and one-half hour period each morning.[15]

Eviction cases in Chicago comprise a significant percentage of the entire civil docket in the First Municipal District Court. More than twenty-six percent of the 1977 civil caseload for that district were eviction actions.[16] In 1978, this percentage rose to 27.7 percent.[17] Given this tremendous caseload and lack of resources, it is not surprising that little justice is administered in Chicago's eviction court. This result has been exacerbated by the expansion of tenant rights during this same time period by the Illinois appellate courts and the state legislature.

Traditional landlord-tenant law adhered to the ancient common law rule absolving a landlord of any obligation to maintain or repair leased premises.[18] This rule grew out of the concept of a lease as a conveyance of an estate in land rather than as a contract.[19] Moreover, the doctrine of independent covenants left the tenant in a predicament, legally obligated

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11. On April 27, 1978, three weeks after the release of JUDGMENT LANDLORD, Presiding Judge Charles P. Horan instituted a staggered court call for both of the eviction courtrooms pursuant to Circuit Court of Cook County, Illinois, General Order No. 78-7 (effective May 8, 1978). The general order, in an attempt to reduce the overcrowded conditions in these courtrooms, provided for separate court calls at 9:30 a.m. in both courtrooms for default cases and at 10:30 a.m. for cases wherein the defendant filed an appearance. The order further provided for a 2:00 p.m. motion call and a separate afternoon trial call for all Chicago Housing Authority cases.

12. *See* note 4 *supra.*

13. JUDGMENT LANDLORD, *supra* note 1, at 3.

14. *See* note 10 *supra.*

15. In-Court Monitor observation. Affidavits from the in-court monitors are on file with the Legal Assistance Foundation of Chicago.

16. CLERK OF THE CIRCUIT COURT, COOK COUNTY, ILL., ANNUAL REPORT (1977).

17. CLERK OF THE CIRCUIT COURT, COOK COUNTY, ILL. ANNUAL REPORT (1978).

18. *See,* Sunasack v. Morey, 196 Ill. 569, 63 N.E. 1039 (1902); Blake v. Ronous, 25 Ill. App. 486 (1888). *See generally* Quinn and Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future,* 38 FORD. L. REV. 225 (1969).

19. 2 F. POLLOCK AND F. MAITLAND, THE HISTORY OF ENGLISH LAW 131 (2nd ed. 1898). A representative sampling of cases citing the rule is found at 32 AM. JUR. *Landlord and Tenant* § 655 n.14 (1941).

to pay rent even though the landlord failed to live up to his part of the bargain.[20]

The Illinois Forcible Entry and Detainer Act of 1874 codified the common law. The Act provided that "matters not germane to the distinctive purpose of the [eviction] proceeding shall [not] be introduced."[21] Until the late 1960's, the Illinois appellate courts generally confirmed that the only defense on the merits to an eviction suit was that the tenant had paid the rent and otherwise fully complied with the terms of his lease.[22]

Early in this decade, the Illinois courts began to construe the "germaneness" limitation of the Act more broadly. Initially, the Illinois judiciary asserted that the tenant could raise race discrimination and other equitable defenses to an eviction.[23] Then, in the landmark decision of *Jack Spring, Inc. v. Little,*[24] the Illinois Supreme Court recognized that outmoded common law assumptions could no longer be applied to contemporary urban housing patterns. The court radically altered Illinois law by establishing an implied warranty of habitability for leased residential premises; the breach of which was made a defense to evictions based upon non-payment of rent.[25] This implied warranty[26] imposes a

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20. Javins v. First National Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970) *cert. denied,* 400 U.S. 925. *See* Truman v. Rodesch, 168 Ill. App. 304 (1912); Geiger v. Brown 167 Ill. App. 534 (1912). These legal concepts were grounded in feudal and agrarian notions that the land was more important than any structure built on it; that the tenant farmer was fully capable of making the simple repairs that might be required; and that the tenant, like his precursor the serf, was subservient to the landlord.

21. ILL. REV. STAT. ch. 57, § 5. *See* Bleck v. Cosgrove, 32 Ill. App. 2d 267, 272, 177 N.E.2d 647, 649 (1961).

22. *See, e.g.,* Schumann Piano Co. v. Mark, 208 Ill. 282, 70 N.E. 226 (1904); Woodbury v. Ryel, 128 Ill. App. 459 (1906).

23. Rosewood Corp. v. Fisher, 46 Ill. 2d 249, 263 N.E.2d 833 (1970), *cert. denied and appeal dismissed,* 401 U.S. 928 (1971); Marine Park Associates v. Johnson, 1 Ill. App. 3d 464, 274 N.E.2d 645 (1971).

24. 50 Ill. 2d 351, 280 N.E.2d 208 (1972).

25. *Id.* at 366, 280 N.E.2d at 217.

26. The warranty of habitability has now been recognized by judicial decision or statute in thirty-nine states: (Alaska) ALASKA STAT. ANN. §§ 34.03, 34.03.160, 34.03.180 (1974); (Arizona) ARIZ. REV. STAT. §§ 33-1324, 33-1361 (1974); (California) CAL. CIV. CODE, §§ 1941, 1942 (West 1974); Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); (Connecticut) CONN. GEN. STAT., §§ 47a-7, 47a-12 (1979); Todd v. May, 6 Conn. Cir. Ct. 731, 316 A.2d. 793 (1973); (Delaware) DEL. CODE ANN. tit. 25, § 5503 (1975); (District of Columbia) Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 (D.C. Cir.), *cert. denied,* 400 U.S. 925 (1970); (Florida) FLA. STAT. ANN. §§ 83.51, 83.56 (West Supp. 1979); (Georgia) GA. CODE ANN. §§ 61-111, 61-112 (1979); Givens v. Gray, 126 Ga. App.

duty on the landlord to comply substantially with applicable municipal building code provisions relating to health and safety. If the landlord fails to keep the premises substantially up to the building code standards, the tenant is entitled to a rent reduction for the diminished value of the premises.[27] Thus, when the landlord sues for eviction based upon

309, 190 S.E.2d 607 (1972); Stack v. Harris, 111 Ga. 149 (1900); (Hawaii) HAW. REV. STAT. §§ 521-42 (Supp. 1976); Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969); (Idaho) IDAHO CODE §§ 6-316 (1977); (Illinois) Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); (Iowa) Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); (Kansas) Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); (Kentucky) KY. REV. STAT. ANN. §§ 383.595, 383.625 (Baldwin Supp. 1974); (Maine) ME REV. STAT. ANN. tit. 14, § 6021 (West Supp. 1978); (Maryland) MD REAL PROP CODE ANN § 8-211 (Cum. Supp. 1975), superseded in their respective jurisdictions by BALTIMORE CITY, MD., PUBLIC LOCAL LAWS, §§ 9-9, 9-10, 9-14.1 (eff. July 1, 1971), and MONTGOMERY COUNTY, MD., CODE, Fair Landlord-Tenant Relations, ch. 93A (Nov. 21, 1972); (Massachusetts) MASS. GEN. LAWS ANN. ch. 239, § 8A (West Supp. 1978); Boston Housing Auth. v. Hemingway, 363 Mass. 184, 293 N.E.2d 831 (Mass. App. 1973); (Michigan) MICH COMP LAWS § 554.139 (1970), Rome v. Walker, 38 Mich. App. 458, 196 N.W.2d 850 (1972); (Minnesota) MINN. STAT. ANN. § 504.18 (West Supp. 1978) *applied in* Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); (Missouri) King v. Moorehead, 495 S.W.2d 65 (Mo. Ct. App. 1973); (Nebraska) NEB. REV. STAT. §§ 76-1419, 76-1425 (1976); (Nevada) NEV REV STAT. tit. 10, ch. 118A, §§ 290, 360 (1977); (New Hampshire) Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); (New Jersey) Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970); (New Mexico) N.M. STAT. ANN. §§ 70-7-20, 27 (Supp. 1975); (New York) N.Y. REAL PROP. LAW § 235-b (McKinney Supp. 1975); (North Carolina) N.C. GEN. STAT § 42-42 (Supp. 1977) (North Dakota) N.D. CENT. CODE § 47-16-13.1 (1978); (Ohio) OHIO REV CODE ANN. §§ 5321.04, 5321.07 (Page Supp. 1978); (Oregon) OR REV STAT. §§ 91.770, 91.800-815 (1977); (Pennsylvania) Commonwealth v. Monumental Properties, Inc., 459 Pa. 450, 329 A.2d 812 (1974) (interpretation and application of this case are presently subject to controversy in Pennsylvania. *But see* Pugh v. Holmes, 253 Pa. Super. Ct. 76, 384 A.2d 1234 (1978), which recognizes common law warranty of habitability at the superior court level. (appeal is pending); (Rhode Island) R.I. GEN LAWS, § 34-18-16 (1970); (Tennessee) TENN. CODE ANN. § 53-5501 (Supp. 1977) (applied to major cities only); (Texas) Kamarath v. Bennett, 568 S.W. 2d 658 (Tex. 1978); (Vermont) VT STAT ANN. tit. 12, § 4859 (1973); (Virginia) VA. CODE §§ 55-248.13, 55-248.25 (Supp. 1979); (Washington) WASH REV CODE ANN. § 59.18.060 (West Supp. 1978), enacted after judicial implication of warranty of habitability in Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); (West Virginia) W. VA. CODE 337-6-30 (Supp. 1979) (sets out landlord obligation but does not provide remedy for breach); (Wisconsin) Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961) *But see* Posnanski v. Hood, 46 Wis. 2d 172, 174 N.W.2d 528 (1970) and Michalek v. LeGrand, 77 Wis. 2d 520, 253 N.W.2d 505 (1977).

27. The question of the proper measure of damages for breach has been generally ignored in the cases. For a discussion of the measure of damages for breach, *see* Fusco, Collins and Birnbaum, *Damages for Breach of the Implied Warranty of Habitability in Illinois—A Realistic Approach*, 55 CHI.-KENT L. REV 337 (1979).

nonpayment of rent,[28] the tenant can defend on the basis that rent is not owed because of the landlord's failure to maintain the premises in accordance with his implied warranty.[29]

Subsequent Illinois decisions have relied upon *Spring* to expand the applicability of warranty in the context of eviction actions.[30] Tenants may file a counterclaim for damages against the landlord[31] or seek an order for enforcement of a covenant to repair the premises.[32] Even if the eviction action is dismissed, the counterclaim survives and must be heard by the trial court.[33] In such a case, the diminution in the value of the premises may be in excess of the rent claimed by the landlord, so that the tenant is entitled to a cash rebate of rent from the landlord.[34] Furthermore, the Illinois legislature has established a second important defense to an eviction action[35] which bars a landlord from terminating a tenant's lease in retaliation for a complaint to authorities about building or health code violations.

It was against this background of a burgeoning volume of evictions being handled by limited court resources and a virtual revolution in the rights of tenants that the *Judgment Landlord* study was commenced during selected periods in 1976, 1977 and 1978.[36]

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28. *See* text accompanying note 10 *supra*.

29. South Austin Realty Ass'n v. Sombright, 47 Ill. App. 3d 89, 361 N.E.2d 795 (1977).

30. Richardson v. Wilson, 46 Ill. App. 3d 622, 361 N.E.2d 110 (1977).

31. Peoria Housing Auth. v. Sanders, 54 Ill. 2d 478, 298 N.E.2d 173 (1973); Fisher v. Holt, 52 Ill. App. 3d 164, 367 N.E.2d 370 (1977).

32. South Austin Realty Ass'n v. Sombright, 47 Ill. App. 3d 89, 361 N.E.2d 795 (1977).

33. Fisher v. Holt, 52 Ill. App. 3d 164, 367 N.E.2d 370 (1977).

34. *See, e.g.*, Gillette v. Anderson, 4 Ill. App. 3d 838, 282 N.E.2d 149 (1972).

35. ILL. REV. STAT. ch. 80, § 71 provides:

Termination of, or refusal to renew lease—
Prohibition—Validity of provisions in Lease. § 1.

It is declared to be against the public policy of the State for a landlord to terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to any governmental authority of a bona fide violation of any applicable building code, health ordinance, or similar regulation. Any provision in any lease, or any agreement or understanding, purporting to permit the landlord to terminate or refuse to renew a lease or tenancy for such reason is void.

See Clore v. Fredman, 59 Ill. 2d 20, 319 N.E.2d 18 (1974).

36. The periods of observation for the study were 15 days during November and December, 1976, 18 days in March of 1977, and 3 days in March of 1978.

II. *FINDINGS BASED ON OBSERVATIONS OF THE CONTESTED COURTROOM: THE REALITY OF THE EVICTION PROCESS IN CHICAGO*

This section discusses the observations and findings of the *Judgment Landlord* study of cases heard in the "contested courtroom" of Chicago's Eviction Court. The data recorded reveals a courtroom in which cases were disposed of in an arbitrary and injudicious manner; in which there was widespread disregard for established law and procedure; and in which there was a demonstrated partiality toward landlords. These observations further demonstrate that the daily operation of this courtroom fails to satisfy even basic notions of fairness. The comprehensive view of those cases heard in the contested courtroom presents a common theme: tenants, regardless of whether they appear or whether they present a defense, almost always lose.

A. *Disposition of the Cases*

1. *Trial Procedure Governing Forcible Detainer Actions in Chicago*

Under notions of due process incorporated in the constitutions of the United States[37] and Illinois,[38] an eviction trial, like any other civil trial, should be an orderly procedure wherein the plaintiff-landlord presents evidence to prove entitlement to possession and compliance with all required procedural steps for notice of termination, filing suit and summons.[39] Since forcible detainer is a statutory proceeding in derogation of the common law, the parties and the court must strictly comply with the procedure prescribed by the statute.[40] The tenant must be given an opportunity to rebut the landlord's evidence or to present new evidence.[41] The court finds the facts and makes its decision solely on the evidence presented at trial.[42]

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37. U.S. CONST amends. V, XIV.

38. ILL CONST. art. 1, § 2.

39. *See generally* ILL. REV STAT. ch. 57, §§ 1-22; *Illinois Law and Practice, Landlord and Tenant*, § 465.

40. Menagh v. Hill, 12 Ill. App. 2d 80, 138 N.E.2d 707 (1956).

41. ILL REV STAT ch. 57, § 5; Coyne v. South Shore De Luxe Laundry, 299 Ill. App. 275, 20 N.E.2d 117 (1939).

42. Davis v. Muriset, 334 Ill. App. 107, 78 N.E.2d 714 (1948).

Trial procedure requires that the landlord in an eviction action has the initial burden of proving a *prima facie* case showing entitlement to possession. Four factors must be shown: (1) that he is the landlord of the premises and the defendant is his tenant; (2) that the tenant violated some provision of the lease or held over after expiration of the lease or termination of a periodic tenancy (for example, week-to-week, month-to-month); (3) that the landlord properly terminated the tenancy by service of notice, unless the lease provides for waivers of notice or has expired by its own terms; (4) that the landlord properly filed the action and had summons served on the tenant.[43]

The landlord must prove a *prima facie* case even when the tenant does not present opposing evidence[44] or appear in court.[45] If the landlord sustains this burden, he should be given a judgment for possession and for rent, if claimed,[46] unless the tenant successfully maintains a defense or a counterclaim for damages.[47]

After the landlord has had the opportunity to present his evidence, the judge must decide whether the landlord has established a *prima facie* case. If the landlord has not, the judge should dismiss the suit.[48] If the landlord has, the tenant should be required to present his defenses. If the judge believes the tenant's evidence, he should rule that the defense has been proven and enter judgment for the tenant.[49] If the judge decides against the tenant, the judge should rule that the defense has not been proven and enter judgment for the landlord.[50] If a judgment of possession for the landlord is entered, the court will stay execution of the

43. *See generally* ILLINOIS LAW AND PRACTICE, LANDLORD AND TENANT § 465.

44. ILL. REV. STAT. ch. 110A, § 181(b)(2) provides that when no answer is ordered by the court, the allegations of the complaint will be deemed denied.

45. The disposition of *ex parte* cases is governed by the Illinois Supreme Court Rules of Judicial Conduct, ILL. REV. STAT. ch. 110A, § 61(c)(15), which requires that the judge conduct a careful examination of the facts and law in *ex parte* cases.

46. ILL. REV. STAT. ch. 57, § 13.

47. The rules of evidence applicable to civil trials require that persons who testify be sworn under oath as witnesses. Gard, Illinois Evidence Manual, 491, Rule 396; 81 AM. JUR. Witnesses 413-415 (1976); Ivanhoe v. Buda Co., 251 Ill. App. 192 (1929). Witnesses may testify only to matters within their knowledge. JONES, EVIDENCE §§ 268-317 (5th ed. 1958). Unless qualified as an exception to the hearsay rule, hearsay evidence is inadmissible. *See* UNIFORM RULES OF EVIDENCE 603.

48. ILL. REV. STAT. ch. 57, § 16.

49. *Id.*

50. *Id.* § 13.

writ of restitution.[51] Disposition of the case may not always occur on trial date as the case may be continued or the landlord or his attorney may appear and decide not to proceed.[52] The judgment of the trial court is a final order which may be appealed pursuant to the rules of the court.[53]

2. *Treatment of Cases by the Court*

As a general rule, the daily operation of the Eviction Courtroom in Chicago failed to satisfy statutory procedural requirements.[54] This failure promoted a courtroom dominated by landlords' attorneys, who dispensed justice in a manner inconsistent with accepted rules of trial procedure and traditional notions of fairness.[55] This perception of the court is reinforced by one of the more significant findings of the study: tenants who appeared in court on trial day were awarded outright possession judgments in only 1.1% of the cases. When all possible dispositions of the cases are analyzed,[56] the study revealed that these tenants were only as likely to win their cases as tenants who filed an appearance but then failed to appear for trial.[57] Landlords easily prevailed in contested cases, and were awarded summary possession 81.2% of the time.

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51. *Id.*

52. *Id.* § 17.

53. Illinois Civil Practice Act, ILL REV STAT ch. 110A, §§ 301-09.

54. JUDGMENT LANDLORD, *supra* note 1, at 114-21.

55. *Id.* at 117-21.

56. These include: no disposition recorded (1.2%), continuance (5%), voluntary dismissal (3.1%), involuntary dismissal (8.4%), possession tenant (1.1%), possession landlord (81.2%). *See generally id.* at 33-40.

57. *Id.* at 37.

The frequencies of the various dispositions in contested cases are shown in Figure 1:[58]

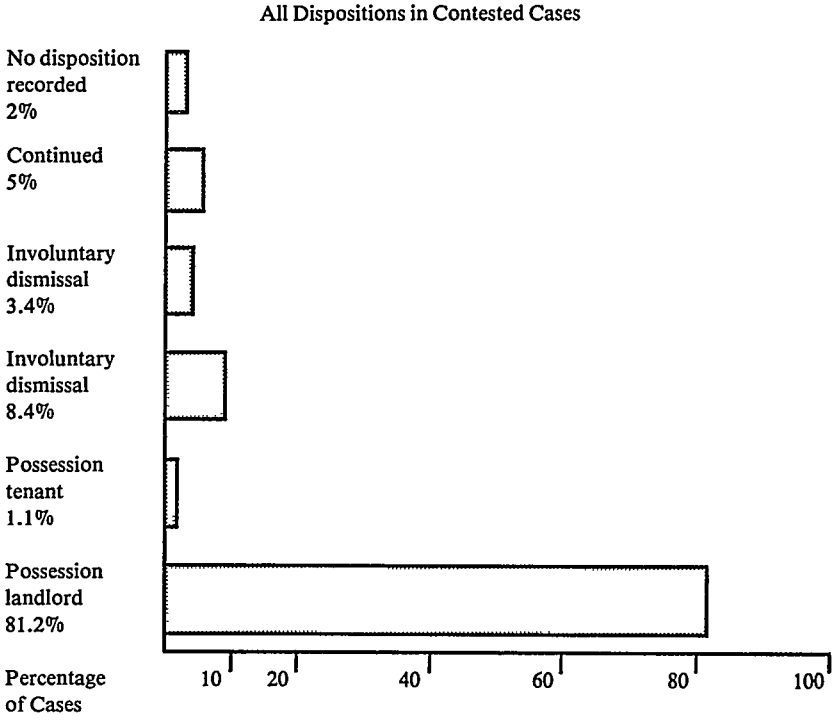

Figure 1

This statistical breakdown of dispositions only partially reflects the reality of Chicago eviction court. The treatment of tenants and their defenses by that court is reflected in the data below.

B. *Defenses Raised by Tenants*

Although tenant-defendants appeared on their trial dates in 1,061 cases, defendants raised defenses in only 435 cases or 40.9% of those

58. Joint actions, cases in which the landlord sued for both possession of the premises and money judgment, comprised 14.9% of the contested case sample (158 of 1,061 cases). Of the joint actions, rent claim judgments were awarded in 134 of the 158 cases (84.4%); rent claims were dismissed in 9.5% and no final disposition was reached in 5.7%. *Id. at 38.*

cases observed. *Judgment Landlord* concluded that this result was, in large measure, due to the pervasive "chilling effect" of the courtroom.[59]

Overcrowded conditions characterized the court hearing contested disputes. Seating was limited; large numbers of defendants typically jammed the back of the courtroom and the corridor. The average court-allotted time for each contested case was approximately two minutes.[60] Many of these cases were called and disposed of in a few seconds. Indeed, in numberous instances, cases were called and judgment entered before the tenant-defendant could move from the back of the courtroom to the bench.[61] If the tenant overcame these obstacles, he was often cut off by the judge in mid-sentence before a defense was completely articulated. The court monitors could not identify the defense in such cases.

The study clearly revealed that the typical eviction case involved vastly unequal adversaries. Most landlords were represented by counsel;[62] nearly all tenants appeared unrepresented.[63] The landlord's representative was typically an attorney, familiar with eviction court proceedings and often known to the judge through frequent court appearances. The typical *pro se* tenant, on the other hand, possessed little or no understanding of landlord-tenant law, a confusion compounded by the swiftly moving and peculiar courtroom procedures. Under these circumstances, it is even more crucial that the court fairly administer the law and take specific precautions to guard the rights of the unrepresented. It was the uniform opinion of the monitors, and those familiar with the court, that given less congested conditions and more

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59. *Id.* at 40.

60. This includes the time necessary to call the case and for the parties to approach the bench (approximately 20 seconds).

61. Affidavits of the in-court monitors are on file with the Legal Assistance Foundation of Chicago. The judge often cut off tenant testimony seemingly relevant to a legitimate defense with pre-emptive exhortations. According to in-court monitors, the judge repeatedly interjected such comments into tenants' testimony, coercively suggesting that the tenant must move:

"You want to stay there?"

"You want to move?"

"I'll do you a favor—20 days to pay or move—good luck to you."

"Of course you want to move."

"Maybe he's doing you a favor."

"I am sure you do not want to stay."

JUDGMENT LANDLORD, *supra* note 1, at 88.

62. 73.8% of landlords were represented by counsel. *Id.* at 69.

63. Only 7.1% of tenants were represented by counsel, while 92.9% appeared *pro se*.

impartial presiding judges, many more tenants would raise defenses.[64]

Nevertheless, a total of 615 defenses were raised and recorded by monitors in 435 contested cases. Figure 2 below illustrates the frequency of the various defenses observed by the monitors. The study grouped defenses into technical and substantive categories. Technical defenses are those which defeat the forcible entry and detainer action by raising the landlord's failure to comply with statutory procedural requirements.[65] Substantive defenses include assertions that the tenant paid the rent or did not otherwise violate the lease in the manner complained of by the landlord.[66] The tenant may also raise affirmative defenses which do not contradict the landlord's allegations but avoid their effect by introducing special circumstances. Such affirmative defense includes the landlord's breach of the implied warranty of habitability or breach of express promise to make repairs; both of these affirmative defenses give rise to a set-off, or counterclaim, against rent claimed in an amount equal to the diminished value of the premises.[67] Another kind of substantive defense

64. Affidavits of the monitors are on file with the Legal Assistance Foundation of Chicago.

65. Technical defenses were recorded in the study under the following types:

"Defective termination notice"—landlord's failure to properly terminate tenancy pursuant to Landlord and Tenant Law, §§ 5-10, ILL. REV. STAT. ch. 80, §§ 5-10 and/or filing a complaint before expiration of the stated notice period.

"Improper service of summons"—failure to comply with rules governing service of summons and complaint. ILL. REV. STAT. ch. 110, § 13.2.

"HUD housing—due process"—failure to comply with regulations governing eviction from federally subsidized multi-family dwelling complexes.

These three types of technical defenses were combined into one variable, "Technical Defenses," for some analyses.

66. The most commonly observed defense of this nature was recorded as *"payment of rent"*—that the tenant had in fact paid the rent claimed as due, that rent was tendered and refused during the five-day notice period, or that rent claimed as due was tendered and accepted after the notice period or prior to trial. It should be noted that this last example—payment and acceptance after the notice period—absent special circumstances is not a legally sufficient defense to eviction.

"Other defenses"—includes that the tenant had in fact not violated a condition of the lease other than payment of rent.

67. This kind of defense was recorded under three types:

"Condition of premises"—breach of the implied warrenty of habitablility where the premises are in defective condition.

"Failure to repair"—where defective conditions exist at the outset of the tenancy and/or arise thereafter and the landlord has expressly promised to make repairs but failed to do so.

"Utilities"—tenant has withheld rent because the landlord has terminated utility services or where landlord has breached his agreement to pay for utilities and tenant has paid bill and deducted from rent pursuant to ILL. REV. STAT. ch. 80, § 62.

may be based upon certain discriminatory motives, such as racial discrimination or discrimination in retaliation for tenant complaints to housing code enforcement authorities.[68]

Finally, tenants observed in the study brought up certain factual situations where they felt evictions would be unfair. These situations, though not legally recognizable, represent significant problems for many tenants and were therefore recorded by the study.[69]

Defenses Raised

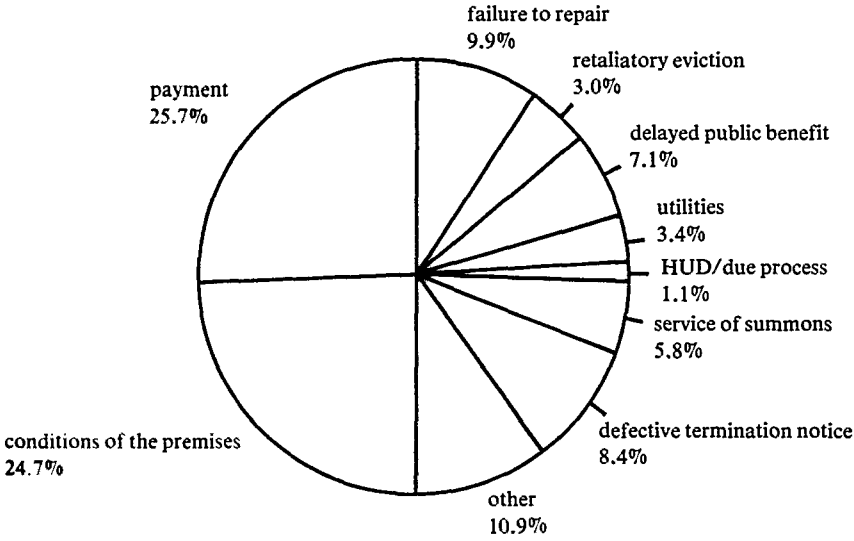

Figure 2

68. This group was recorded as:

"Discrimination"—eviction for reasons prohibited by law such as race discrimination.

"Retaliatory Eviction"—where the landlord has terminated or refused to renew a lease because the tenant has complained to the building or health department about building or health code violations.

69. For example, tenants on fixed incomes from social security, public assistance,

As Figure 2 indicates, the most frequently claimed individual defense by tenants was payment of rent.[70] This was followed closely by the defense of conditions.[71] However, when the related defenses of utilities, conditions, retaliatory eviction and failure to repair are combined, all being defenses based upon some problem with habitability of the apartment, this grouping becomes the most commonly asserted defense.[72] This was a somewhat surprising statistic considering the relatively recent vintage of the warranty of habitability doctrine in Illinois,[73] and the low number of tenants who were represented by counsel.[74]

1. *Disposition of Defenses Raised*

The total number of cases in which defenses were recorded comprised 40.9% (435 cases) of the contested case sample.[75] This section analyzes these cases, looking both at rulings entered regarding each defense as to disposition and at their ultimate disposition. For purposes of analysis, the defenses are grouped into three separate categories: "warranty of habitablility defense,"[76] "payment of rent defense,"[77] and "technical defenses."[78]

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unemployment compensation, or disability insurance plans whose checks were late, were stolen, or did not come for other reasons, explained that they were unable to pay due to circumstances outside their control and that they were not at fault. Under present law, these are not legally sufficient defenses to an eviction action. Similarly, tenants who explained that they had not been able to pay within the five-day notice period but had subsequently tendered rent or that they could now pay the rent did not state a legal defense.

These "defenses" were recorded as:

"Delayed public benefit"—where the tenant claimed that there had been a delay in receiving or a failure to receive a governmental entitlement.

"Other defenses"—articulated set of facts explaining reason for non-payment which did not fall within above types.

70. Payment of rent made up 25.7% (or 158) of the 615 defenses recorded.

71. This category included 24.7% (or 152) of the defenses recorded.

72. Habitability accounted for 29.1% (or 179) of the 615 defenses.

73. *See* text accompanying notes 22-35 *supra.*

74. *See* note 66 and accompanying text *supra.*

75. 435 of 1,061 cases raised defenses.

76. Warranty of habitability defenses include conditions, utilities, failure to repair, and retaliatory eviction. *See* text accompanying notes 70-71 *supra.*

77. *See* note 69 and accompanying text *supra.*

78. Technical defenses include defective notice of termination, improper service of notice and HUD due process. *See* note 68 and accompanying test *supra.* The HUD defense, however, was raised in only seven cases and excluded from the above analysis.

Surprisingly, the tenant who comes to court and manages to articulate a legal defense has about the same chance of defeating his eviction as the tenant who does not appear or the tenant who appears and remains silent. Tenants who raised the habitability, technical, and payment defenses had judgments entered against them 75.8% of the time;[79] tenants in all contested cases, including all tenants who appeared but failed to articulate a defense, and those whose defenses were not legally cognizable, on the other hand, had judgments entered against them 81.2% of the time—only a slightly higher percentage.[80] Tenants who failed to appear for trial at all statistically appeared almost as well off as those who appeared and raised defenses, having judgment entered against them in 78.3% of their cases.[81]

(a) *Warranty of Habitability Defenses*

A startling number of tenants' complaints involved dwelling units' conditions. Habitability defenses were raised in 41.1% of all cases where a defense was recorded[82] and constituted 29.1% of the total number of defenses raised.[83] Despite the high incidence of this type of defense, landlords were awarded summary possession in 93.3% of these cases.[84] No tenant was awarded possession of the premises or a full or partial rent abatement on the basis of a warranty of habitability defense.[85] The data on disposition of cases raising a warranty of habitability defense emphatically demonstrates that, despite clear Illinois law, no tenant can expect to raise a habitability defense in Chicago's eviction court and prevail against his landlord on the basis of that defense.[86]

Tenants who attempted to raise the warranty of habitability defense

79. JUDGMENT LANDLORD, *supra* note 1, at 43.

80. *Id.*

81. *Id.*

82. *Id.* at 43-44.

83. *Id.*

84. *Id.* at 44-45.

85. The landlord's case was involuntarily dismissed in four (2.2%) of the warranty cases, but none of these dismissals was based on the warranty defense. Each dismissal was premised on a technical defect in service or sufficiency of notice of termination. *Id.* at 44-45.

86. The most frequent ruling recorded in warranty cases was "defense not germane." This ruling was recorded in 25.7% of the warranty cases (46 of 179). The judge "refused to consider" the defense in 20.7% of the warranty cases (37 of 179) and ruled "conditions bad, tenant must move" in 15.1% of such cases (27 of 179). *Id.* at 47.

were often interrupted by the judge and denied the opportunity to present a defense. Monitors uniformly reported that tenants who testified about building conditions were quickly silenced by the court.[87]

Regardless of the extent of the substandard conditions, the unfulfilled promises of repairs, or the lack of utilities, judges characteristically stated that there was only one question at issue: Whether the tenant paid the rent. Perhaps the judicial attitude was most succinctly stated in *Rice v. Dorsey.*[88] The tenant, who was unrepresented, raised the defense of uninhabitable premises. "Even if the place is no good at all," the court stated, "you can't stay there without paying." Similarly, in *Johnson v. Flowers,*[89] the judge cut off the tenant's testimony that her apartment floor had fallen in and that it was rat-infested, ruling: "The issue is not the repairs—the issue is whether or not she [the tenant] paid."[90]

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87. In the great majority of habitability cases, the judge would interrupt the tenant's testimony, making preemptive comments such as:

"You will be better off somewhere else." Graham v. Smith, 77 M1 723083 (March 7, 1977).

"I can't do anything about it [referring to conditions]."

"You better look around for a new place." Orner Shayne v. Hoskins, 77 M1 722388 (March 10, 1977).

"I am sure you do not want to stay." Jackson v. McClary, 77 M1 723787 (March 21, 1977).

"Of course you want to move." Wolin Levin v. Dobbs, 77 M1 723952 (March 21, 1977).

The judge would then proceed to enter judgment for the landlord, often including a money judgment. If the tenant protested that he did not want to move, could find no place else, or wanted the landlord to fix the apartment or restore utility service, the judge would commonly enter judgment and say, "you are better off going." Mason v. Ball, 77 M1 720870 (March 9, 1977). JUDGMENT LANDLORD, *supra* note 1, at 80–81.

88. 76 M1 748167 (Nov. 30, 1976).

89. 77 M1 724438 (March 23, 1977).

90. JUDGMENT LANDLORD, *supra* note 1, at 83. In another group of cases (46 of 179 habitability cases), the judge specifically ruled that the conditions of premises were not germane to eviction proceedings. The most common mode of doing that was to tell the tenants that the facts did not constitute a defense to an eviction action. The court might add, giving an appearance of great sympathy, that the tenant should go to some other government agency to correct the substandard condition of his apartment:

77 M1 724185 (March 21, 1977) (when the tenant alleged that the landlord had cut off all the lights and water to his apartment, the judge appeared to accept the truth of the tenant's story and told the tenant to call the police to restore the lights because the condition was illegal and dangerous). Ratliff v. Wheeler, 77 M1 724185 (March 21, 1977) (when informed of the lack of water in the tenant's apartment, the judge told the tenant to get out quickly before a fire started.) Great American Realty v. Funches, 77 M1 722569 (March 8, 1977) (when a tenant testified that the building was rat-infested and she had medical evidence of

In clear contravention of Illinois law, the Chicago eviction court repeatedly ruled that the tenant was not entitled to judgment because the warranty of habitability defense was "not germane." In many cases the court refused even to acknowledge evidence which *pro se* tenants sought to introduce.[91] The landlord was never required to rebut a *pro se* tentant's warranty defense, and in the vast majority of these cases the defense was rejected despite the fact that neither the landlord nor any competent witness for the landlord appeared at trial.[92] Almost without exception, the court ignored or rejected without a full hearing defenses based upon the warranty of habitability.[93]

(b) *Payment of Rent*

The second most frequently raised defense was payment of rent. In 36.3% of those cases in which a defense was raised (158 of 435), the tenant's defense was either that rent had been paid or that the landlord had wrongly refused a lawful tender of rent. Tenants claiming payment as a defense generally lost, but they were still more likely to prevent the

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rat bites to present, the judge told her that the conditions' defense was improper in an eviction suit and that she should file a separate suit against the landlord). JUDGMENT LANDLORD, *supra* note 1, at 81.

91. The judge ignored all kinds of evidence of deplorable building conditions, including building department inspection reports, the pendency of building court cases citing the alleged conditions, and photographs of conditions in the building. In one case, the tenant presented a petition signed by 18 residents and an inspection report citing 38 violations. The judge's only retort: "You had better move." Newman v. Snow, 76 M1 746287 (Nov. 17, 1976). One tenant brought vermin and a dead mouse in jars to prove infestation of her apartment. The judge admonished: "Now I don't want to see that." Morgan v. Haynes 76 M1 748016 (Nov. 22, 1976). JUDGMENT LANDLORD, *supra* note 1, at 82.

92. In 94 of the 179 warranty defense cases (52.9%), the landlord was absent and was represented by an attorney. The warranty defenses by definition, consist of factual details as to conditions. Thus, given normal court procedure, a landlord or his witness would be required to offer testimony to rebut the defenses. Nevertheless, in 87 of these 94 "attorney only" cases (92.6%), where there was no landlord or witness competent to rebut tenant testimony, judgment for the landlord was entered. The remaining cases were continued. In *no* case was a possession judgment for a tenant entered on the basis of the warranty defense.

In only three cases of the 94 did the landlord ever raise any evidence in rebuttal. In one case, neither landlord nor his attorney was present in court, and the case should have been dismissed for want of prosecution. The tenant testified that the apartment had no heat, the ceiling was falling in, and he had to board up the windows. The judge entered judgment for the absent landlord. Hammond v. Liffridge, 77 M1 261396 (March 23, 1977). JUDGMENT LANDLORD, *supra* note 1, at 88-100.

93. *Id.* at 44-45 and 80-84.

landlord from securing an immediate possession order than those tenants raising the warranty of habitability defense. In the 158 cases raising payment as a defense, landlords were awarded summary possession 111 times (70.3%). While the court granted the tenant possession on the merits of this defense in only 6 of 158 cases (3.8%), the tenant raising this defense had about one chance in four that the case would be continued or dismissed for some reason unrelated to the payment defense.[94]

According to Illinois law, the landlord has the burden of proving allegations of nonpayment, since an appearance by a tenant is deemed a denial of all allegations of the landlord's case.[95] In 79.7% (126 of 158) of the cases in which a payment defense was presented, only the landlord's attorney was present. Therefore, in 79.7% of these cases no competent witness was present to rebut the tenants' testimony.[96] Nevertheless, the courts started summary disposition in favor of the landlord in 95 of 126 cases (75.4%).

Tenants who presented evidence of payment were far less likely to prevail than an absent landlord. The court dismissed twelve cases in which tenants presented unrebutted testimony of rent payment; landlords' attorneys voluntarily dismissed another eleven cases. Tenants, however, retained possession in only 18.3% of the unrebutted payment cases, while absent landlords gained possession 75.5% of the time.

Monitors' descriptions of specific cases support these statistical findings. In numerous cases, the judge listened to the uncontradicted testimony of the tenant and ruled in favor of the absent landlord.[97] In several of these cases, not only was judgment for possession entered over the tenants' uncontradicted testimony of payment, but also a judgment

94. *Id.* at 50–51. The disposition involuntary dismissal, which occurred in 10.7% of the cases, is in effect a ruling by the judge in the tenant's favor. However, voluntary dismissals, occurring in 8.8% of the cases, were taken at the initiative of the plaintiff-landlord, and are thus not a ruling by the court in the tenant's favor. Continuances, occurring 4.4% of the time, might be on the motion of the landlord, the tenant, or the court, but they were not conclusive as to possession.

95. ILL. REV. STAT. ch. 110A, § 181(d).

96. JUDGMENT LANDLORD, *supra* note 1, at 95. It is possible that a landlord's attorney could have personal knowledge of the facts of a *prima facie* case. This situation rarely occurs, however; attorneys appearing without landlords often make representations about the tenant based upon information furnished to them by the landlord. The study bears this out by documenting the common practices of accepting telephone testimony and continuing cases for landlords to testify. *Id.* at 96–99.

97. HUD v. Henderson, 76 M1 748001 (Nov. 22, 1976); Rime Management v. Moore, 76 M1 746170 (Nov. 22, 1976) (four-year tenancy); JUDGMENT LANDLORD, *supra* note 1, at 96.

for rent was entered.[98]

Tenants did not rely solely on oral testimony to support the assertion of payment of rent. Many tenants introduced documentary evidence of payment, such as copies of money orders and rent payment receipts signed by the landlord or his agent. Nonetheless, in most of these cases the judge ruled in favor of absent landlords.[99]

In a number of cases, tenants presented signed rent receipts where there were no competent witnesses for the landlord. Judges would then delay the case and direct the landlord's attorney to telephone the landlord to ascertain if he had received payment. Upon the attorney's return, the judge would enter judgment based upon the attorney's representation of what the landlord told him on the telephone.[100]

This practice of accepting "telephone testimony" blatantly violates defendants' rights to a fair trial since the tenant is deprived of an opportunity to cross-examine the out-of-court declarant. "Evidence" thus obtained is rank hearsay: the attorney reports a statement told him by an unseen, unidentified, and unsworn witness.[101] The court lacks any basis to weigh either the competency and credibility of the declarant or the admissibility of his "testimony."

The most frequent ruling recorded in the payment defense cases was: "Told parties to settle, judgment landlord." This ruling was recorded in 25.3% of all such cases.[102] Typically, the judge would tell the tenant: "I'll give you fifteen days to work this out."[103] No one explained to the tenant that his defense had been rejected and that judgment had been

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98. Silverwood v. Dean, 76 M1 266163 (Nov. 22, 1976); Travis Realty v. Morrison, 77 M1 261165 (March 10, 1977) ($150); JUDGMENT LANDLORD, *supra* note 1, at 96.

99. In the case of Teninga Bergstrom v. Coffey, 77 M1 722629 (March 3, 1977):

> The landlord, a new owner of the building, was not present but was represented by counsel. The tenant testified that she had lived in the apartment for four and one-half years, and had paid all rents to the same owner. She testified that all rent was paid, and presented a letter from the previous landlord stating that no rent was due when the suit was filed. Without landlord testimony as to his right to rent or as to non-payment, the judge entered an eviction order.

100. *See, e.g.*, Wolin-Levin v. Curtis, 77 M1 720296 (March 2, 1977). JUDGMENT LANDLORD, *supra* note 5, at 98.

101. *See* D. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE §§ 244–53 (2d ed. 1972). McCormick suggests that hearsay evidence is "testimony in court, or written evidence, of a statement made out of court, the statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value on the credibility of the out-of-court asserter." *Id.* § 246.

102. JUDGMENT LANDLORD, *supra* note 1, at 51.

103. *Id.* at 53 n.52.

entered for the landlord.[104] The high incidence of this ruling in the rent payment cases further demonstrates both the court's reluctance to rule in a tenant's favor for any reason and the *de facto* presumption in favor of landlords permeating the eviction courtroom.

(c) *Technical Defenses*

This group of defenses consists primarily of cases alleging defective notice of termination of tenancy. In general, tenants raising one of the technical defenses were substantially more successful in preventing the landlord from securing a summary possession order than tenants raising either payment of rent or warranty of habitability defenses. As with the other defenses, however, the court demonstrated a reluctance to rule on the merits of a technical defense.

Tenants raised the defense of defective termination notice in 12% of the cases in which defenses were raised.[105] While the use of this defense is limited, the correlation between the raising of this defense and pro-tenant disposition is significant. Landlords were awarded summary possession in only 51.9% of these cases.[106] Tenants, in other words, had about one chance in two for a continuance or dismissal.[107] Although tenants seldom received favorable judgment on the merits by raising this defense,[108] tenants were most successful in avoiding summary disposition of their cases.

C. *The Effect of Representation*

One of the most dramatic findings of *Judgment Landlord* was the remarkable disparity in treatment and disposition between tenants represented by counsel and those who appeared *pro se*. Landlords' representation by counsel had little affect upon the outcome of their cases. Outcomes were markedly different, however, between tenants represented by an attorney and tenants who did not retain counsel.

1. *Tenants*

Only 7.1% of all tenants in the study were represented by an at-

104. *Id.* at 53 n.53.

105. *Id.* at 53.

106. *Id.* at 54.

107. *Id.*

108. This occurred in only 1.9% of the cases. *Id.*

torney.[109] White tenants, like white landlords, were more likely to be represented by attorneys: white tenants appeared with counsel 9.6% of the time;[110] black tenants retained legal assistance only 3.6% of the time.[111] Attorneys appeared on behalf of absent tenants in twenty-eight hearings.

There was a significant difference between tenants represented by counsel and those who appeared *pro se* in every disposition except voluntary dismissal. When a tenant was represented by counsel, possession was awarded to the tenant 13.3% of the time;[112] *pro se* tenants, on the other hand, won possession in only 6% of their cases.[113] Represented tenants were more than twice as likely to have their cases dismissed. While only 7.8% of the cases where tenants appeared *pro se* resulted in an involuntary dismissal,[114] represented tenants won involuntary dismissal of the landlord's case in 17.3% of their cases.[115] Landlords were awarded summary possession in only 38.7% of the cases in which the tenant retained counsel,[116] but where the tenant appeared *pro se,* the landlords gained summary possession 84.2% of the time.[117] A represented tenant was eleven times more likely to have his case continued than a *pro se* tenant. Continuances accounted for 34.7% of all dispositions in cases with represented tenants,[118] while *pro se* tenants had their cases continued only 2.9% of the time.[119]

The court reserved its most blatant discrimination for unrepresented tenants. *Pro se* tenants, the largest group of persons appearing in the courtroom that were encountered a disproportionate number of dispossession judgments, improper rulings.[120] Judges shunted aside *pro*

109. *Id.* at 60.

110. *Id.*

111. Three attorneys represented Latino and other minority tenants. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 61.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. The *pro se* tenants were told to settle in 19.6% of their cases while judgment was given to the landlord. No such ruling was ever entered against a represented tenant. Nor was any represented tenant ever told that it was the "landlord's prerogative" to sue him again. Yet, 1.3% of *pro se* tenants had this ruling and judgment entered against them. The ruling that "conditions were bad and that tenants therefore must move" was entered in 3.3% of *pro se* cases, but never in the cases where a tenant's attorney was present. *Id.* at 63.

se tenants, legitimate defenses,[121] by subtly or coercively inducing them to abandon their rights.[122] Despite the pressing need to protect the unrepresented and largely unsophisticated tenant, judges abdicated their role of impartial decision-maker and cast their lot with the plaintiff-landlord. This extreme bias was partially offset only in the limited number of cases where an attorney appeared on behalf of the tenant.

2. *Landlords*

Landlord representation differed dramatically from tenant representation. Most landlords were not present in court and appeared only through their attorneys. In 63.1% of the cases[123] only an attorney appeared. In 19.7% of the contested cases[124] the landlord appeared *pro se.*

The correlation of attorney representation with case dispositions was surprising. Representation by an attorney did not appear to have any affect upon the landlords' winning possession judgments: *pro se*[125] landlords were awarded summary possession orders 85.6% of the time, exactly the same percentage recorded for landlords represented by attorneys.[126]

In summary, the effect of representation on the outcome of cases drastically differed between landlords and tenants. Both *pro se* landlords and landlords represented by counsel fared well in court. Representation by counsel for tenants, however, was a crucial factor in determining both how they were treated by the court and the outcome of their cases.[127]

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121. Other unfavorable rulings showed a like disparity. The court "refused to consider" a *pro se* tenant's defense in 5.9% of the cases; it "refused to consider" a represented tenant's defense in only 1.3% of cases. The court ruled a *pro se* tenant's defense "not germane" in 6.5% of the cases but made this ruling in only 2.7% of the cases where tenants were represented. *Id.*

122. This conduct was most prevalent in treatment of tenants' jury demands. *Id.* at 77.

123. *Id.* at 65.

124. *Id.*

125. *Id.* at 66.

126. *Id.*

127. *See, e.g.,* Rice v. Dorsey, 76 M1 748167 (Nov. 30, 1976). The tenant, who was unrepresented, raised the defense of uninhabitable premises. "Even if the place is no good at all," the judge said, "you can't stay there without paying." JUDGMENT LANDLORD, *supra* note 1, at 83.

D. *Summary of Findings*

1. Tenants who appeared on trial day (including those who appeared either with or without counsel) lost their cases about as often as tenants who filed an appearance but failed to show up for trial. Even more startling, tenants who appeared and asserted a legal defense were only slightly more likely to avoid a judgment for the landlord than those who did not appear for trial, or than those who appeared, but failed to assert a defense.

2. Fewer than one-third of the landlords in contested cases appeared personally at trial, most being represented only by their attorneys. Unrepresented landlords, however, were as likely to win at trial as those represented by an attorney.

3. Tenants won a judgment for possession in about one of every one hundred contested cases. Another 8% of the cases against tenants were dismissed by the court. Landlords voluntarily dropped their suits in 3% of the cases.

4. In virtually all contested cases, the court did not require the landlord to establish the requisite *prima facie* case. When faced with a proper tenant defense, the court generally did not require the landlord to present any evidence in rebuttal. Indeed, in 70% of all cases, neither a landlord nor a competent witness in his behalf was present in court to testify.

5. When an unrepresented tenant presented a proper factual defense, the court consistently disregarded tenant testimony and other proof. In most cases, the court failed to require any landlord rebuttal and entered judgment for the landlord in the face of uncontradicted tenant testimony. In the rare case where the court required rebuttal, it usually relied upon hearsay testimony given by the landlords' attorneys.

6. The most frequently used defense by tenants in eviction cases concerned landlord's breach of the implied warranty of habitability. Despite clear Illinois law, the court repeatedly refused to consider these defenses, often ruling them irrelevant to an eviction action. *No* tenant was awarded possession based on the merits of these defenses.

7. In contrast to landlord representation, representation of tenants by counsel had a very significant effect on the outcome of cases and on judicial behavior. Differences between represented and unrepresented landlords were minimal. Tenants with attorneys won their cases *twice as often* as unrepresented tenants. They also received many more continuances and were treated more favorably by the court in nearly everly respect.

8. The eviction courtrooms in Chicago are clearly landlords' forums, forums designed and operated to serve landlords in the swift and summary retaking of possession, with little or no consideration given to the merits of their claim. The court imposes a wholly improper presumption that the landlord is entitled to possession, tailoring the treatment of cases to achieve this end. This prejudice was particularly evident in contested cases. In the contested courtroom, the court has used various means to guarantee an outcome in favor of the landlord, including excusing the landlord from making any *prima facie* showing, rejecting tenants' legal defense by improper rulings, relying on hearsay testimony given by landlords' attorneys, and imposing an extraordinary burden of proof on tenants. Furthermore, use of this presumption has led to abuse of the judicial process: plaintiff-landlords have prevailed over unrepresented tenants; dead attorneys and landlords have secured favorable judgment when represented by persons unauthorized to practice law. This has occurred despite the presence of tenants to contest their evictions.

III. *CONCLUSIONS OF THE STUDY*

The eviction process manifests an inherent conflict between the tenants' basic need for shelter and the landlords' property interests. As noted by one commentator:

> [A]s long as owners and financers of private urban housing, seeking the greatest yield with the least investment and without public accountability, confront tenants' non-commercial basic human needs for decent shelter at affordable rents, a built-in conflict between human and property interests is ensured. This is particularly evident during a depressed economy, which has made available housing scarce and produced a landlord's market.... The conflict is further exacerbated by overwhelming poverty and exploitation and racial, language and cultural prejudice and fears.[128]

The observations regarding the operation of eviction court must be considered in light of the drastic consequences of a successful eviction action. An eviction order compels a family to vacate its home or suffer a

128. Cohen, *The New York City Housing Court—An Evaluation,* in SPECIAL ABA COMM. on HOUSING AND URBAN DEVELOPMENT LAW, URBAN HOUSING COURTS AND LANDLORD-TENANT JUSTICE: NATIONAL MODELS AND EXPERIENCE 26 (1977).

forced removal.[129] While the eviction caseload in Chicago has presented tremendous manageability problems for the circuit court,[130] that fact, standing alone, cannot justify the treatment of the cases and the resulting hardship inflicted upon tenants.

A. *Recent Developments in Landlord-Tenant Law have had Little Impact in the Eviction Process in Chicago*

A central conclusion from observation of the eviction process in Chicago is that, despite recent developments of warranty of habitability, retaliatory eviction and other defenses to eviction actions, tenants' rights remain unrecognized and unprotected.[131] Chicago's eviction court continues to serve as a vehicle through which landlords may summarily and swiftly retake possession, unhampered by procedural requisites[132] or the merits of their particular case.[133]

In Chicago the efforts at legal reform over the past ten years have fallen short of expectations.[134] New defenses to evictions and the implied warranty of habitability have, in practice, had little effect.[135] Furthermore, the same period that witnessed the theoretical growth of tenants' rights saw the number of eviction suits filed in Chicago rapidly increase more than forty-nine percent since 1970.[136]

While a general increase in civil suits filed has congested the circuit court dockets,[137] there is no backlog in the eviction court. As the caseload increases, the court merely speeds up the process.[138] The average contested case in Chicago was disposed of in less than two

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129. *See* note 4 and accompanying text *supra.*

130. *Id.*

131. *See* text accompanying notes 24-36 and 87-94 *supra.*

132. *See* text accompanying notes 38-56 *supra.*

133. *See* text accompanying notes 85-90 *supra.*

134. "The housing and sanitary codes, especially in light of Congress, explicit direction for their enactment, indicates a strong and pervasive congressional concern to secure for the city's slum dwellers decent, or at least safe and sanitary, places to live." (Cites omitted). Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1081 n.57 (1970).

135. A similar conclusion was reached in Detroit. *See* Mossier and Soble, *supra* note 3.

136. *See* note 4 *supra.*

137. As of December 31, 1977, in the Municipal Department, First District, Circuit Court of Cook County, there was a backlog of 134,251 cases, according to the annual report of the Clerk of the Court.

138. *See* text accompanying notes 12-15 *supra.*

minutes.[139] While the number of eviction cases has burgeoned over the past ten years, not a single judge or a single hour of judicial time has been added since 1964 to accommodate this expanding case load and the increased complexity of cases. Under conditions such as these, efforts at expansion of tenants' rights in the eviction process cannot satisfy the goals of improved housing conditions and effective code enforcement.[140]

B. *The Eviction Courts in Chicago are Landlords' Forums*

Eviction courtrooms in Chicago seem designed to facilitate the swift and summary taking of possession by the landlords. Several findings of *Judgment Landlord* reinforce this conclusion.

The tenant's failure to respond to summons inevitably means he will lose possession of his home.[141] In Chicago only about one-half of all tenants sued file their appearances.[142] Surely, all these tenants did not consciously and intelligently decide to acquiesce in their displacement. The reasons for their nonresponse are varied and complex. The incomprehensible "legalese" of the summons and complaint form is one explanation.[143] Perhaps an even greater factor is that many tenants, particularly the poor and indigent, simply do not trust the court system to give them a "fair shake." Sadly, *Judgment Landlord's* statistics confirm the validity of their mistrust.

In cases where tenants responded by filing an appearance, the study

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139. JUDGMENT LANDLORD, *supra* note 1, at 9.

140. "[T]he legislature has made a policy judgment—that it is socially (and politically) desirable to impose these duties on a property owner—which has rendered the old common law rule obsolete. To follow the old rule of no implied warranty of habitability in leases would, in our opinion, be inconsistent with the current legislative policy concerning housing standards." Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 (1970) (footnote omitted).

141. A similar conclusion was reached in Detroit. The study of the Detroit Landlord-Tenant Court concluded these "defaults...mean that the landlord prevailed even before trial day."

> With but a small proportion of tenants appearing to contest the action filed against them, even the best courtroom results fail to touch most tenants. This means that if reform...is to be meaningful, it must either be coupled with a procedure for increasing the proportion of tenants with valid defenses who actually raise them in court, or it must place affirmative burdens on landlords rather than solely give defenses to tenants.

Mossier and Soble, *supra* note 3, at 62.

142. JUDGMENT LANDLORD, *supra* note 1, at 107.

143. *See* Mossier and Soble, *supra* note 3, at 66; JUDGMENT LANDLORD, *supra* note 1, at 107-17.

reveals that landlords were awarded *immediate* possession judgments, as well as money judgments, when sought, over eighty percent of the time. That percentage remained nearly constant whether the tenant appeared at trial or whether he raised a legal defense.[144] Tenants won judgments for possession in about one percent of the cases; about another eight percent of the cases against tenants were dismissed by the court. Raising an apparently meritorious defense had virtually no effect on the outcome of the case.

In nearly all contested cases, the court, in flagrant violation of the law, did not require the landlord to put on a *prima facie* case. When faced with a proper tenant defense, the court did not require, nor did the landlord present, any evidence in rebuttal. Indeed, in seventy percent of all cases, neither landlord nor a competent witness in his behalf was present in court.[145] When an unrepresented tenant presented a proper factual defense, the court consistently disregarded it and entered judgment for the landlord. A wholly improper presumption that the landlord was entitled to possession pervaded the courtroom. The court's treatment of cases was calculated to achieve that end. The court, however, reserved its greatest hostility for tenants' assertions that their apartments were in substandard condition.[146]

There is a great need and opportunity for the eviction courts to serve both the general public and those renters forced to live in dilapidated housing. The City of Chicago, in its 1977 *Housing Assistance Plan,*[147] estimated that 213,000 (about 30%) of the City's rental units were in substandard condition or in need of substantial repairs. These units are predominantly located in the same communities most affected by the eviction process. As this study demonstrates, however, despite clear Illinois law, the eviction court repeatedly refused to consider habitability defenses. No tenant was awarded possession based on this defense. In fact, in a cruel turn-about, the judge in entering judgment against the tenant frequently ruled that the conditions were so bad, the tenant must move.[148]

Judgment Landlord shows that the eviction courts belong to the landlords. These courts are designed and operated to serve landlords in the swift and summary retaking of possession, without regard to the merits

144. JUDGMENT LANDLORD, *supra* note 1, at 34.

145. *Id.* at 92-93.

146. *See* text accompanying notes 85-94 *supra.*

147. City of Chicago, *Housing Assistance Plan* (1977).

148. *See* text accompanying notes 89-92 *supra.*

of their claims. The prevailing judicial attitude is one of bias against tenants. The difference in status between the owner and the renter is the one recurring distinction throughout the data. The tenant's "pariah" status is the most significant factor in deciding who wins and who loses.

IV. *RECOMMENDATIONS FOR REFORM— A CALL TO ACTION*

Judgment Landlord demonstrates the need for immediate and drastic reform of the Chicago Eviction Court to insure the even-handed administration of justice.[149] Long-term systemic changes are necessary to eliminate the abuses suffered by tenants in eviction actions. Thus, the study calls for a number of immediate reforms, including expansion of the number of courtrooms and provision of court reporters to end the most flagrant abuses of tenants' rights.[150] In addition, *Judgment Landlord* suggested that the court system act quickly to study and implement certain intermediate steps[151] in order to "transform eviction court from a

149. The release of JUDGMENT LANDLORD on April 7, 1978, generated city-wide publicity and discussion regarding the operation of the eviction courtroom. Editorials in most Chicago news media called for reform of the court and interested community groups, tenant organizations and private citizens established a city-wide coalition to work for reform of the court, the Alliance to Reform Eviction Court (AREC).

150. The full list of emergency reforms called for in the study were:

1) The judges presently assigned to hear eviction cases must be transferred and replaced by new judges, qualified to hear and objectively decide landlord-tenant matters. These judges should be instructed to conduct eviction hearings in an orderly fashion: to inquire landlords to present *prima facie* cases, to hear and fully consider all proper defenses, and to decide all cases only on admissible evidence presented to them.

2) The total call for eviction cases must be expanded from three and one-half hours to run all day, on a staggered basis, so that congested conditions and long waiting periods can be avoided and due consideration given all cases.

3) All contested evictions in which substantive defenses are raised that cannot be resolved without an evidentiary hearing should be automatically referred to one or more new courtrooms specifically designated to try only such matters.

4) Court reporters must be assigned to all eviction courts on a full-time basis to transcribe and record the proceedings.

151. These intermediate steps included:

1) The chief judge should seek modification of Illinois Supreme Court Rule 101, so that the form summons can be redesigned. A new summons should be written in language comprehensible to lay persons. It should inform tenants of their rights to appear and defend and of the basic rights and defenses available to them. The chief judge should modify the form complaint to require the landlord to state the facts constituting his grounds for eviction. All new forms should also include Spanish language translation. Pending design and development of appropriate form summons and complaints for for-

repossession and rent collection agency to a court which equally protects the rights of tenants and landlords, and acts to improve housing conditions."[152]

The courts have responded with indifference to the call for eviction court reforms. Rather than meeting with the sponsors of *Judgment Landlord* to formulate a plan for implementing necessary changes in the circuit court, the Chief Judge initially requested that a committee of the Chicago Bar Association (CBA) consider the operation of the court and issue an additional report. Two months after the release of *Judgment Landlord* the CBA committee issued its report. The eleven recommendations offered for the reform of the eviction courtrooms,[153] con-

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cible actions, as an interim measure, an information sheet should be attached to all summons informing tenants to this basic information. Appropriately trained law students should be placed in the clerk's office to assist tenants on their return dates.

2) The state or county should provide free legal counsel to indigent tenants contesting their eviction.

3) Where a matter has been referred to the new trial courts and the defense of breach of the warranty of habitability has been raised, the Chicago building department should be required to provide the parties access to any building inspection reports concerning the premises and, upon the request of a party or the court, to produce any such reports prior to or at trial without the service of subpoena or witness fee.

152. JUDGMENT LANDLORD, *supra* note 1, at 124-25.

153. The CBA recommendations were as follows:

1) At the present time, two judges and two courtrooms should be used on a full-time basis to hear forcible entry and detainer cases in the First Municipal District. The implementation of the recommendations contained herein, and a projected increase in the caseload may necessitate the use of additional courtrooms and the assignment of additional judges.

2) The court should have staggered court calls. On April 27, 1978, pursuant to General Order No. 78-7, Presiding Judge Charles P. Horan instituted a staggered court call. Since this General Order has only recently been implemented, the committee further recommends that the court, and the organized bar, continue to study and possibly improve this procedure, particularly for the hearing of those contested cases requiring more extended evidentiary presentations.

3) The court and the organized bar should work together to develop a simple form summons for use in forcible detainer cases that would be easily understood by the parties.

4) Due to the high volume of cases heard in the forcible entry and detainer courts on a day-to-day basis, judges assigned to these courts should be rotated on a regular basis.

5) A court reporter should be assigned to each courtroom on a full-time basis. This recommendation has already been implemented by the presiding judge.

6) More formal courtroom procedures should be followed in the hearing of cases in forcible entry and detainer court. The committee recognizes the great pressures placed on the judges in these courtrooms as a result of the high volume, the important interests involved and the need for expeditious hearing of the issues. It may be that, historically, the court has developed special practices and procedures to adjudicate the high volume of cases presented. However, the rights involved in litigation in forcible entry and detainer courts

curred in large part with those recommended in *Judgment Landlord.* Despite this unanimous call for reform, only two changes were implemented by the court in the year following release of the study: a staggered court call has been implemented[154] and court reporters now transcribe a record of all eviction actions.[155] In June, 1979, a third

are extremely important for both plaintiffs and defendants. Therefore, the committee strongly urges that more formal and traditional courtroom procedures be immediately adopted, particularly in contested cases. Such procedures should include the swearing of all witnesses, requiring the landlord to put on a *prima facie* case before the tenant's case is presented, and allowing sufficient time for the tenant to present whatever defenses he may have. The judges should be aware of their judicial function so as to avoid any impression of favoring or unduly assisting one side or the other prior to making their finding on the facts and law presented. The committee believes that adherence to such formal procedures will eliminate the many criticisms that have been addressed to court procedures, and will assure an orderly and respected determination of the issues. Every effort should be made to make the forcible entry and detainer court in Chicago a model of legal integrity, fairness and efficiency.

7) A training manual such as has been developed for use in the criminal court should be prepared for this court. Such a manual should include:

a) guidelines for hearings on contested and non-contested cases. b) opening remarks to be given daily by the Court. c) a section reviewing the applicable cases and law. d) a section analyzing the defenses available to tenants with particular emphasis upon the defense of breach of warranty of habitability (the "conditions" defense). The Chicago Bar Association is willing to assist the court in the preparation of such a manual.

8) A copy of the order entered by the court should be given to all parties in the case.

9) In cases where "conditions" defenses are raised, procedures should be established to make available to the parties, at the cost of duplicating the records, the inspection reports of the building department of the City of Chicago on the premises in question for the preceding 12-month period.

10) The court should explore the possibility of establishing a "volunteer settlement program" similar to the program being operated in the Los Angeles Municipal Court. A copy of Judge Norman L. Epstein's letter describing the program is attached. The Chicago Bar Association is willing to assist in obtaining volunteers to staff such a program.

11) If a defendant requests legal representation, that defendant, if eligible, should be provided a lawyer by those agencies and organizations whose function it is to provide legal assistance to the public at large, and whose activities are subsidized by public or charitable funds. The Chicago Bar Association is prepared to assist in this effort. Special Committee Report on Forcible Entry and Detainer Court, Chicago Bar Association (June 20, 1978).

154. "Staggered Court Calls in Forcible Entry and Detainer Courtrooms (April 27, 1978)." Circuit Court of Cook County, Illinois, First Municipal District, General Order No. 78-7. This order increased available time to hear contested matters by approximately 50% and provided extra seating space in contested matters. JUDGMENT LANDLORD called for full day calls in these two courtrooms and additional courtrooms for contested matters. The court's general order added no new courtrooms and provided only a morning call, with afternoon used for only a very light motion call in eviction cases.

155. The Chicago Bar Association announced on June 24, 1978, that the chief judge of the First Municipal District had agreed to implement the reforms called for in the CBA report. In the year following release of the report the only additional reforms implemented

eviction courtroom was added to reduce the caseload and a new form summons has now been implemented.[156]

Fundamental changes in the operation of Chicago's eviction court have not been implemented since release of the study. Observers of the court, including tenants and attorneys, indicate that while there has been some improvement, many of the same problems still exist: minimum standards of due process are not observed, tenants' rights continue to be abused, and overcrowded conditions continue unabated.[157]

Many of the problems specifically identified in *Judgment Landlord* remain. The court continues to rely upon telephone testimony procured from an absent landlord by his attorney rather than relying upon the unrebutted testimony of a tenant at trial.[158] The court continues its refusal to give effect to the implied warranty of habitability.[159] In *Guthrie v. Berg,*[160] for example, a tenant appeared *pro se* to raise a defense of warranty of habitability. The tenant had withheld two months' rent because of holes in the ceiling of his apartment. At the time of trial all rents due had been paid to the court. The landlord was not present at trial. Rather, the landlord had counsel present who testified that he had no knowledge of the defective condition. The judge examined the tenant's photographic evidence of conditions and informed the tenant that he could not order repairs or dismiss the eviction. Without any trial on the question of whether rent was due and owing, the court entered judgment for the landlord and ordered the tenant to vacate within twenty days.

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have been the revised form summons and the third eviction courtroom. *See* Press Release accompanying Special Committee Report on Forcible Entry and Detainer Court, Chicago Bar Association (June 21, 1978).

156. Effective June 1, 1979 the Cook County circuit court adopted a new form summons for forcible detainer actions. The new form eliminated much of the "legalese" on the old form, eliminated the "return day" procedure and informed tenants that their trial date would be fourteen days from filing of the complaint. The new form does not, however, advise tenants of their rights in the forcible proceeding.

157. The authors secured a copy of the official reporters' transcript of the proceedings of January 29, 1979, selected at random, to determine if the practices identified in JUDGMENT LANDLORD had been abated.

158. *See* discussion at note 101 *supra.* In this case the judge refused to dismiss the case based on a *pro se* tenants' testimony of payment and receipts. Instead, the judge allowed the landlord's attorney to telephone the "absent witness." The judge dismissed the case only after the attorney returned and informed the court that his client admitted receiving the rent.

159. *See* text accompanying notes 24-36 *supra.*

160. Guthrie v. Berg, 79 MI 726004 (Jan. 29, 1979).

The restructuring of the eviction process in Chicago is long overdue. The observations of *Judgment Landlord* have generated a call for reform from all quarters of the City. The response from the court administration, however, remains discouraging. The recommendations called for are modest and reasonable. The reforms can be easily implemented by the circuit court. Nonetheless, over a year after release of *Judgment Landlord,* only minor changes have been made in the court's procedure.

The long-range solutions recommended in the study will require time to consider and develop. Complexity is no excuse, however, for unendurable delay in a court which continues to deny fundamental guarantees of due process of law on an equal basis to all those who pass through its doors. These recommendations demand a commitment to reassessing the notion of status and property interests which lie at the very heart of our present court system. Implementation of the report's suggestions will not be a simple task since the reforms threaten interests which until now have dominated. It may be that none of the recommendations will be voluntarily embraced by the local court system and that most of these reforms will be vigorously opposed by special interests and the representatives of these interests in state and local government. These interests have been successful in opposing meaningful landlord-tenant reform in the past, and they will be successful again without the support and participation of conscientious public officials, the legal profession, community and civic groups, and tenant organizations.

The challenge to the bench and bar today is clear: alter the court practices in order to effectuate fundamental legal rights for all parties in our eviction courts. Until and unless that challenge is met, the goals and purposes of effective housing code enforcement will remain unfulfilled and the law will have no impact upon the unsatisfactory conditions under which many tenants are forced to live. All should be mindful that "It is time now to end the destruction and the violence, not only in the streets of the ghetto but in the lives of people."[161] The U.S. Supreme Court has recognized that

> [M]iserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the

161. Report of the National Advisory Commission on Civil Disorders 483 (Bantam ed. 1968).

status of cattle. They may indeed make living an almost insufferable burden.[162]

162. Berman v. Parker, 348 U.S. 26, 32 (1954).

APPENDIX

THE METHODOLOGY AND DATA SAMPLE OF THE STUDY

The study consisted of two parts: (1) in-court monitoring by two specially trained court-watchers who recorded their observations for each case observed on specially designed data sheets and (2) examination of court files for a random sampling of the contested cases and for certain other special categories of cases. Each part was designed to corroborate and complement the other. The in-court study disclosed information regarding the race, sex and representation of the parties as well as the grounds for termination, the defenses raised by the tenant, the disposition of each case and all rulings entered by the judge. The file study corroborated the in-court observation and provided information not susceptible to in-court observation: the landlord's attorney, the zip code area of the premises, the method of service, the type of landlord (realty company or individual). Taken together, the two separate parts provide a comprehensive view of the cases observed.

1. *Design to Monitor Data Forms*

The development of forms suitable for use by monitors was a painstaking process. The coordinators consulted with other experienced practitioners about a proposed set of variables to be included on the forms, including rulings, defenses, dispositions and characteristics of the parties. The idea was to create a data sheet which both encompassed the most common characteristics of a particular eviction case and was inclusive enough to record an unusual factual situation. The coordinators prepared and tested several forms. During this process it became apparent that one monitor would be unable to record all data on cases heard in the contested courtroom. The authors decided to employ two monitors, each using separate forms designed to record different aspects of the eviction proceedings. Two draft forms were tested, prepared and finally used by the monitors to collect the in-court data.[163]

2. *Training of Monitors*

The contested courtroom was observed for fifteen days during

163. These forms are on file with the Legal Assistance Foundation of Chicago.

November and December, 1976, and for eighteen days in March of 1977.[164] The authors trained the monitors[165] and provided them[166] with a handbook on Illinois Landlord-Tenant Law.[167] This handbook contained an overview of substantive law and procedure under the Landlord-Tenant Act and the Forcible Detainer Statute. All monitors participated in at least two training sessions on the law, the use of the forms, and observed court for one day prior to the actual study. After observing the court, the monitors met with the coordinators again to discuss any problems and resolve any questions they had regarding the operation of the court and the use of the forms. This same process was repeated prior to the monitoring in March, 1977. Data from these training sessions was not included in the study.

3. *Use of Forms and Other Monitor Materials*

The in-court data sheets were structured to systematically eliminate any categories of data which would have called for monitors to reach conclusions rather than to describe conduct. These forms were designed to facilitate accurate and speedy recording of observable facts. No categories were included, for example, which required monitors to make value judgments or determinations on the validity of a defense or the admissibility of evidence.

The forms were designed so that all cases would be recorded prior to the court date. Monitors were able to fill in the case name and number from the *Chicago Daily Law Bulletin* published prior to the court call and then complete the form at the time the case was heard. A second blank sheet accompanied each form for monitors to record their specific comments. These comments were indexed to correspond with the form sheet and line number of the case.

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164. Student monitors returned to observe the trial call in this courtroom on March 13-15, 1978. The purpose of this period of observation was to determine whether any changes in court procedure or the handling of cases had occurred since the in-court observation in March, 1977. Judge Eugene R. Ward was the presiding judge at that time.

165. Each of the monitors was a law student member of the National Lawyers Guild, Chicago chapter, who volunteered his or her time.

166. This handbook is on file at the Legal Assistance Foundation of Chicago.

167. The "A" sheets contained 42 variables relating to disposition, defenses, grounds for termination and tenant and landlord types. The "B" sheets contained 40 variables relating to rulings, time, the judge's conduct, the landlord's and tenant's conduct. These sheets are on file with the Legal Assistance Foundation of Chicago.

While the number of variables on each sheet varied,[168] all were marked and used in the same manner and pursuant to the same code. A blank space on the form indicated a particular variable was not applicable to the observed case; a check mark for that variable indicated observed conduct for the particular case.

To avoid the possibility of monitor error, confusion or misunderstanding, each monitor was provided with a Glossary of Terms[169] defining the variables, and sample sheets "A" and "B" containing further explanation and definitions.[170] In addition, each data sheet was subsequently checked by the coordinators for irregularities.

During in-court observation, the monitors supplemented the information recorded on the data sheets in particular cases by recording on blank sheets additional information such as a dialogue between the judge and the tenant. These sheets and the raw data formed the basis for affidavits submitted by the monitors supporting their observations.[171]

4. *Compilation and Analysis of the Data*

After the data sheets were checked for irregularities, all data was keypunched. Each case can be identified by the phase of the in-court study in which it occurred.

All cases from Phase I (November–December 1976) have 1976 case numbers; all cases observed and recorded in Phase II have 1977 case numbers and bear an identifying code for the courtroom. The total sample of cases in both phases was subjected to separate analysis. No significant differences were found between the two groups of data. The two phases taken together constitute the total in-court data for the contested courtroom.

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168. This glossary of terms is on file at the Legal Assistance Foundation of Chicago.

169. These sample sheets are on file at the Legal Assistance Foundation of Chicago.

170. These affidavits are on file at the Legal Assistance Foundation of Chicago.

171. The total number of cases observed was 2,060. The above referenced number was arrived at by the following process. 409 cases were excluded from the study due to known monitor error. These cases represented data collected by two sets of monitors; one set had all of their cases excluded from the study for failing to follow instructions regarding the recording of observation; the other two monitors had all but 35 of their cases excluded because one monitor failed to complete the corresponding sheet for those cases, making the data incomplete. Other cases were excluded for the following reasons: 12 cases because the only data recorded was that a continuance was entered; 6 cases because only voluntary dismissal was checked on the data sheet; 45 cases because there was no corresponding "A" or "B" sheet; one non-forcible; and 56 commercial cases.

The actual study sample was based upon the observation of 1,540 eviction cases.[172] These cases were broken down for purposes of analysis into cases where no tenant appeared in court (479) and cases where a tenant appeared to contest the eviction (1,061) ("the contested cases").

5. *The File Study*

In the file study a selected number of cases were examined and recorded to accomplish two separate goals: to corroborate and check the reliability of in-court observations and to determine characterisitics of the parties or adduce additional information regarding a particular case or the parties which was not readily ascertainable from in-court observation.

The file study consisted of two parts. First, a computer-generated, random sample was taken from Phase I and Phase II cases comprising the 1,061 contested cases sample. The files for each of these cases were examined[173] and data recorded directly onto specially designed file study Data Sheets. All data gatherers were provided with a key describing the use of all forms and a landlord code compiled by the coordinators.[174] The second part of the file study consisted of recording and tabulating

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172. The data gatherers for the file study were two law students who also had been in-court monitors, two law students not monitors but who had extensive knowledge regarding the study and three undergraduate students who had some special training, and who always worked with at least one law student. The data gatherers were assisted and trained by the coordinators who checked all data for irregularities and accompanied the data gatherers on the first few sessions.

173. The file study data sheets, key and landlord code are on file at the Legal Assistance Foundation of Chicago. These cases were generated at total random of 230 cases which were keypunched and tabulated.

The random sample case files were checked to ascertain the identity of landlords, zip code areas of the city in which tenants live, compliance with procedure under the Forcible Entry and Detainer Act, ILL. REV. STAT ch. 57, 51 whether rulings and orders given in court were accurately recorded and whether a writ of restitution was subsequently filed and executed. The data from the random file study thus give statistically valid information about those areas of the eviction process.

174. The categories were all cases in which monitors indicated that the judge made the following rulings: (a) defense not germane (data sheet B); (b) told parties to settle (data sheet B); (c) ordered utilities restored (data sheet B); (d) ordered repair (data sheet B); (e) refused to consider defense (data sheet B); (f) partial rent abatement (data sheet B); (g) or where written pleadings were filed by the tenant (data sheet B). The study showed that 165 cases from the 1976 monitor observations had one or more of the variables checked and were therefore examined. This process was not used for 1977 cases because of the time limitations.

data from selected categories of cases. This data was recorded using file study sheets "A" and "B," but was coded separately from the random sample.[175] In addition to examining files in the random and selected samples, files were examined for cases in which monitors were unable to ascertain final disposition from in-court observation.

175. The 165 selected file study cases provide the same basic information as the random sample cases. These cases comprise the total sample of cases in which the judge made certain oral rulings. The files were examined to compare whether these rulings were reflected in orders entered on the court files.