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This article is a description of a study of cases filed and tried in the Detroit, Michigan, Common Pleas Court, Landlord-Tenant Division, during 1970 and 1971.[1] The court is in a large urban center and handles a high volume of cases, in most of which one or both parties appear without an attorney. The impetus for the study was Michigan legislation passed in 1968, which gave tenants additional defenses to summary eviction procedures. The main goal of the study was to observe the effects of the legislation on tenants who were subject to summary proceedings in Detroit. The purpose of the study was not just an analysis of landlord-tenant law or practices per se, but also the more general inquiry into the administration of justice and practical effects of reform legislation.

Part I of the article provides background on landlord-tenant law in general and the law in Michigan at the time of the study. This section also explains why the new legislation was passed and what was expected of it. Parts II and III describe the study methods and the data gathered. Finally, there are conclusions, including summary and interpretation of the data and analysis of whether the law as carried out achieved any of its purported objectives, and recommendations arising from the implications of the study for law reform in this and other areas.

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I. THE SUBJECT OF THE STUDY

A. Why the Project was Undertaken

The study was begun in the summer of 1970, two years after the enactment of the Michigan tenants' rights legislation. This legislation, discussed in detail below,[2] gave tenants the right to raise the issue of the condition of the premises in a summary eviction proceeding for nonpayment of rent and to have the rent abated accordingly.[3] Previously the only nonprocedural defenses had been payment of the rent claimed and constructive eviction. The legislation also gave tenants the new defense of retaliation where they claimed the summary proceedings were in retribution for their lawful acts, such as reporting suspected housing code violations.[4]

Since there had been no observable improvement in housing conditions and because the legislation was new and unique, the objective of the study was to find out the effects of the legislation on proceedings in landlord-tenant court. Data were gathered from the court files and from in-court observation to answer the following questions: whether tenants were aware of the new defenses and were using them, whether the court procedures had become slow and complex, and whether the outcomes in such actions were affected by new defenses being raised. The goal was to determine whether the new defenses afforded tenants by the legislature had actually resulted in increased protection for tenants in court.

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[2] *See* part I *B 2 infra.*

[3] MICH. COMP. LAWS ANN. § 554.139 (Supp. 1973) (originally enacted as Mich. P.A. 1968, No. 295) added warranties of habitability and repair to residential leases. Mich. P.A. 1968, No. 297 recognized the defenses in summary proceedings. This act has since been recodified and modified slightly; it now appears as MICH. COMP. LAWS ANN. §§ 600.5720, 600.5741 (Supp. 1973). Further statutory references herein will be to the session laws as passed and studied. After the time covered by the study, the Michigan legislature recodified and amended all of the legislation covering summary proceedings to recover possession of premises by a landlord or land contract vendor. MICH. COMP. LAWS ANN. §§ 600.5701 *et seq.* (Supp. 1973) (adding a new chapter to the Revised Judicature Act of 1961). The recodification in 1971 essentially left the tenants' rights statute intact and without substantive changes, with the exception that the retaliation defense was strengthened slightly. For a brief analysis of the new act, see *Public Act 120 of 1972: The New Summary Proceedings Act*, 51 MICH. ST. B.J. 361 (May, 1972).

[4] P.A. 1968, No. 297, § 5646(4) (b).

and were using them, whether the court procedures had become slow and complex, and whether the outcomes in such actions were affected by new defenses being raised. The goal was to determine whether the new defenses afforded tenants by the legislature had actually resulted in increased protection for tenants in court.

In addition, because the legislation did increase the possible defenses for tenants and thus made the defense more complicated, the study included observation of the differences, if any, between those tenants who had attorneys and those who were unrepresented. Few tenants in the Detroit Landlord-Tenant Court were represented by counsel, and the hypothesis was that under the new statutes tenants without counsel were at a disadvantage.

The study also included observation of the sex and race of the parties who came into court personally, as opposed to appearing only through counsel, so that it could be determined whether these factors affected outcome. An observational study of defendants in Detroit Recorders Court had indicated that such variables had affected the outcomes of criminal cases in the city,[5] and some wondered if similar results might be found in civil cases. The study plan also included observation and analysis of possible differences among judges and comparison of bench and jury trial outcomes.

B. The Legislation Studied

1. Historical Perspective—Except for recent changes in some areas, the landlord-tenant law that affects today's urban tenants was developed in the feudal society in the English countryside.[6] Traditional landlord-tenant law recognizes a lease not as a contract, but as a conveyance of an estate. In this framework, the obligations (covenants) of the parties are independent rather than mutual. The tenant's obligation to pay rent is independent of any obligation by the landord to repair the leased premises, and any failure to pay rent means the landlord may regain possession,

[5] D. Warren, Justice in the Recorder's Court of Detroit: An Analysis of Misdemeanor Cases During the Months of September to December 1969 (1970) (unpublished). The results of this study are summarized in Bell, *Racism in American Courts: Cause for Black Disruption or Despair?*, 61 CALIF. L. REV. 165, 176 (1973).

[6] There are many sources that may be consulted for detailed historical development of landlord-tenant law. *See, e.g.*, Quinn & Phillips, *The Law of Landord-Tenant: A Critical Evaluation of the Past With Guidelines for the Future*, 38 FORDHAM L. REV. 225 (1969); Bross, *Law Reform Man Meets the Slumlord: Interactions of New Remedies and Old Buildings in Housing Code Enforcement*, 3 URBAN LAWYER 609 (1971).

even if he himself has breached the agreement in some way short of eviction.

At the time traditional landlord-tenant law was developed, what the land could produce was of more importance than whatever rude dwellings might be on it. Because the shelter was simple and the typical lease spanned a long term, the tenant farmer was in a position to do repairs himself. Today, however, it is hard to argue that it is economic for each individual apartment tenant to contract separately for repairs, especially when he might be a short-term resident. It is nonsense to claim that today's tenant pays his rent for peaceful enjoyment of an estate and merely wants possession of space. On the contrary, what the tenant thinks he is getting is an apartment furnished with utilities, or utility service at least, as well as common areas (such as stairs or elevator) so that he can reach his apartment. Nonetheless, feudal property conveyance principles have been applied to apartment lease transactions in the United States even recently. [7]

Traditional landlord-tenant law also recognizes that the landlord has the right to regain possession of his premises at the end of the tenancy, even at the end of each period of a periodic tenancy, without showing any reason. In fact, the reasons for retaking the premises have been held immaterial,[8] so that a landlord traditionally had the right to evict in retaliation for the tenant's attempt to have a governmental agency enforce the housing code that the tenant was powerless to enforce.

The theory that a lease is not a contract but a conveyance of an estate was first eroded by the doctrine of constructive eviction. Under this doctrine, if the premises become so grossly unfit as to preclude their use, then the tenant can rescind the lease by vacating the premises. When the tenant has left the premises, the obligation to pay rent ceases.[9] This development benefited commercial lessees, but it was of little help to weekly and monthly tenants and to tenants to whom no better housing was available.

By the 1960's there was a growing trend toward modernization of residential landlord-tenant law to make it more reasonable for

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[7] *See, e.g.*, Baronne Bldg., Inc., v. Mahoney, 16 La. App. 84, 132 So. 795 (1931); Reaume v. Wayne Circuit Judge, 299 Mich. 305, 300 N.W. 97 (1941); Edgerton v. Page, 20 N.Y. 281 (1859); Ravkind v. Jones Apothecary, Inc., 439 S.W.2d 470 (Tex. Civ. App. 1969).

[8] *See, e.g.*, Wilkens v. Tebbetts, 216 So. 2d 477 (Fla. Dist. Ct. App. 1968); Wormood v. Alton Bay Camp Meeting Ass'n, 87 N.H. 136, 175 A. 233 (1934); DeWolfe v. Roberts, 229 Mass. 410, 118 N.E. 885 (1918).

[9] *See, e.g.*, Charles E. Burt, Inc. v. Seven Grand Corp., 340 Mass. 124, 163 N.E.2d 4 (1959); Nesson v. Adams, 212 Mass. 429, 99 N.E. 93 (1912); Washington Chocolate Co. v. Kent, 28 Wash. 2d 448, 183 P.2d 514 (1947).

today's conditions and also, some hoped, to alleviate bad housing conditions.[10] In the last dozen years there has been a growing recognition that new landlord-tenant law must be developed so that residential leases would include a warranty of habitability, and the lease covenants of landlord and tenant would be mutually dependent. These two innovations would allow a tenant facing eviction for nonpayment of rent to raise the condition of the premises as a defense. The need for these reforms was recognized by the commentators,[11] courts,[12] legislatures,[13] and model landlord-tenant codes.[14] Additionally, the idea that a tenant should be protected from retaliatory eviction for making a complaint about housing code violations, so that code enforcement, already usually slight, might not be further hindered, was also recognized by the commentators,[15] courts,[16] legislatures,[17] and codes.[18]

The pressure for change came about not just because of a response to bad law and worse housing conditions, but because a

[10] *Trends in Landlord-Tenant Law Including Model Code*, 6 REAL PROP. PROBATE & TRUST J. 550 (1971); Quinn & Phillips, *supra* note 6; Bross, *supra* note 6.

[11] *See* Moscowitz, *Rent Withholding and the Implied Warranty of Habitability—Some New Breakthroughs*, 4 CLEARINGHOUSE REV. 49 (1970); Quinn & Phillips, *supra* note 6; Schoshinski, *Remedies for the Indigent Tenant: Proposal for Change*, 54 GEO. L.J. 519 (1966) (with the principle disguised as constructive eviction without abandonment).

[12] *See, e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970); Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Reste Realty Corp. v. Cooper, 53 N.J. 444, 251 A.2d 268 (1969); Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

[13] *See, e.g.*, PA. STAT. ANN. tit. 35, § 1700-1 (Supp. 1973); N.Y. MULT. DWELL. LAW § 309(5) (c) (3) (McKinney Supp. 1972).

[14] National Conference of Commissioners on Uniform State Laws, PROPOSED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (Final Draft 1972) [hereinafter cited as UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT], reprinted in 8 REAL PROP. PROBATE & TRUST J. 125 (1973); American Bar Foundation, MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft 1969) [hereinafter cited as MODEL RESIDENTIAL LANDLORD-TENANT CODE]. Section 2.104 of the Uniform Residential Landlord and Tenant Act and section 2-203 of the Model Residential Landlord-Tenant Code impose a warranty of habitability and repair, while section 4.105 of the Uniform Act and section 2-102 of the Model Code in certain situations make the covenants mutual with the duty to pay rent.

[15] *See, e.g.*, McElhaney, *Retaliatory Evictions: Landlords, Tenants, and Law Reform*, 29 MD. L. REV. 193, 214 (1969); Note, *Landlord and Tenant, Retaliatory Evictions*, 3 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 193, 204-05 (1967); Note, *Retaliatory Eviction—Is California Lagging Behind?* 18 HASTINGS L.J. 700, 705 (1967).

[16] *See, e.g.*, Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969); Aweeka v. Bonds, 20 Cal. App. 3d 278, 97 Cal. Rptr. 650 (1971); Dickhut v. Norton, 45 Wis. 2d 389, 173 N.W.2d 297 (1970); Alexander Hamilton Savings & Loan Ass'n v. Whaley, 107 N.J. Super. 89, 257 A.2d 7 (1969).

[17] *See, e.g.*, ILL. REV. STAT., ch. 80, § 71 (1971); HAWAII REV. STAT. § 666-43 (Supp. 1971); MD. ANN. CODE, art 21, 8-213-1 (Supp. 1973); ME. REV. STAT. ANN. tit. 14, § 6001 (Supp. 1972).

[18] Section 5.101 of the Uniform Landlord and Tenant Act and section 2-407 of the Model Residential Landlord-Tenant Code (*See* note 14 *supra*) prohibit retaliatory evictions, rent increases, and decreases in services.

growing tenants' movement was finally demanding changes.[19] Tenants' rights advocates litigated, lobbied, and held rent strikes.

Although some hoped that the developing changes in landlord-tenant law would be held constitutionally required, the United States Supreme Court recently dashed those hopes and restricted the change to the local level in *Lindsey v. Normet.*[20] In *Lindsey,* the Court held that federal constitutional principles of due process and equal protection do not require that a tenant in a summary eviction proceeding be enabled to raise the condition of the premises as a defense; that is, the federal constitution allows a state to treat the covenants of landlord and tenant as independent rather than dependent.[21]

Michigan landlords and tenants were not affected by *Lindsey,* however, nor did they have to rely on court decisions, for in 1968 the Michigan legislature passed legislation that, at least on the statute books, gave Michigan tenants rights that are still being debated in most other states—warranties of habitability and repair, mutuality of covenants, and protection against retaliation.

2. The Michigan Tenants' Rights Acts—Before enactment of the reform legislation which prompted the study described in this article, Michigan law was similar to the traditional landlord-tenant law of property conveyance.[22] Prior to 1968, the major purpose of summary proceedings in Michigan was to permit landlords to regain possession of their property as quickly as possible. A tenant had little protection; if he refused to pay rent because of the landlord's breach of the lease, the judicial answer to the tenant in summary proceedings was pay or move.

In 1967, it was hardly realistic to assert that Detroit residents had the alternative of moving, because the places available were in as bad a condition as those they would leave. Of the 167,000 dwelling structures in Detroit's inner and middle city, only 45,000 were considered sound by the Detroit Community Renewal Pro-

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[19] *See* TENANTS AND THE URBAN HOUSING CRISIS (S. Burghardt ed. 1972); T. FLAUM & E. SALZMAN, THE TENANTS' RIGHTS MOVEMENT (Urban Research Corporation Report, Sept. 1, 1969); Indritz, *The Tenants' Rights Movement,* 1 N.M.L. REV. 1 (1971) (contains a bibliography); Comment, *Tenant Unions: Collective Bargaining and the Low Income Tenant,* 77 YALE L.J. 1368 (1968).

[20] 405 U.S. 56 (1972).

[21] *Id.* at 68.

[22] There was no required warranty of habitability in residential leases, the covenant to pay rent was independent of any covenant to repair on the part of the landlord, and a landlord could evict in retaliation if a tenant complained to the authorities about code violations, because reasons for termination of tenancies were immaterial in eviction proceedings. *See generally* Schier, *Draftsman: Formulation of Policy,* 2 PROSPECTUS 227 (1968); Comment, *The New Michigan Landlord-Tenant Law: Partial Answer to a Perplexing Problem,* 15 WAYNE L. REV. 836 (1969).

gram.[23] Even more severe was the problem in the inner city, where only 1,000 of 27,000 structures were considered sound.[24] Therefore, unless tenants could remedy the structure in which they resided, they were effectively denied relief.

Soon after its creation in 1965, the Urban Law Program[25] in Detroit drafted landlord-tenant law reform bills in response to staff frustration in dealing with their landlord-tenant caseload under the old law and pressure from community groups for better housing in the city.[26] Eventually, the Michigan Committee on Law and Housing, comprising landlords, city officials, labor leaders, and church and civic leaders as well as tenants, was formed to ensure that suggestions from diverse groups would be included in the legislation.

Bills were placed before the legislature during its 1967 session, but they failed to pass. Then the Detroit rebellion in the summer of 1967 "put the passage of this legislation into a completely new perspective."[27] The New Detroit Committee, a group of civic leaders formed immediately after the disturbance, endorsed and helped redraft the proposed acts, which were then passed in the next regular legislative session in 1968.

The goals for the new legislation, as stated by one of its draftsmen, were:

> First, the tenant must have sufficient space for the comfort and convenience of himself and his family. Second, the term of occupancy should be long enough that the tenant is assured some degree of permanency. Third, the premises must be maintained in a safe and sanitary condition. Fourth, basic services, such as heat, light, and water, must be provided in sufficient quantity and quality to meet normal needs. And fifth, the price to be paid by the tenant for the premises and the attendant services should reflect his ability to pay in some measure. A more encompassing goal was to alter the balance of power in the lease relationship so that the tenant might assume some responsibility and control in matters fundamental to his well-being. If the tenant had the leverage to force his landlord to bargain, he could compel the commitment of more

[23] Summary Report, Community Renewal Program, reprinted in CITY OF DETROIT, DETROIT: THE NEW CITY at 49-50 (1960).

[24] *Id.*

[25] The Urban Law Program was an Office of Economic Opportunity project at the University of Detroit Law School. The Center for Urban Law and Housing is the successor to the research division of this project.

[26] Beattie, *Persuader: Mobilization of Support*, 2 PROSPECTUS 239 (1968), is a good eyewitness account of the drafting of and lobbying for the tenants' rights bills. There is no official legislative history in Michigan.

[27] *Id.* at 242.

> money to improve the quality of existing housing. There would be no limit on the nature and variety of beneficial considerations which he could extract with his bargaining leverage.[28]

Of the six bills dealing with tenants and housing that were passed in 1968, two were the subject of the study and are discussed in detail in the next section. Under Act 295, warranties of habitability and covenants to repair were added to residential leases. In Act 297, the summary proceedings statutes were amended so that landlords' covenants became mutual with tenants' covenants to pay rent; retaliatory eviction was also prohibited under this act. The four additional acts gave added protection to tenants being evicted from public housing,[29] established a board of tenant affairs in public housing,[30] allowed public and tenant enforcement of housing maintenance laws,[31] and required fair housing or open occupancy.[32] These acts are all still in effect, although they have been recodified and modified slightly.

Commentators were not entirely optimistic that the legislation would meet the goals set for it. One tenants' attorney claimed that the laws barely touched the housing problems[33] and vigorously criticized the new laws for strengthening the rights of the individual while failing to further collective action.[34] A second article oscillated between predicting that the legislation would have little effect on housing and hoping that it would, but in conclusion stated that the most significant aspect of the legislation was that, from then on, tenants would be able to vindicate their own rights.[35] Study of the Detroit Landlord-Tenant Court showed how little that meant.

3. The Summary Eviction Procedures—The Michigan summary proceedings statutes provide landlords with a method for swift recovery of possession of property. In the Detroit Landlord-Tenant Court, a case is set for trail approximately one week after the complaint is filed by the landlord. Service on the tenant can be as late as three days before trial.[36] The summons and

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[28] Schier, *supra* note 22, at 227-28.
[29] Mich. P.A. 1968, No. 267.
[30] Mich. P.A. 1968, No. 344.
[31] Mich. P.A. 1968, No. 286.
[32] Mich. P.A. 1968, No. 112.
[33] Glotta, *Tenant's Attorney: Evaluation of Impact*, 2 PROSPECTUS 247, 248 (1968).
[34] *Id.* at 250.
[35] *See* Comment, *supra* note 22, at 853.
[36] At the time of the study the statutory provision was in the Revised Judicature Act of 1961, MICH. COMP. LAWS ANN. § 600.5640(1) (1968) (originally enacted as Mich. P.A. 1961, No. 236). The provision is now MICH. COMP. LAWS ANN. § 600.5735(2) (b) (Supp. 1973).

complaint need not be served on the defendant personally.[37] At the time of the study, the practice in the Detroit Landlord-Tenant Court was for a bailiff to go to a defendant's home and either (1) serve the named defendant personally (personal service), (2) serve the summons on another person inside the home (substituted service), or (3) attach the summons to the door of the property (tacked service).

When a case was called, if the service had been personal or substituted or if the service had been tacked and the defendant appeared,[38] the case was heard at that time. But if the summons had been tacked and defendant did not appear, the case was put over for one week, during which another summons, called an alias summons, was served. After the second summons, if defendant still did not appear, a default judgment for possession was entered even if the second summons had also been tacked and the defendant had never been personally served.

Two types of summary proceedings cases heard in Detroit Landlord-Tenant Court were analyzed: nonpayment actions and termination actions. These two actions are both possessory only; the landlord prevailing in a nonpayment action has a right to either the rent due (after payment of which the tenant may remain in the premises) or possession, but he does not receive a separately enforceable money judgment.[39] The landlord prevailing in a termination action wins the right to recover possession. The 1968 legislation gave tenants new defenses in both nonpayment and termination actions and gave landlords new obligations.

a. Nonpayment Actions—Under Michigan law, seven days after making a written demand for overdue rent a landlord can begin summary proceedings to recover possession of his premises if the rent due is not paid.[40] This type of action is herein designated a nonpayment action.

In nonpayment actions, one defense is, of course, that payment or partial payment of the rent claimed has actually been made. Prior to enactment of the 1968 legislation, payment and construc-

[37] Mich. P.A. 1961, No. 236, §§ 5643 and 5652 allowed issuance of a default judgment if defendant had been served twice by having the summons tacked to his door and had failed to appear.

[38] Substituted service is permitted under MICH. COMP. LAWS ANN. §600.5718 (Supp. 1973) (originally enacted as Mich. P.A. 1961, No. 236, § 5643).

[39] Where personal jurisdiction over the defendant is obtained, the plaintiff may seek a money judgment in addition. However, since only possessory actions are heard in the Detroit Common Pleas Court, Landlord-Tenant Division, this discussion is limited to such actions only.

[40] Mich. P.A. 1968, No. 297, § 5634(2). A similar provision was in Mich. P.A. 1961, No. 236, § 5634, and is in the current statute as MICH. COMP. LAWS ANN. § 600.5714(1)(a) (Supp. 1973). *See* note 3 *supra*.

tive eviction were the only defenses that a tenant who had received proper notice and service could make to a nonpayment action.[41] After the 1968 legislation, the tenant had the additional defense that the rent claimed by the landlord was not owing because the landlord had breached either express or statutory covenants regarding the condition of the premises. Unlike the constructive eviction defense, this defense is valid even if the tenant has not vacated all or part of the premises. The new statute read in part as follows:

> A claim for possession for nonpayment of rent is deemed to include, without limitation thereto, the following issues:
> (a) That the defendant has paid the rent due.
> (b) That the plaintiff has committed a breach of the lease which excuses the payment of rent.[42]

These defenses are herein designated payment and landlord breach, respectively.

The 1968 Michigan tenants' rights legislation set out statutory covenants for residential tenancies.[43] By law thereafter, all leases of less than one year included a legally enforceable promise or covenant by the landlord that the premises and common areas were fit for the use intended and in compliance with state and local health and safety code standards, whether or not the tenant had inspected the premises beforehand. The landlord also covenants, by the statute, to keep the premises in reasonable repair during the term of lease. The landlord breach defense referred to herein includes breach of these statutory covenants to repair and to meet code standards.

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[41] *See* notes 22-24 and accompanying text *supra*.

[42] Mich. P.A. 1968, No. 297, § 5637(5). The latter provision is in the current statute as MICH. COMP. LAWS ANN. § 600.5720(1) (f) (Supp. 1973).

[43] MICH. COMP. LAWS ANN. § 554.139 (Supp. 1973) (originally enacted as Mich. P.A. 1968, No. 295, § 39) provides:

> Sec. 39. (1) In every lease or license of residential premises, the lessor or licensor covenants:
> (a) That the premises and all common areas are fit for the use intended by the parties.
> (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants [sic] wilful or irresponsible conduct or lack of conduct.
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

The statute clearly intended the covenants of the landlord to be mutual with the tenant's covenant to pay rent; that is, the landlords' breach of any part of the agreement could be raised by the tenant as a defense in a proceeding for nonpayment of rent. The law was given this interpretation in Detroit Landlord-Tenant Court during the study; no claims, by either judges or plaintiffs' attorneys, that the covenants were not mutual were observed. The lack-of-mutuality argument was made elsewhere in the state, but a recent appellate decision held the covenants to be mutual.[44] The statute as recodified after the study makes the intended mutuality clearer.[45]

Under Michigan law, if the landlord receives a judgment for all or part of the rent claimed in a nonpayment action, the losing tenant has ten days to pay the amount of the judgment or vacate. After ten days, if the tenant still remains and has not paid or appealed, the landlord can return to court and obtain a writ of restitution.[46] With this writ, the bailiff is empowered to enter the premises forcibly, to remove all of the tenant's belongings to the street, and to restore the plaintiff landlord to full possession of his property.

b. Termination Actions—If a Michigan landlord wants to evict his tenant rather than bring an action for rent, he may begin an action to regain possession of the premises after giving the tenant notice for a period at least equal to the period of the tenancy.[47] For example, if a tenant has a month-to-month tenancy, the notice must be given at least thirty days prior to the filing of the complaint. This type of action is herein designated a termination action.

In termination cases prior to 1968, the only defense was improper notice or service; otherwise, the landlord could evict the tenant for any or no reason.[48] After 1968, the defense that is herein designated "retaliatory eviction" was created.[49] Under the

[44] Rome v. Walker, 38 Mich. App. 458, 196 N.W.2d 850 (1972), reversed an Ann Arbor, Michigan, circuit court opinion which held that breach of the statutory covenants by the landlord could not be raised as a defense in summary nonpayment proceedings. The court of appeals held that the statutory covenants are mutual with, rather than independent of, the covenant to pay rent (38 Mich. App. at 463, 196 N.W.2d at 853), and stated that the tenant can raise, in a nonpayment action, any defense that would justify withholding of the rent (38 Mich. App. at 464, 196 N.W.2d at 853).

[45] MICH. COMP. LAWS ANN. § 600.5741 (Supp. 1973).

[46] MICH. COMP. LAWS ANN. § 600.5744(4) (Supp. 1973) (originally enacted as Mich. P.A. 1961, No. 236, § 5673.

[47] MICH. COMP. LAWS ANN. § 554.134 (1968).

[48] Mich. P.A. 1961, No. 236, § 5637.

[49] Mich. P.A. 1968, No. 297, § 5646 provided:

> (4) When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the

new law, the landlord could still evict the tenant for any reason at all *except* retaliation for the tenant's attempts to complain about housing conditions to the landlord or health department, or to enforce any of his rights under the lease. The defense of retaliation was also available to tenants in nonpayment cases who alleged that their rent was raised in retaliation for their lawful acts.

In a termination case, the losing tenant simply has ten days to vacate. Unlike some state statutes, where judges can grant additional time in hardship cases,[50] Michigan law provides only the standard ten-day period in all cases.[51] If the tenant still remains after the ten days, a writ of restitution can be obtained, authorizing the bailiff to restore the premises to the landlord.[52]

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defendant alleges in a responsive pleading and if it appears by a preponderance of the evidence that any of the following situations exist, judgment shall be entered for the defendant:

a) That the alleged termination was intended as a penalty for the defendant's attempt to secure or enforce rights under a lease or contract, or under the laws of the state or its governmental subdivisions, or of the United States.

b) That the alleged termination was intended as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of any health or safety code or ordinance.

c) That the alleged termination was intended as retribution for any other lawful act arising out of the tenancy.

d) That the alleged termination was of a tenancy in housing operated by a city, village, township or other unit of local government, and was terminated without cause.

(5) When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the defendant alleges and it appears by a preponderance of the evidence that the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for such lawful acts as are described in subsection (4), and that the defendant's failure to perform such additional obligations was a material reason for the alleged termination, judgment shall be entered for the defendant on the claim of possession, and all such additional obligations shall be void.

These provisions are in the current statute as MICH. COMP. LAWS ANN. § 600.5720 (Supp. 1973) with slight modification including a provision that while a presumption of retaliation arises if the tenant has made a complaint to a governmental agency within ninety days of the commencement of summary proceedings, a presumption against retaliation arises if the tenant has not so complained. MICH. COMP. LAWS ANN. § 600.5720(2) (Supp. 1973).

The authors testified before the Michigan House Judiciary Committee when the current act was being considered and amended. The preliminary results of this study, which showed that the original retaliation defense was almost never used, were presented to urge that the defense be strengthened by adding the presumption.

[50] Such statutes are discussed in Gibbons, *Residential Landlord-Tenant Law: A Survey of Modern Problems With Reference to the Proposed Model Code*, 21 HASTINGS L.J. 369, 375-76 (1970).

[51] Michigan judges do, however, sometimes arrange extra days before the writ is to issue, in both nonpayment and termination cases. While a landlord-tenant judge does not have any statutory or judicial authority to grant time beyond the ten-day statutory period (the court cannot grant equitable relief), as a practical matter, a judge's suggestion in this area is usually accepted by the landlord or his attorney. This suggestion of additional time is then informally stipulated to by the parties and reduced to an order by the judge.

[52] *See* note 46 and accompanying text *supra*.

II. How the Data were Gathered

A. Court Characteristics

Detroit landlord-tenant disputes are ordinarily heard in the Landlord-Tenant Division of Detroit Common Pleas Court.[53] It is this court that was studied and is herein denoted "Landord-Tenant Court" or "the court." This division of Common Pleas Court hears possessory summary eviction proceedings and land contract foreclosures. Cases in which a money judgment is sought in addition to possession are heard elsewhere in Detroit Common Pleas Court.

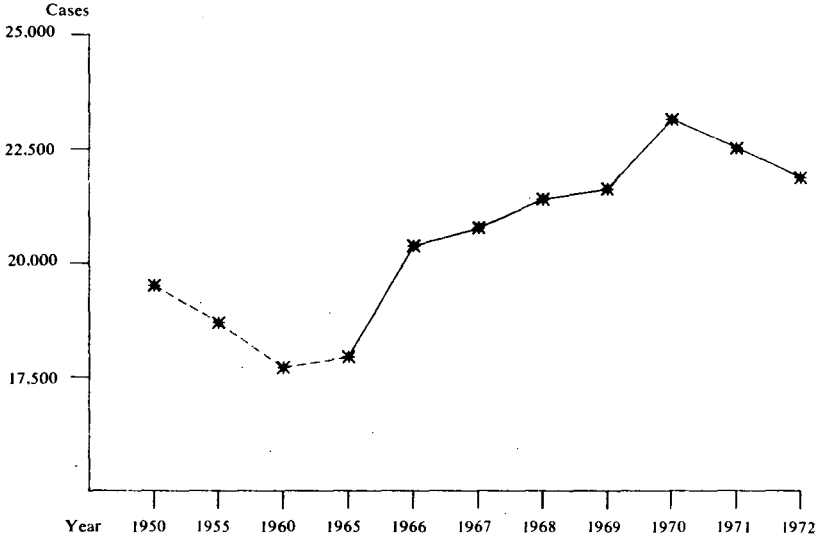
The Landlord-Tenant Court is located in a downtown office building and is physically separated from other parts of Common Pleas Court. During the study, two judges were ordinarily assigned to the court. These judges were either regular, elected Common Pleas judges, assigned on a rotating basis, or visiting judges from nearby municipalities. The court's practice at the time of the study was to call landlord-tenant cases twice a day for about an hour each, and to hear land contract disputes at a different time. Land contract cases were not observed or studied.

The court has for many years handled a large volume of cases. Records kept by the clerk of the court indicate that the 1968 legislation did not seem to affect the court's caseload. Figure 1 shows total cases filed in recent years; no abrupt changes occurred after 1968. Landlords clearly did not abandon use of the court as futile, as over 20,000 cases were filed in 1968 and in each year afterward. Records kept by the clerk of the court also indicate that the number of writs of eviction issued has not decreased since the 1968 legislation, but remains roughly at the level of one-fourth of all cases started.

Perhaps more surprisingly, however, the clerk's figures for number of jury demands filed do not show the marked increase many expected because of the new fact issues which the 1968 legislation permitted tenants to raise. Figure 2 shows that after an initial increase in 1970, the number of jury demands has almost returned to its earlier level. It should be remembered that these

[53] The venue provisions of the Michigan summary proceedings statutes are such that Detroit Common Pleas Court is the "proper" court for summary proceedings regarding property within Detroit only, although other cases may be started and tried there if the defendant or the court does not object. MICH. COMP. LAWS ANN. § 600.5706(2) (Supp. 1973). In practice, the vast majority of properties involved in the Detroit Landlord-Tenant Court are located in the City of Detroit. During the file study, approximately 1,500 addresses of tenants were recorded, but these have not yet been analyzed since the data are not easily classified.

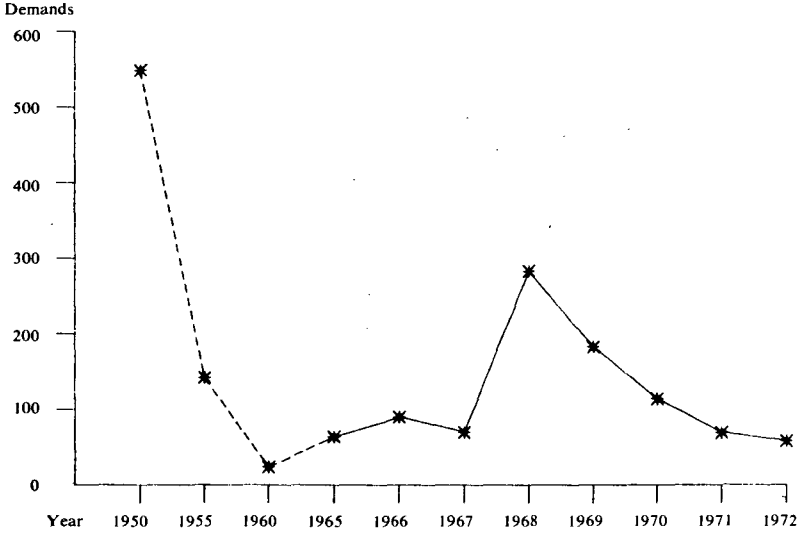
Figure 1. CASES* STARTED, DETROIT COMMON PLEAS COURT, LANDLORD-TENANT DIVISION, 1950–1972



Source: Records kept by Court Clerk

*Includes Nonpayment, Termination, and Trespass Cases

Figure 2. JURY DEMANDS,* DETROIT COMMON PLEAS COURT, LANDLORD-TENANT DIVISION, 1950–1972



Source: Records kept by Court Clerk

*Includes Nonpayment, Termination, and Trespass Cases

figures represent jury demands only and that the number of jury trials (nine for the year studied) is much lower. Even so, the ratio of jury demands to total cases is small.

The court that was the subject of the study thus processed, on an average, ninety cases per day in two sessions. Contested cases were heard mainly before judges as triers of fact rather than before juries.

B. Methodology

The court study had two parts: a file study in which the court records of all the cases heard for one year were examined, and an in-court study in which a data sheet was filled in by a court-watcher on each case observed. In the file study, data were gathered on defaults, representation by attorney, type of trial, outcome, issuance of writ of eviction, and type of summons. The court files provide accurate information on these items, but do not reveal, for example, what defenses a tenant raised at trial (except in the rare case where the tenant was represented by an attorney who filed an answer). However, the in-court study discloses the tenant's defenses, if any, and other information. The court-watchers in each case recorded defenses raised and outcome as well as race, sex, and representation of the parties appearing.

Each part of the study fills gaps in the other. Only the in-court study could provide data that would show the effect of the new statutory defenses; only the file study could give information on the type of summons being issued, enabling an analysis of the high default rate, and supply a look at a large number of cases in which the tenant had an attorney, allowing documentation of differences between represented and unrepresented tenants. The cases observed in the in-court study were begun during the time period covered by the file study. Thus, the file study also provides a check on the accuracy of the observers in the in-court study. Taken together, the studies furnish a comprehensive view of what happened to landlords and tenants appearing before Detroit Landlord-Tenant Court in 1970-71.

1. In-Court Study—The study was begun by watching the court in session in the summer of 1970 and the early spring of 1971. Trained observers[54] sat in court watching each case called

[54] The observers in the summer of 1970 were six law school students, including Mosier. Each had completed one year of law school, including a course in property law that had covered the 1968 Michigan tenants' rights legislation. Each student court-watcher was provided with instruction sheets on the law and the study, along with a sample data sheet and had one training session with author Soble, who had practiced extensively in the

and checking entries on a data sheet.[55] Variables checked were parties' presence in court (rather than appearing only through counsel), race, sex, presence of counsel, type of action, defenses, outcome, and judge. A total of 797 contested cases were eventually observed, coded, keypunched, and analyzed.[56] The number of defaults taken each day was also recorded.

The Landlord-Tenant Court has two courtrooms. During the time of the study, in one courtroom each day one judge heard the bulk of the cases by conducting bench trials. The court heard nonpayment and termination cases in this courtroom along with trespass cases, which were few in comparison. Data concerning trespass cases were not recorded, since the new defenses were not available in such cases. The other courtroom was used for jury trials and for pretrial proceedings in cases where a jury request was made.

In the part of the study done in the summer of 1970, only the courtroom with the bench trials was usually covered, since there was only one observer per session. If a case was begun in the bench trial courtroom and moved to the other courtroom for pretrial or trial, that fact was recorded. In the spring, 1971, part of the study, two observers were available at all times and observed both courtrooms. The same analysis was performed separately on the 1970 set of cases and on the 1971 set,[57] and there were no significant differences between them.[58] Therefore the two sets of cases are taken together to constitute the in-court data.

Landlord-Tenant Court. A sample of the instruction sheet is on file with the *University of Michigan Journal of Law Reform*. The observers in the spring of 1971 were seven VISTA volunteers, who subsequently gathered the data for the file study. They had previously worked with Detroit tenants in their VISTA work, and thus were somewhat familiar with the law and the court. In addition, the authors conducted two training sessions on the law and on the study. The VISTA volunteers also were provided with instruction sheets and sample data sheets.

[55] Samples of the data sheet and coding sheet for both parts of the study are on file with the *University of Michigan Journal of Law Reform*. On the in-court data sheets a space left blank was not considered an answer. Each data sheet included the observer's name and the date. The in-court data sheets were designed and prepared by a graphics designer and were structured to facilitate accurate recording.

[56] For the summer cases, author Mosier coded all of the data. For the spring cases, each court-watcher coded his or her own data as the study progressed. For all court-watchers, the first day of observation and coding was not counted in the study. Also, each data sheet and coding sheet was checked by Mosier for irregularities. After the data were keypunched, cases were discarded if they contained incomplete or inconsistent information.

[57] Each case keypunched bears a code identifying which part of the in-court study it is from. The final sample consists of 359 cases from summer, 1970, and 438 cases from spring, 1971.

[58] The Mann-Whitney rank test was applied and showed no statistically significant difference between the data of two groups of cases. This test checks two groups of data to see if they came from the same distribution by ranking the data according to size. *See* P. HOEL, INTRODUCTION TO MATHEMATICAL STATISTICS 333-35 (ed ed. 1962); J. KEMENY & T. KURTZ, BASIC PROGRAMMING 85-86 (1967).

2. *File Study*—In the file study, the court records of all cases begun in the Detroit Common Pleas Court, Landlord-Tenant Division, from April, 1970, to April, 1971, were examined.[59] The data were recorded directly (in code) on computer coding sheets.[60] Each file was examined and the type of action was recorded. Only nonpayment and termination cases were examined further;[61] data on 20,517 nonpayment and termination cases were coded, keypunched, and studied.[62]

For all non-payment and termination cases, the data-gatherers recorded that either the case was contested by the tenant, a default judgment was entered for the landlord because the tenant never appeared, or the case was dismissed voluntarily by the landlord prior to the return day. For the 4,116 cases that were contested, the data-gatherers further examined each file to see if either party had an attorney; if a jury demand was made; whether there was a bench or jury trial or settlement; what the outcome was; who the judge was; and, if the outcome was a judgment for the landlord, how many days the tenant was given before the writ would issue (with ten days being the statutory minimum and stipulated additional time being termed "extra days").

In addition, for the first 1,546 nonpayment and termination cases coded, cases filed in April and May of 1970, information was recorded regarding whether or not a writ of restitution of the premises was issued and whether the eviction was peaceful or forceful, the type of service of the summons, and the name of the bailiff involved.

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[59] The court clerk, Joseph Mihalko, generously provided us with an empty courtroom in which to examine the files at length.

[60] The data-gatherers for the file study were the seven VISTA workers who had earlier begun court observation for the in-court study and thus had some training in landlord-tenant law. At the outset, they were accompanied by authors Soble and Mosier, who checked the data that were gathered from the court files. Each data-gatherer was also given a key describing the coding forms and a sample filled-out form. Samples are on file with the *University of Michigan Journal of Law Reform*. For each case, the file number was recorded along with the data describing the case.

[61] Land contract and trespass cases were in the same series of files, but these types of actions were not studied.

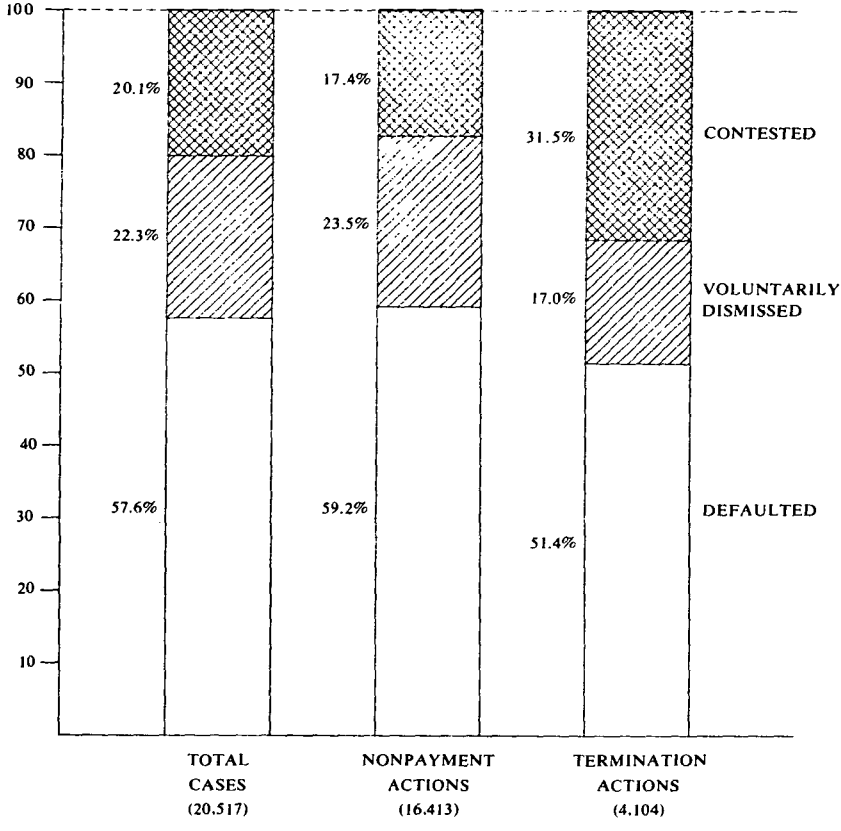
[62] Author Mosier fully realizes that the study of such a huge number of cases is not necessary to obtain statistically significant information about the court. What we have is not a sample of cases or a statistical prediction of what the whole is like, but the whole itself; that is, the study showed exactly what happened in the court that year. The reason for the statistical overkill is that when we began to present our preliminary data from the in-court study (before we began the file study), we kept confronting the skepticism of the legal profession with regard to mathematics and statistics. In order to forestall any suggestion that the study is some sort of mathematical hocus-pocus, the decision was made to analyze cases from an entire year.

III. THE DATA

A. Defaults and Summonses

As expected, the file study showed a high default rate for tenants. During the year studied, 22.3 percent of the cases started were voluntarily dismissed by landlords before the return day of the summons and 57.6 percent resulted in default judgments for landlords; only the remaining 20.1 percent were contested (Figure 3). A greater percentage of nonpayment cases than termination cases were voluntarily dropped by landlords, perhaps because the tenants had paid the rent due before the trial date. If only the cases actually called for trial are considered, in 74.3 percent of the cases (77.5 percent of the nonpayment cases and 62.0 percent of

Figure 3. PROPORTION OF TOTAL FILED CASES CONTESTED, VOLUNTARILY DISMISSED, DEFAULTED

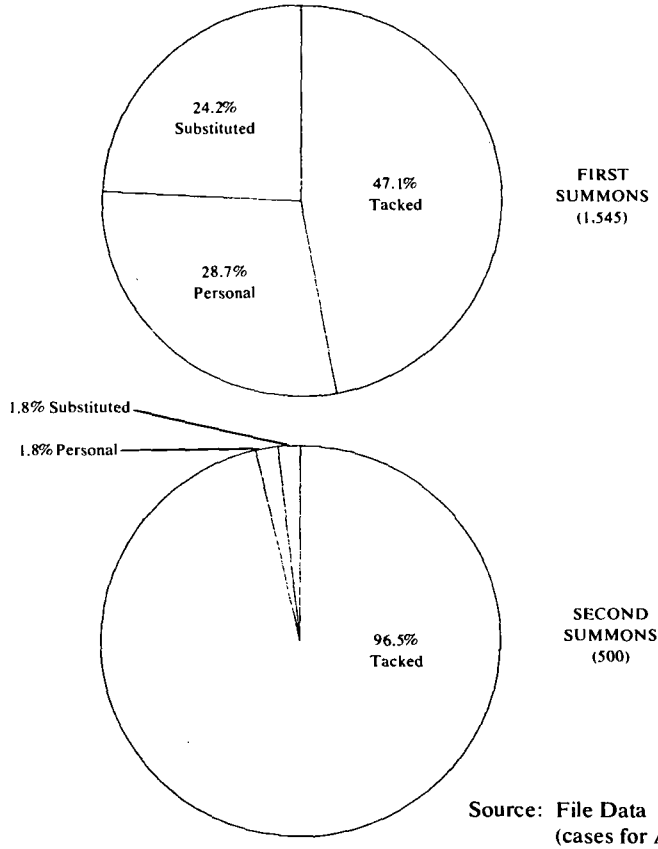


Source: File Data

the termination cases) the tenant did not appear and the landlord received a default judgment.[63] This large number of nonappearances indicated that the data should be further examined to see if there is a relationship between the method of service of the summons and the frequency of tenant defaults.

Figure 4 shows that most of the first summonses[64] were not served on the defendants personally and almost half were not served on any person, but were tacked to the door of the premises.[65] For second summonses, which were served when the first

Figure 4. SERVICE OF SUMMONS



Source: File Data
(cases for April
and May 1970 only)

[63] The in-court data indicate that 75 percent of the cases called for trial were defaulted by the tenants. This high default rate is not unique to the Detroit Landlord-Tenant Court. A State of New Jersey report found that only 14.77 percent of tenants served responded in one New Jersey court. NEW JERSEY RENTAL HOUSING COMMISSION REPORT 31-32 (1971), cited in *The Model Residential Landlord-Tenant Code*, 26 RUTGERS L. REV. 647 n.126 (1973).

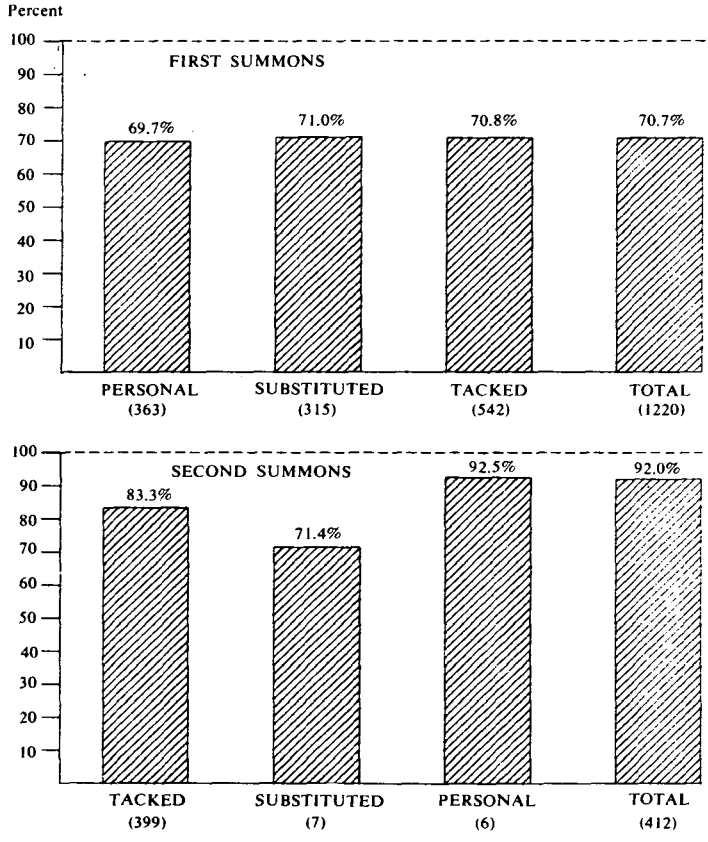
[64] The summons and writ data were not drawn from the entire year, but from the first 1,545 cases studied. These cases were filed in April and May, 1970.

[65] *See* notes 37-38 and accompanying text *supra*.

summons was tacked and defendant did not appear, only a very small proportion were served on the defendant personally or on another person at the address; most were tacked for the second time.

The relationship between the occurrence of a default and the method of service of both the first and second summons is displayed in Figure 5. The data do not suggest a relationship between type of service and rate of default—69.7 percent of those served personally defaulted, while nearly the same proportion (70.8 percent) of those getting tacked service defaulted.[66] A statis-

Figure 5. PROPORTION OF CALLED CASES DEFAULTING BY TYPE OF SERVICE



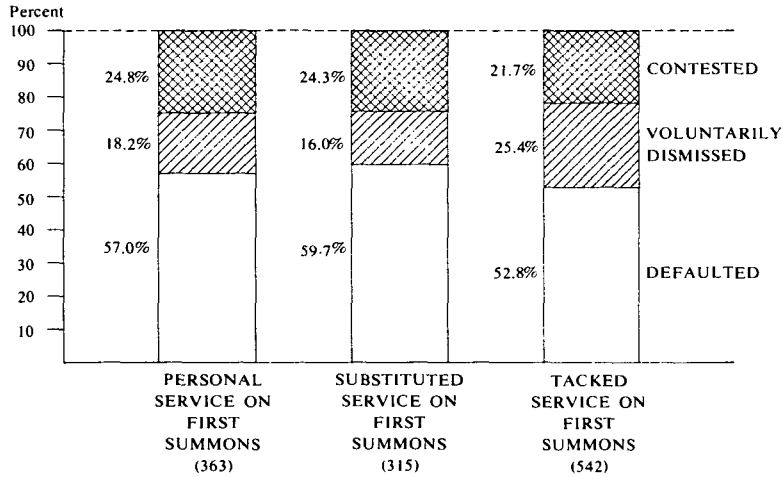
Source: File Data (cases for April and May 1970 only)

[66] Since the data for second summonses (Figure 4) show that 96.5 percent of the second summonses were also tacked, it cannot be suggested that those who received a tacked summons the first time did not have a higher rate of default because they were finally served personally.

tical test was applied to determine whether this difference would be likely to occur by chance or whether it indicated a correlation between method of service and default rate. The test indicated that there is no correlation.[67]

If all cases, including those voluntarily dismissed by landlords, are considered, Figure 6 shows that a slightly lower proportion of those receiving a tacked summons appeared to contest their cases, but that their rate of default was also slightly lower. The lower default rate is made up for by the increased percentage of volun-

Figure 6. PROPORTION OF CALLED CASES CONTESTED, VOLUNTARILY DISMISSED, DEFAULTED BY TYPE OF SERVICE ON FIRST SUMMONS



Source: File Data (cases for April and May 1970 only)

Figure 5 shows that although defendants receiving tacked first summonses appeared at about the same rate as defendants otherwise served, few of those who did not appear and thus were served again, appeared on the second court day.

[67] Since only a sample of 1,545 summonses were examined, the distribution of type of service versus rate of default was checked mathematically to see whether it could safely be concluded that the type of service did not affect the rate of default. A contingency test was applied with the result that there is a probability of 90 percent that the rate of default could be more different for samples of personal and tacked service, assuming that the proportion of defaults is actually the same. The contingency test measures the probability that such a sample could have been drawn if the two events (here default and contested) had equal proportions overall in each of the two groups (here tacked and not tacked summonses). This probability depends on both the size of the sample and the observed difference between the two groups in the sample. Hence, there is no clear evidence from our data that the default rate is affected by the type of service. *See* P. HOEL, *supra* note 58, at 252–55; J. KEMENY AND T. KURTZ, *supra* note 58, at 83–85.

tary dismissals. Landlords dismissed more cases where the summons was tacked than where it was served personally. Perhaps in some of the cases that were voluntarily dismissed the landlords had discovered that the tenants had already vacated.

Interestingly, a higher percentage of termination defendants than nonpayment defendants received a tacked first summons (Figure 7). By examining each type of action for those cases in which the first summons was tacked, Figure 8 shows that a higher percentage of termination defendants than nonpayment defendants failed to appear and thus required a second summons. Yet overall, a smaller proportion of termination defendants than nonpayment defendants defaulted (Figure 3 shows 62.0 percent compared to 77.5 percent.). Thus, the rate of appearance for those termination defendants who had received personal or substituted service was much higher than that of tenants facing nonpayment actions who received such service.

Perhaps these differences can be explained by the surmise that if termination defendants are still living in the premises, they are more likely to appear in court after receiving a summons of any type than nonpayment defendants, but that termination defendants are apt to have moved out by the time the summons is served. A further explanation for the difference between termination and nonpayment cases might be that nonpayment defendants are more likely to see an appearance in court as a useless gesture if they do not have the money claimed to be owing and know of no other defense. Termination defendants may tend to appear

Figure 7. TYPE OF SERVICE OF FIRST SUMMONS BY ACTION

Service	*Nonpayment Cases (1,144)*	*Termination Cases (401)*
Personal	29.0%	27.9%
Substituted	25.2%	21.7%
Tacked	45.9%	50.4%
	100 %	100 %

Source: File Data (Cases for April and May, 1970, only)

more often because they are not aware that their only defenses are improper notice and retaliation, but believe an explanation to the judge that they do not owe rent or have no place to go will help them. Observers in the in-court study saw many termination cases in which tenants offered such explanations. The section below concerning outcomes shows how these tenants fared.

The rate of defaults for all cases called during the year analyzed in the file study was 74.2 percent. This is slightly higher than the 70.7 percent default rate in the cases where the summons and writ were studied in more detail. Since the data relating defaults to method of summons were drawn from cases filed in April and May, 1970, perhaps the pleasant weather at that time of year decreased the default rate. Further study of the default rate throughout the year might prove interesting.

B. Outcomes

The file study provides a detailed picture of the court's effectiveness in serving the ends of landlords, even after the reform legislation was passed. This pro-landlord effectiveness is corroborated by the in-court data.

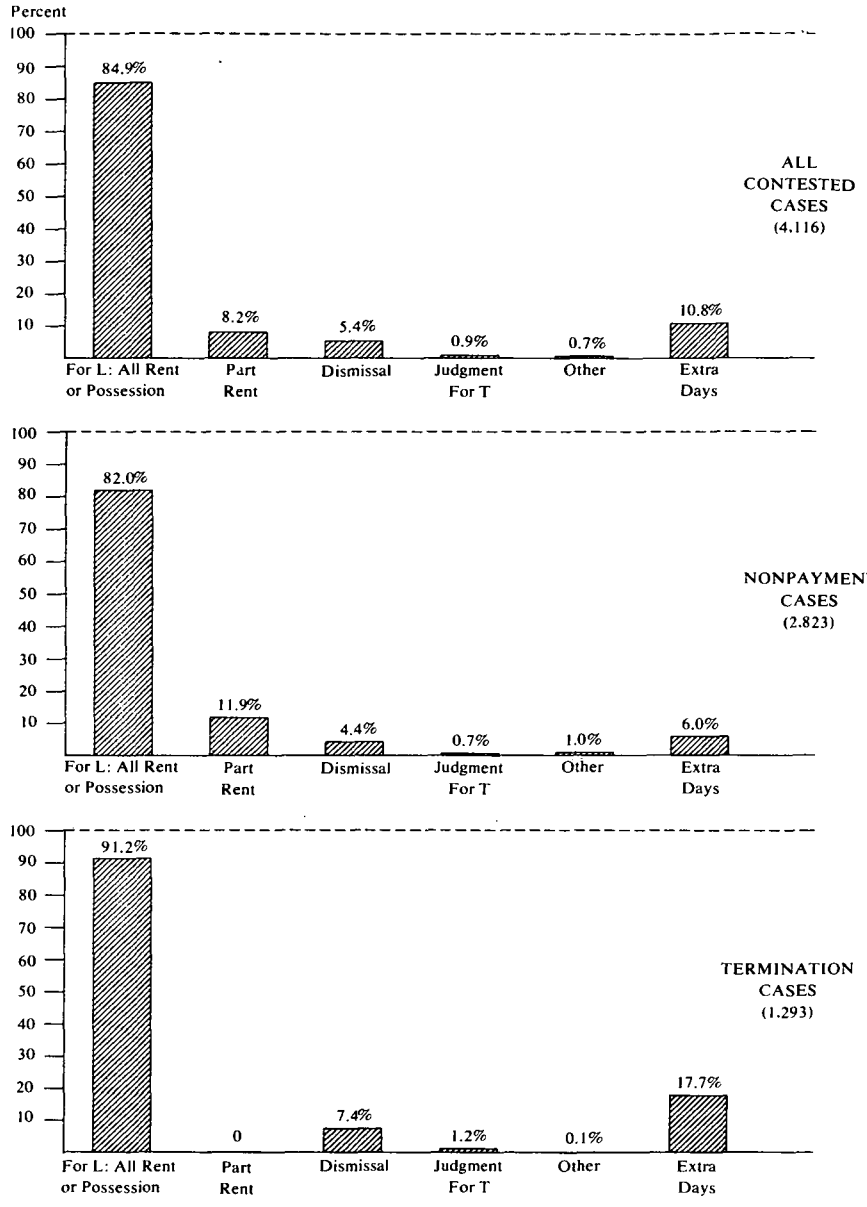
Figure 9 shows the proportion of each type of outcome for contested cases examined in the file study. Figure 9 also shows outcomes for each of the two types of cases studied; both the file study and the in-court study showed that approximately two-thirds of the contested cases were nonpayment actions. Con-

Figure 8. TYPE OF SERVICE OF SECOND SUMMONS BY ACTION

Service	*Nonpayment Cases (359)*	*Termination Cases (141)*
Personal	1.9%	1.4%
Substituted	1.4%	2.8%
Tacked	96.7%	95.7%
	100 %	100 %

Source: File Data (Cases for April and May, 1970, only)

Figure 9. OUTCOMES OF CONTESTED CASES



Source: File Data

LEGEND

For L: All Rent or Possession – Landlord took judgment for all rent in nonpayment case or possession in termination case.

Part Rent – In nonpayment cases; judgment for less than amount claimed in complaint. Includes those where rent miscalculated, part rent already paid, or rent reduced because of condition of premises.

Dismissal – Dismissed by judge for procedural reason (usually faulty notice) or by landlord after case called for trial.

Judgment for T – Tenant prevailed on merits; rent entirely excused (nonpayment cases) or eviction prohibited (termination cases).

Other – Usually result of agreement reached between parties.

sideration of the portion of cases having each outcome, as displayed in Figure 9, discloses that the 1968 tenants' rights legislation gave no sweeping advantage to Michigan tenants whose landlords filed nonpayment or termination cases against them.

In 84.8 percent of the contested cases examined in the file study, the landlord took judgment for all he claimed.[68] These cases coupled with the 74.2 percent of the called cases that were defaulted mean that for cases which the landlord did not dismiss before the return day, the landlord took judgment for *all* he claimed a full 96 percent of the time. If all cases started are considered, including those voluntarily dismissed by landlords (Figure 10), landlords received all they asked in 97 percent of the cases, either by their voluntary dismissal before the return day, default of tenant, or judgment on the merits. Only 1.6 percent of the cases commenced resulted in a judgment of part rent due; 1.1 percent were later dismissed; and less than 1 percent were either won by the tenant or had other outcomes.

Of course, the in-court data that details the defenses raised is the best indication of the use and awareness of the new legislation by tenants.[69] However, Figures 9 and 10 show the miniscule in-court impact of the new legislation, which made the new defenses of landlord breach and retaliation available.

Landlord breach was available as a defense to tenants in nonpayment cases who were seeking to excuse all or part of the rent claimed. Tenants had the entire rent claim excused in 0.7 percent of the contested nonpayment cases or 0.1 percent of the total nonpayment cases started, and had part of the rent claim excused in 11.9 percent of the contested nonpayment cases or 2.0 percent of the total nonpayment cases. Therefore, the files show that *at most* 2.1 percent of the tenants in nonpayment actions could have used the defenses supplied by the 1968 legislation to obtain a favorable result. Cases where part of the rent was abated include those where the rent claimed was merely miscalculated and those where the tenant was able to prove that part of the rent claimed had actually been paid, as well as cases in which the new landlord-breach defense was successful. The in-court data, explained below, show that most part-rent cases were ones in which the tenant raised payment as a defense, so the assessment that the

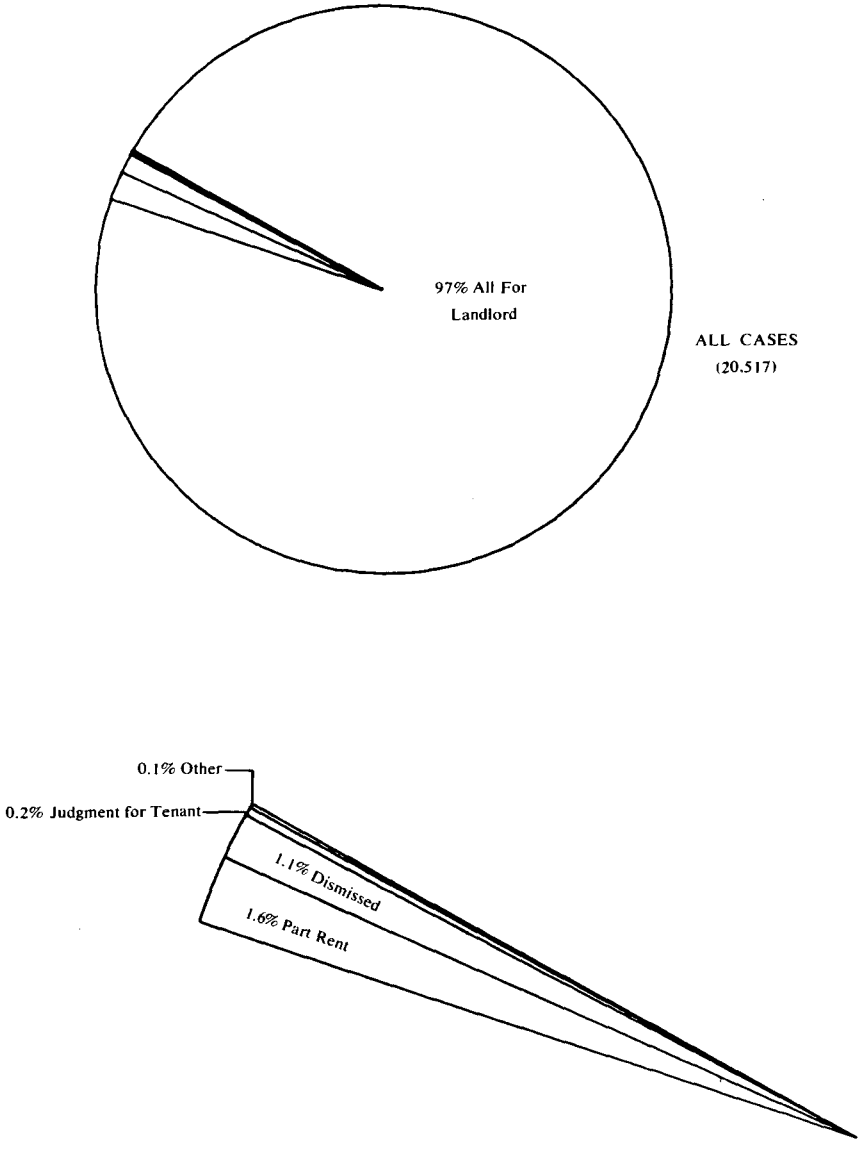
[68] The in-court observations showed that the landlord received immediate total victory in 77.9 percent of the contested cases. Another 4.8 percent of the cases were adjourned, 1.8 percent were set for jury trial or pretrial, and 1.8 percent had other outcomes; these might also have eventually ended in the landlord's favor.

[69] *See* part III *D infra*.

legislation favorably affected 2.1 percent of the cases is doubtless too high.

In termination cases, successful use of the retaliation defense would result in judgment for the tenant because retaliatory eviction is a complete defense. Tenants won only 1.2 percent of the

Figure 10. OUTCOMES FOR ALL CASES STARTED



Source: File Data

contested termination cases and 0.4 percent of the total termination cases started.

Thus, the outcomes disclosed in the file study provide a good indication that the new legislation had little effect on Detroit Landlord-Tenant Court cases in the year studied. Some might argue that the legislation might have convinced many landlords that filing a case would be futile. The study had no way of measuring this effect except by checking court records (Figure 1) to see if the number of cases started dropped or even leveled off after 1968. It did not.

C. Effect of Attorneys on Outcomes

Figure 11 shows that there was a great difference between landlords and tenants with respect to having an attorney. Almost half of the 4,000 landlords whose contested cases were examined in the file study were represented by an attorney; less than one-tenth of the tenants were represented.[70] Proportionally, more tenants were represented in termination cases than in nonpayment cases; a slightly greater proportion of landlords were represented in nonpayment cases than in termination cases. Figure 12 displays the percentage of unrepresented parties facing an attorney representing the other side. In 43.4 percent of the contested cases, an unrepresented tenant faced a landlord's attorney, while in only 1.8 percent did an unrepresented landlord face an attorney for the tenant.

The data indicate that the important factor affecting outcome is whether the tenant had an attorney; representation of the landlord had little effect on outcome. Figure 13 shows that almost twice as high a proportion of cases (87.7 percent compared to 46.2 percent) ended in complete judgment for the landlord when the tenant had no attorney as when the tenant was represented.[71] By contrast, Figure 14 shows unrepresented landlords won a complete judgment slightly more often than represented landlords (86.0 percent compared to 83.6 percent).[72]

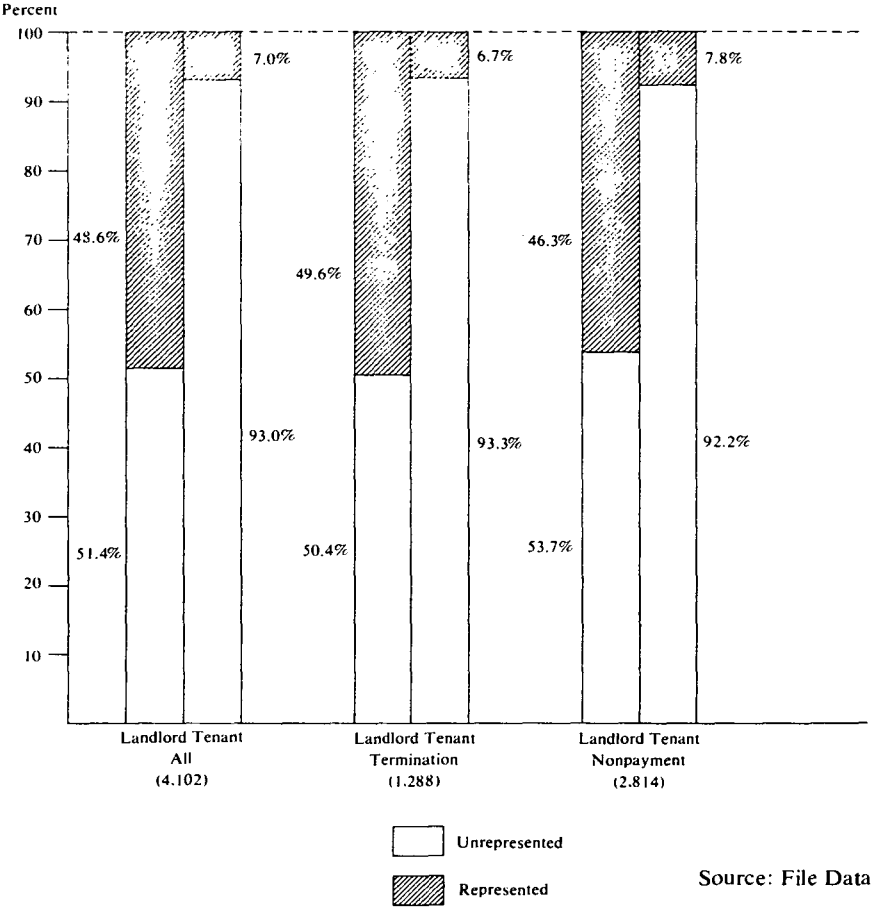
Possible reasons for the landlords' higher rate of complete judgment without attorneys are suggested by the other outcomes

[70] The in-court observation showed that 49.2 percent of the landlords and 7.3 percent of the tenants were represented by counsel.

[71] The in-court data confirm these figures. Represented tenants lost completely to the landlord immediately in 27.6 percent of their cases, while unrepresented tenants lost in such a manner in 81.9 percent of such cases.

[72] In the in-court cases, represented landlords took immediate complete judgments in 76.8 percent of their cases and unrepresented landlords did so in 79.0 percent of theirs.

Figure 11. REPRESENTATION OF LANDLORDS AND TENANTS



Source: File Data

Figure 12. PROPORTION OF CONTESTED CASES WHERE UNREPRESENTED PARTIES FACED ATTORNEYS

	Landlord Represented	*Landlord Unrepresented*	*Total*
Tenant Represented	5.3% (216 cases)	1.7% (73 cases)	7.0%
Tenant Unrepresented	43.3% (1,776 cases)	49.7% (2,037 cases)	93.0%
Total	48.6%	51.4%	100 %

Source: File Data

indicated in Figure 14: attorneys are more likely to settle (probably because of the economic restraints on an attorney's time), and judges apparently look more closely at the notice given in cases where an attorney is representing the landlord and are thus more likely to dismiss because of faulty notice. Also, it should be noted that Michigan's summary proceedings act, like most traditional landlord-tenant statutes, puts only a slight affirmative burden on the landlord. The landlord merely has to swear that he is the owner of the premises and that rent of a certain amount is due. The tenant, on the other hand, has the burden of raising and proving the more complicated affirmative statutory defenses if he is to prevail.

The differences in the effect of representation seem to be a characteristic of the attitude of courts and the proof burdens imposed by landlord-tenant statutes. A study done in Brooklyn's landlord-tenant court also showed landlords doing slightly better without attorneys and tenants faring much worse without representation.[73]

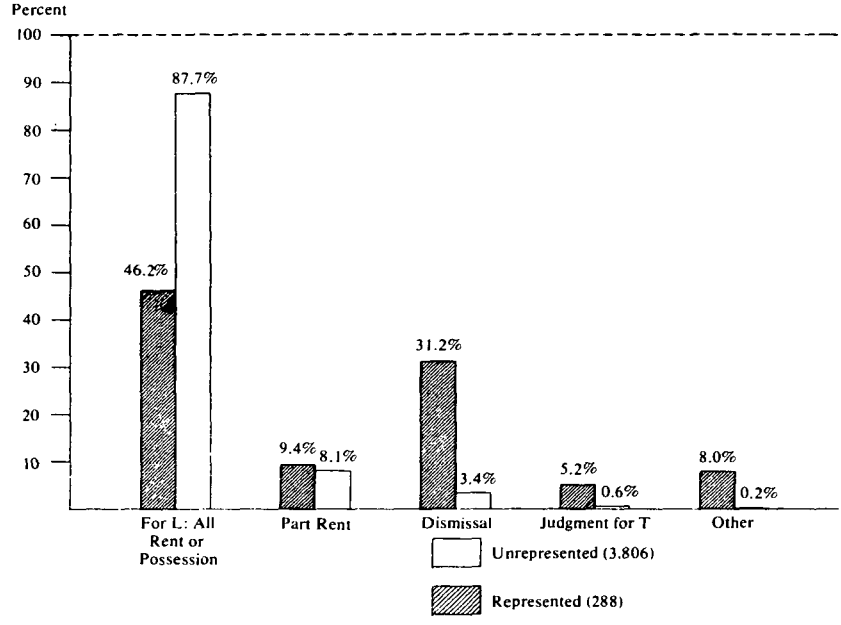
An examination of outcomes other than total judgment for the landlord (Figures 13 and 14) also shows that the tenant's having an attorney greatly affected these outcomes, while representation of the landlord had little effect. For most outcomes, the proportion of cases resulting in that outcome was different for tenants with attorneys and those without attorneys; landlords with and without attorneys had approximately the same proportion of each outcome. For the year studied, tenants with attorneys had only a slightly higher rate of cases resulting in a judgment for part rent than those without, but tenants with attorneys had about ten times as great a rate of dismissal (31.2 percent compared to 3.7 percent) and judgment for tenant (5.2 percent compared to 0.6 percent), and were much more likely to have a settlement with some other outcome (8.0 percent compared to 0.2 percent).

In Figure 15, it can be seen that for the stipulated result of "extra days,"[74] having an attorney made a big difference for the tenant. In these cases, the tenant, though losing to the landlord,

[73] The recent Brooklyn, New York landlord-tenant study also found unrepresented landlords did slightly better than landlords with attorneys (43 percent favorable to unrepresented landlord and 39 percent favorable to represented landlord). Unrepresented tenants fared much worse (47 percent favorable to landlord) than represented tenants (23 percent favorable to landlord). COURT STUDY GROUP OF THE JUNIOR LEAGUE OF BROOKLYN, REPORT ON A STUDY OF BROOKLYN LANDLORD-TENANT COURT 20-21 (National Clearinghouse for Legal Services No. 10, 1973) [hereinafter cited as BROOKLYN REPORT].

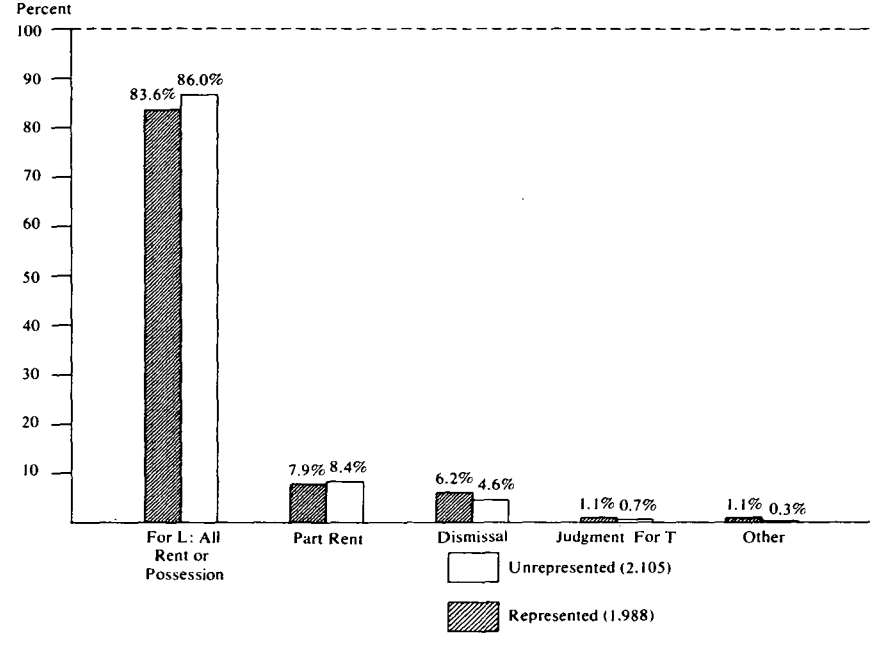
[74] The statute provides that the writ can issue after ten days, without provision for extra days in hardship cases. *See* note 46 *supra*. However, Detroit judges sometimes suggest that the writ be delayed. *See* note 51 *supra*.

Figure 13. OUTCOMES OF CONTESTED CASES BY REPRESENTATION OF TENANT



Source: File Data

Figure 14. OUTCOMES OF CONTESTED CASES BY REPRESENTATION OF LANDLORD



Source: File Data

Figure 15. EXTRA DAYS STIPULATED AND ISSUANCE OF WRIT BY REPRESENTATION OF TENANT

	Cases Studied	*Tenant Represented*	*Tenant Unrepresented*
Extra Days			
Contested Cases in Which Extra Days Stipulated	447	24.1% (67 cases)	10.0% (380 cases)
Cases Where L Took Judgment in Which Extra Days Stipulated	447	41.8%	10.4%
Median Number Extra Days	———	8	14
Range of Extra Days	———	1-82	1-72
*Writ**			
No Writ Issued	261	81.2% (26 cases)	71.9% (235 cases)
Writ Issued, Eviction Peaceful	23	12.5% (4 cases)	5.8% (19 cases)
Writ Issued, Eviction Forceful	75	6.3% (2 cases)	22.3% (73 cases)
		100 %	100 %

Source: File Data

*Of the 1,546 cases during April and May, 1970, where issuance of the writ was examined, only 359 were contested and are considered here.

got more than the statutory minimum ten days to pay or move. This arrangement happened in a greater proportion of contested termination cases than nonpayment cases, probably because the result of a termination judgment, eviction from the premises, is harsher. For tenants with attorneys, one-fourth received extra days, while only one-tenth of those without did. This difference is even greater when only cases in which the landlord took judgment, either for full or part rent or for possession, are considered: 41.8 percent of tenants with attorneys and 10.4 percent of those without attorneys got extra days. For tenants who were given extra days, the median number of extra days was eight for unrepresented tenants and fourteen for tenants with attorneys.

The tenant's having an attorney also made a difference in whether a writ of eviction was finally issued and in how it was carried out. Figure 15 shows that for 81.2 percent of the cases where the tenant had an attorney, no writ of eviction was issued. For unrepresented tenants, the percentage of cases in which no writ issued was 71.9 percent. In 22.3 percent of the contested cases where the tenant was unrepresented, there was a forcible eviction; for tenants with attorneys, this happened in only 6.3 percent of the cases. Further, if a writ was issued, it was more likely to be forcibly executed against tenants without attorneys and peaceably against those with attorneys, although there were only six cases of the latter type.

The file data also show that tenants without attorneys fared approximately the same whether or not the landlord had an attorney. Tenants with attorneys had similar proportions of outcomes whether or not the landlord had an attorney, except that where both sides had attorneys, there was a higher rate of "other" unclassified results (10.2 percent compared to 1.4 percent) and a slightly lower rate of judgment for tenants. The "other" results reflect a greater likelihood of settlement where both sides are represented by attorneys.

The outcomes of the cases observed in court both corroborate the file study and provide further detail. In-court data indicate that a lower proportion of cases were dismissed when the landlord had an attorney, but a greater proportion were adjourned. Many of the adjourned cases were delayed to allow the landlord's attorney to get some knowledge of the facts of the case after a tenant had raised a defense. There was also a higher rate of "other" outcomes for landlords with attorneys, reflecting the greater tendency of attorneys to settle a case than for unrepresented parties to do so.

The in-court observation also shows the differences in outcomes between tenants with attorneys and those without. Where the tenant had no attorney, the landlord got immediate judgment for all he claimed in 81.9 percent of the cases. Where the tenant had an attorney, the comparable figure was only 27.6 percent. In none of the cases where the tenant was unrepresented was the case adjourned for a jury trial or pretrial, and only 3.8 percent of such cases were otherwise adjourned. In cases where the tenant had an attorney, 24.1 percent were set for jury trial or pretrial, and 17.2 percent were otherwise adjourned.[75]

D. Defenses

The data concerning the defenses raised by tenants are taken from the in-court observations. Defenses were recorded when the tenant brought up formally or informally, knowingly or unknowingly, what would be a defense by law. For example, if the tenant in a nonpayment case mentioned that her apartment had rats and its plumbing was broken, "landlord breach" was checked as a defense raised. Arguments that tenants thought were defenses but that had no legal merit were not recorded. For example, a tenant in a termination case who said only that the rent had always been paid on time was recorded as having no defense. Cases where the landlord was the City (public housing) were not included since special defenses are available in such cases. In many cases, more than one defense was raised.

"Other" defenses represent a variety of situations, each of which was recorded individually. In many of these cases the tenant had an attorney and requested a jury trial, but the case was set for pretrial without the defenses being stated aloud in court, so the actual defenses could not be recorded. Others are nonpayment cases in which the tenant claimed that the landlord had refused to accept rent. Another example is a case in which the title to the property was not clear, because of a recent sale or because the property belonged to an estate, and the tenant claimed to have paid rent to a party other than the one seeking to recover the rent in court.

In 66.7 percent of the contested cases, no legal defense was raised by the tenant (Figure 16). If these cases are combined with

[75] The statistical contingency test was applied to this data and showed a probability of greater than 99.5 percent that the differences between represented and unrepresented tenants would occur by chance. *See* note 67 *supra*.

the voluntarily dismissed cases and the defaults,[76] where tenants obviously raised no defenses, the study shows that in 93 percent of the cases started the tenant raised no defense and the landlord's action went entirely unchallenged.

The most frequently used defense was not a new defense but the defense of full or part payment of the rent claimed to be owing (Figure 16). In nonpayment cases this defense was raised by one-fifth of the tenants who came into court.

The technical defense of inadequate notice was raised in less than 5 percent of the contested cases. Not surprisingly, notice was challenged more often in termination cases than in nonpayment cases, since the notice requirements are more stringent in termination actions.[77]

Figure 16 shows that only 11.7 percent of the tenants in contested cases raised the new landlord-breach defense and only 0.9 percent raised the new retaliation defense. However, these new defenses might have been raised a few more times by attorneys seeking jury trials; these cases appear only as "other" defenses because the case was removed from the courtroom under observation.[78] Even considering all cases which went to pretrial as ones in which new defenses were raised, the proportion of tenants utilizing new defenses was small. If cases in which new defenses might have been raised are considered as a percentage of total cases started, calculated by reference to the file study data showing that 20.1 percent of the cases started were contested,[79] it is apparent that in *at most* 5 percent of the cases started was a new statutory defense raised. The percentage of cases where new defenses were raised is actually lower than 5 percent because not all of the "other" defenses represent new defenses and because more than one defense was raised in some cases.

E. Effect of Attorneys on Defenses Raised

Very few tenants had an attorney. Those who did not were

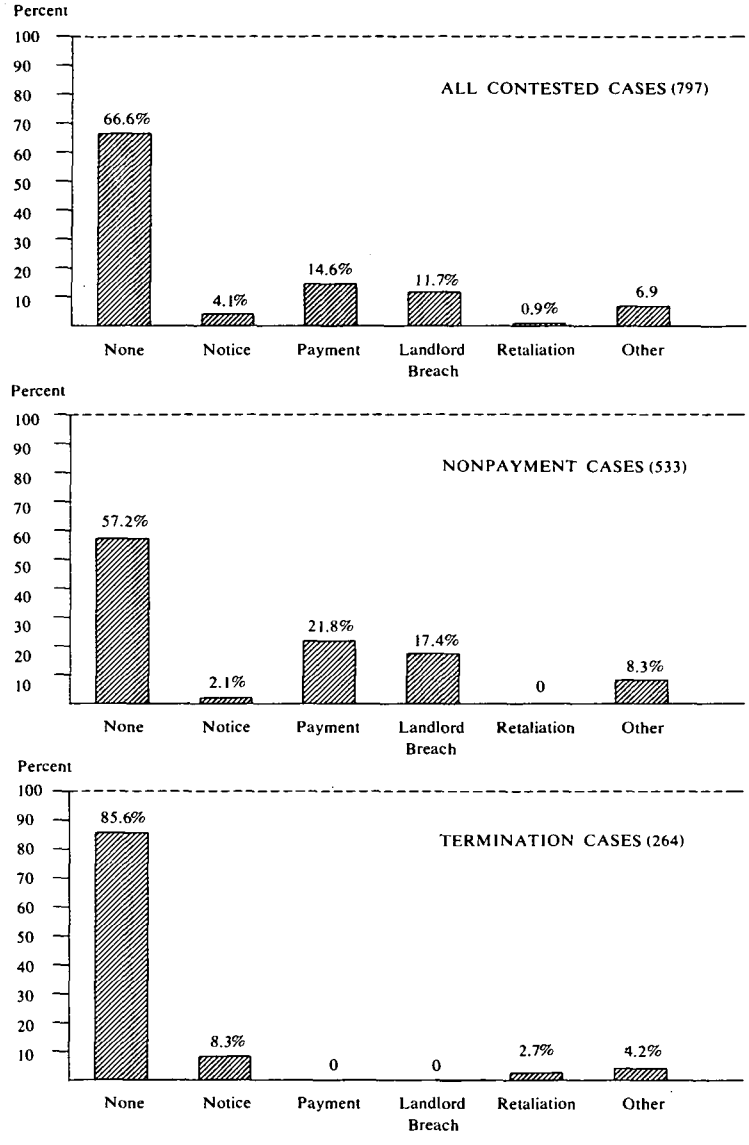
[76] The in-court sample size (797) is such that there is a 95 percent probability that the percentages from the in-court study fall within 3 percent of the actual percentages overall. This calculation was made by using the Central Limit Theorem and upon the assumption that the sample was random. Also, whenever the two parts of the study dealt with the same variables there was no discrepancy. *See* notes 63 and 70 and accompanying text *supra*. For these reasons it was felt that extrapolation from the in-court study to the file study figures on rate of defaults and voluntary dismissals was justified in order to express findings such as percent raising a certain defense as percent of total cases. *See* R. FELLER, 1 INTRODUCTION TO PROBABILITY THEORY AND ITS APPLICATION 245 (3d ed. 1970).

[77] *Compare* the statutes cited in notes 40 and 47 *supra*.

[78] Many of the defenses raised by attorneys are only included as "other" defenses because they were not raised orally in open court in the courtroom observed (*see* part II *B 1 supra*) and thus could not be recorded specifically.

[79] *See* note 76 and accompanying text *supra*.

Figure 16. DEFENSES RAISED



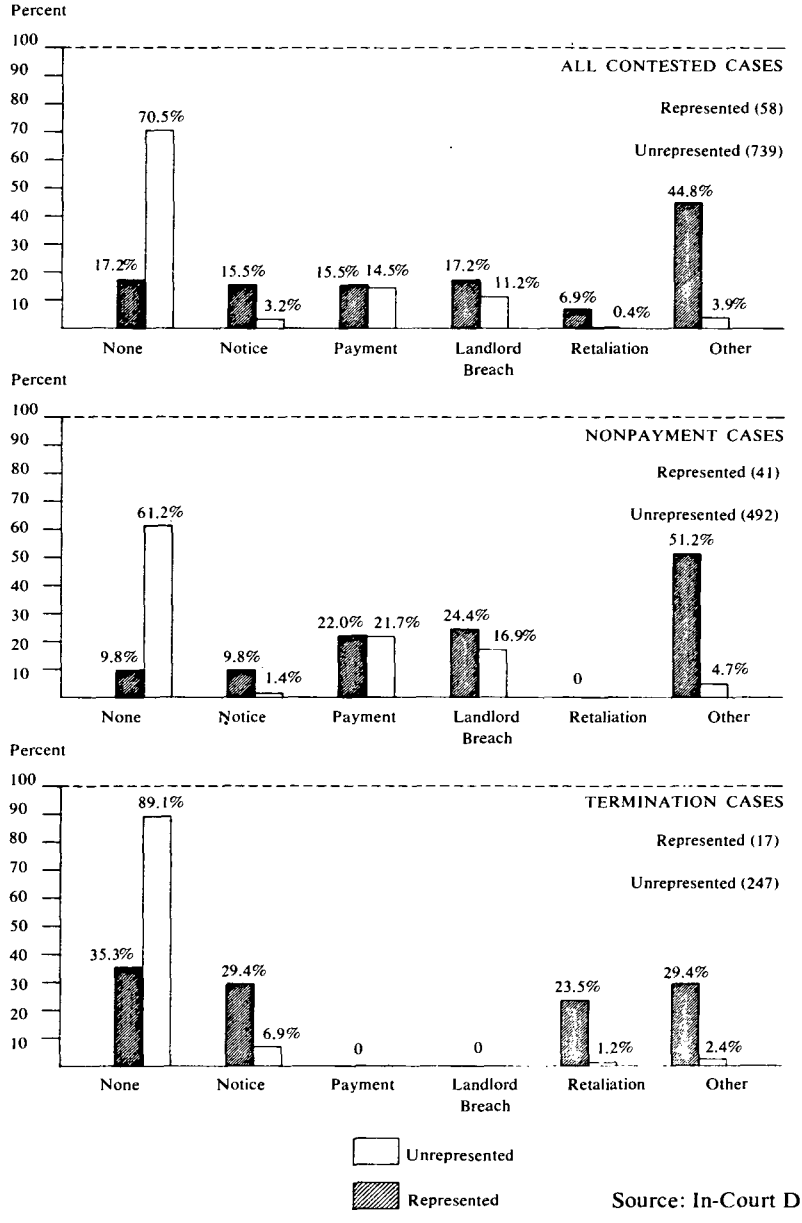
LEGEND

None – No legal defense raised either formally or informally.
Notice – Either the 7-day rent due notice in nonpayment cases or notice equal to period of tenancy in termination cases was attacked; includes cases where landlord allegedly violated his termination notice by later accepting rent.
Payment – Tenant claimed to have paid all or part rent claimed in any way or that landlord had miscalculated rent due.
Landlord Breach – Condition of premises raised formally or informally.
Retaliation – Termination allegedly in retaliation for lawful acts.

Source: File Data

unlikely to raise any defense (Figure 17). Over two-thirds of the unrepresented tenants who appeared in court to "contest" their cases raised no legal defenses. Only slightly more than 10 percent of the unrepresented tenants raised the new statutory defenses. In contrast, tenants with attorneys seldom were without a defense

Figure 17. DEFENSES RAISED BY REPRESENTATION OF TENANT



Source: In-Court Data

and raised the new defenses more than twice as often as unrepresented tenants.

Unrepresented tenants raised the new statutory defenses of landlord breach and retaliation in only 11.2 percent and 0.4 percent of the cases, respectively. Without attorneys, tenants were unlikely to challenge the notice they had allegedly received; only 3.2 percent did. The defense most popular with unrepresented tenants was payment; 14.5 percent claimed that full or partial payment had been made of the rent claimed by the landlord. This was probably the easiest defense for an unrepresented tenant to present.

Of the tenants appearing without an attorney in nonpayment cases, over 60 percent had no defense (Figure 17); the defense of full or partial payment was raised in 21.7 percent of the cases; and 16.9 percent raised the new landlord-breach defense. Unrepresented tenants in termination cases seldom presented defenses; only 1.2 percent claimed that the attempted eviction was retaliatory and 6.9 percent attacked the notice.

Tenants with attorneys seldom failed to raise defenses (Figure 17). Attorneys were much more inclined to raise the procedural defense of faulty notice. Tenants' lawyers were also more likely than unrepresented tenants to raise one of the new defenses of landlord breach and retaliation, especially the defense of retaliatory eviction in termination actions. There was less difference between represented and unrepresented tenants with respect to raising the landlord breach defense than the retaliation defense. One possible reason for this disparity is that while an unrepresented tenant in a nonpayment action had some opportunity to bring up a landlord breach defense informally when answering the judge's questions about why he did not pay and when he would pay, an unrepresented tenant in a termination action was unlikely to stumble upon the retaliatory eviction defense and was usually questioned about the notice, if questioned at all.

The data show some difference between defenses raised against landlords with attorneys and those raised against unrepresented landlords. Payment was raised 12.6 percent of the time when the landlord was unrepresented and 16.6 percent of the time when he had an attorney. This breakdown is not surprising since the landlords' attorneys often appeared alone and had no personal knowledge of the actual collection of rents. Landlord breach, on the other hand, was brought up more often against unrepresented landlords than against represented landlords (14.8 percent compared to 8.4 percent), perhaps because more discussion or judicial questioning occurred and the defense informally came out.

The in-court data were also examined to determine the other defenses raised, if any, when a tenant asserted a certain defense. Of the ten tenants' attorneys who raised the defense of landlord breach, two attacked the notice and three, the amount due. Many unrepresented tenants who raised the landlord-breach defense also raised payment as a defense (21.7 percent), but seldom did they also question the notice (1.2 percent). Tenants raising the landlord-breach defense were often at least partially successful; only 43.4 percent of unrepresented tenants and 20 percent of tenants with attorneys who raised the defense suffered a judgment awarding the landlord all the rent he claimed. These percentages are striking if it is recalled that landlords recovered all the rent claimed in 71.3 percent of all contested nonpayment cases studied. However, the data do not show whether the rent was lowered because landlord breach or partial payment was found.

Of the nine cases in which tenants with attorneys raised the defense of payment, the defense of landlord breach was raised in three cases and in one case the notice was attacked. Among unrepresented tenants claiming the defense of payment, 16.8 percent also claimed landlord breach and 3.7 percent claimed faulty notice. None of the represented tenants who raised the defense of payment immediately suffered a judgment for all rent claimed, while 47.1 percent of the unrepresented tenants who raised the defense did. When the payment defense was asserted, one-third of those with attorneys and 17.8 percent of those without had their cases adjourned, often so that the landlord or his attorney could check rent records. In none of the cases where partial payment was claimed was the case set for jury trial or pretrial.

F. Effect of Attorneys on Type of Trial

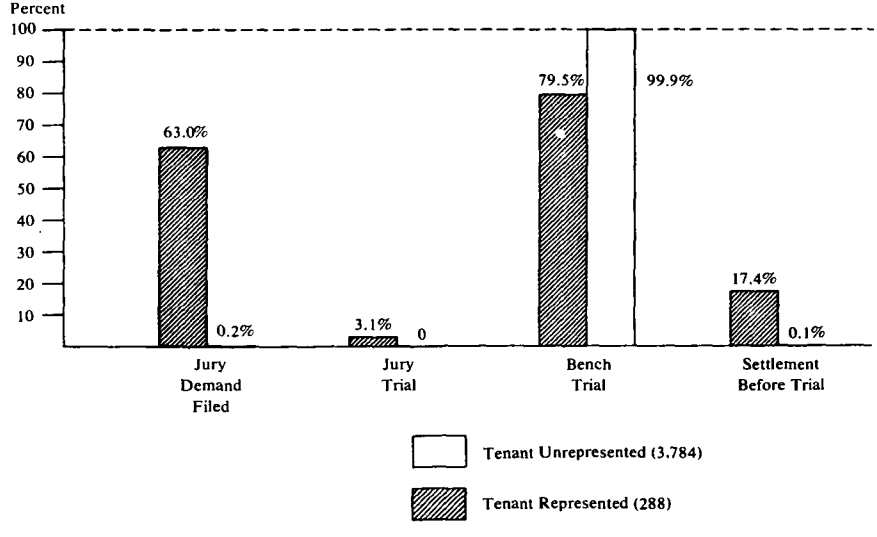
Many opponents of the 1968 legislation predicted a sharp rise in jury demands and jury trials if the legislation passed. This prediction was based on the legislation's provision of new factual defenses that a tenant could raise before a jury. However, the court's records (Figure 2) show no vast increase in jury demands after 1968; the moderate increase in 1969 has since leveled off.

Very few jury demands were filed, and even fewer jury trials were held during the year studied. Out of over 4,000 contested cases studied, in only 189, or less than 5 percent, were jury demands filed; these cases represent less than 1 percent of the cases started. Most jury demands did not result in jury trials. Only nine of the contested cases (0.2 percent) ended with a decision by a jury.

Figure 18 examines jury demands and the type of trial by comparing cases in which tenants had attorneys with cases in which tenants were unrepresented. In 63 percent of the cases where the tenant had an attorney there was a jury demand, while less than 1 percent of the unrepresented tenants made such a demand. Tenants' attorneys made jury demands in a greater percentage of nonpayment cases (68.1 percent), where notice, landlord breach, and partial payment were possible issues of fact, than in termination cases (53.5 percent) where only retaliation and improper notice could be litigated. While unrepresented tenants virtually always had bench trials (Figure 18), for defendants with attorneys there was more variety: 79.5 percent had bench trials, 3.1 percent had jury trials, and 17.4 percent settled before trial. Thus, one benefit for the court in having tenants represented is the greatly increased likelihood that cases will be settled by the parties out of court. At the same time, there is no evidence that having tenants represented raises greatly the number of jury trials.

For 69 percent of those cases in which a jury demand was made, a bench trial was eventually conducted, either because a jury trial was refused or by agreement of the party requesting the jury trial (Figure 19). There was a much higher rate of settlement before trial for cases in which a jury demand was made than for those in which it was not made (26.6 percent compared to 0.1

Figure 18. TYPE OF TRIAL BY REPRESENTATION OF TENANT



Source: File Data

percent). For termination defendants making a jury demand, a higher proportion (93 percent) eventually had a bench trial than nonpayment action defendants making a demand (58.8 percent). This could reflect the judges' refusal to allow jury trial when tenants brought up the new statutory defense of retaliation.

Figure 20 shows the great differences in outcomes between cases where a jury demand was made and where it was not. However, this outcome disparity is to be expected, since all except four jury demands were filed where tenants had attorneys, and tenants with attorneys overall had a range of outcomes roughly in proportion to the results where jury demand was filed (Figure 13). Interestingly, 2.7 percent of cases in which a jury demand was made ended in judgment for the tenant, while 5.2 percent of all the cases in which tenants had attorneys resulted in judgment for the tenant. This, perhaps, reflects the large proportion of cases where tenants' attorneys were able to obtain dismissals; these dismissed actions were probably cases in which no jury demand was filed.

Figure 21 compares the outcomes for jury trials, bench trials, and settlements. Again, it must be remembered that only tenants with attorneys had jury trials and nearly all settlements involved tenants with attorneys. Most bench trials ended in total victory for the landlord. Four of the nine jury trials studied ended in judgment for the tenant. Most of the cases settled by the parties before trial were dismissed.

G. Variation Among Judges

As expected, there were variations in case outcomes among the judges observed, although the differences were not huge. The more extensive information on judges is from the file study. Only the outcomes of cases before the seven judges who each tried over 400 of the cases studied were analyzed. The relatively large sample of cases heard by each judge allows meaningful comparison among them.

Figure 22 shows the pattern of outcomes for the seven judges. The judges varied from granting judgments to the landlord in 91.3 percent of the cases heard (Judge 4) to granting judgments to landlords in 77.8 percent of cases heard (Judge 7). Judge 4 gave no judgments to tenants, while Judge 10 gave judgments to 2.6 percent of the tenants before him. Some judges appeared little disposed to hear tenant defenses.

Figure 19. TYPE OF TRIAL BY JURY DEMAND

	Number of Cases	*% Having Each Type of Trial*	
		Jury Demand Filed	*No Jury Demand*
NONPAYMENT & TERMINATION		(188 cases)	(3,880 cases)
Bench Trial	4,006	69.1	99.9+
Jury Trial	0	4.3	0
Settlement	54	26.6	4 cases
		100 %	100 %
NONPAYMENT		(131 cases)	(2,659 cases)
Bench Trial	2,733	58.8	99.9+
Jury Trial	7	4.6	0
Settlement	51	36.6	3 cases
		100 %	100 %
TERMINATION		(57 cases)	(1,221 cases)
Bench Trial	1,273	93.0	99.9+
Jury Trial	2	3.5	0
Settlement	3	3.5	1 case
		100 %	100 %

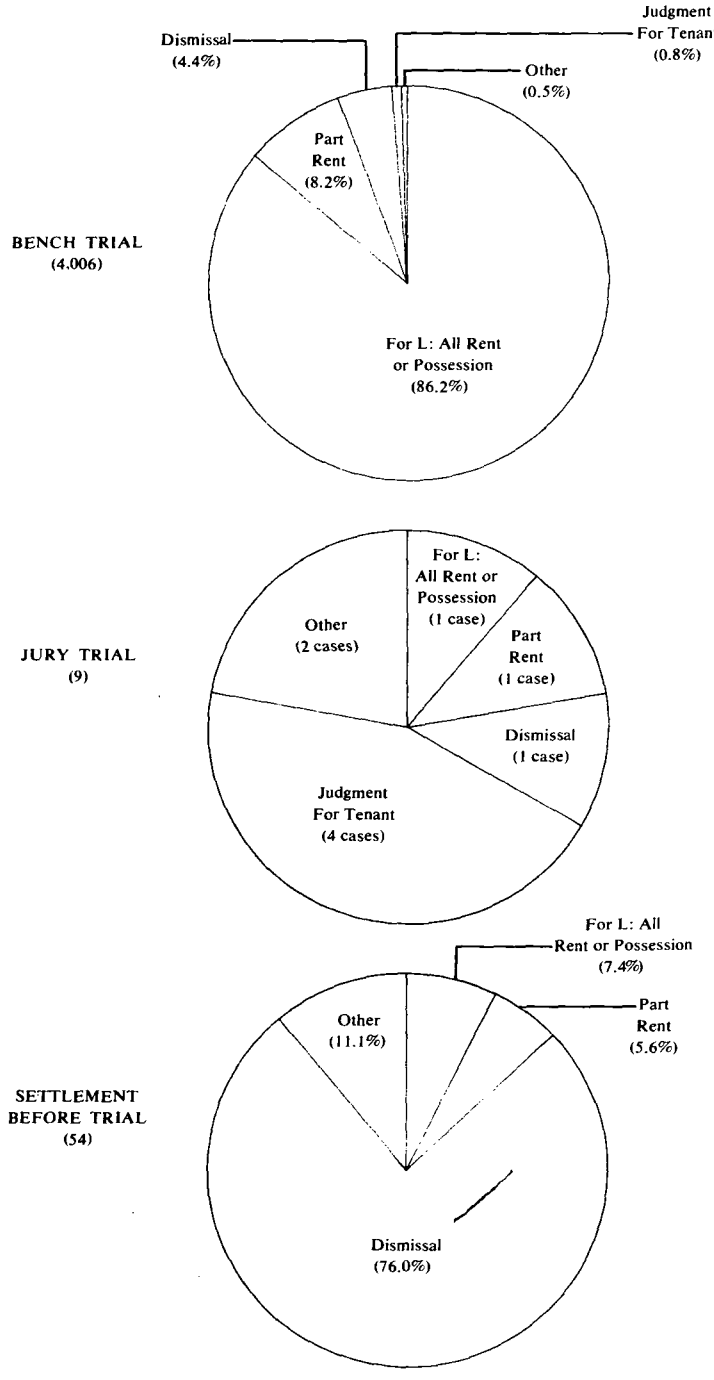
Source: File Data

Figure 20. OUTCOME OF CONTESTED CASES BY JURY DEMAND

Outcome	*% Having Each Outcome*	
	Jury Demand Filed (189)	*No Jury Demand (3,909)*
For L: All Rent or Possesion	44.1%	86.8%
Part Rent	8.0%	8.2%
Dismissal	34.6%	3.9%
Judgment for T	2.7%	0.8%
Other	10.6%	0.3%
	100 %	100 %

Source: File Data

Figure 21. OUTCOMES OF CONTESTED CASES BY TYPE OF TRIAL



Source: File Data

Figure 22. OUTCOME OF CONTESTED CASES BY JUDGE

	% Having each Outcome						
	*Judge Number**						
Outcome	*1 (565 cases)*	*2 (592 cases)*	*4 (693 cases)*	*6 (520 cases)*	*7 (440 cases)*	*9 (462 cases)*	*10 (429 cases)*
For L: All Rent or Possession	85.2	87.3	91.3	88.5	77.8	88.5	78.8
Part Rent	6.2	9.0	4.9	8.8	16.1	6.9	8.6
Dismissal	6.3	3.2	2.7	2.5	4.8	3.9	9.3
Judgment for T	1.6	0.2	0	0	0.5	0.6	2.6
Other	0.7	0.3	1.0	0.2	0.7	0	0.7
	100 %	100 %	100 %	100 %	100 %	100 %	100 %

Source: File Data

*Only for the 7 judges hearing more than 400 cases; 5 of the 12 judges observed heard too few cases to break down extensively.

Figure 23 shows the variation in the extra days allowed before the writ of eviction was to issue. Extra days were stipulated in 16.8 percent of the cases before Judge 9, while only 6.2 percent of the cases before Judge 1 involved extra days. Where extra days were stipulated, the median varied by judge from four days to eighteen. Some judges who were harder on tenants in rendering judgment perhaps tried to make up for their harsh judgment by assisting tenants in obtaining extra days (For example see Figure 23, Judge 4.).

H. Race and Sex of Parties

The "typical" landlord[80] in contested cases in Detroit Landlord-Tenant Court appeared personally and was a White male who was unrepresented (although almost half the landlords had attorneys). The file study showed that the "typical" tenant defaulted. For those tenants who appeared to contest their cases, however, the in-court study showed the "typical" tenant to be a Black male (although nearly half were women) who appeared personally and had no attorney. The "typical" contested case was

[80] The word "typical" is used here to indicate the variable that appeared most often for each characteristic.

a nonpayment action in which the tenant raised no defenses and the landlord won a judgment for all the rent claimed.

The landlord appeared in only 57.4 percent of the contested cases studied; in the other cases only the landlord's attorney was present. The tenant appeared in 97.2 percent of the contested cases. When the landlord did not appear in court, the attorney filed an affidavit or testified as to the amount of rent due and notice sent, often without having personal knowledge of these facts.

By race, 36.9 percent of landlords appearing were Black, 62.7 percent were White, none were Oriental-American, and 0.4 percent were Spanish-American (Figure 24). The race of the tenants observed was not similarly distributed: 76.5 percent were Black, 22.3 percent were White, 0.4 percent were Oriental-American, and 0.8 percent were Spanish-American. Since the proportion of Oriental-American and Spanish-American individuals was so small, further breakdowns refer to White and Nonwhite categories, with the Nonwhite category being over 98 percent Black.

Figure 23. EXTRA DAYS ARRANGED BY JUDGE

*Judge Number**	*% of Judge's Cases in Which Extra Days Were Stipulated*	*Median Number of Extra Days*
1	6.2	4
2	9.0	7
4	13.0	10
6	9.2	10
7	6.8	4
9	16.8	5
10	8.1	18

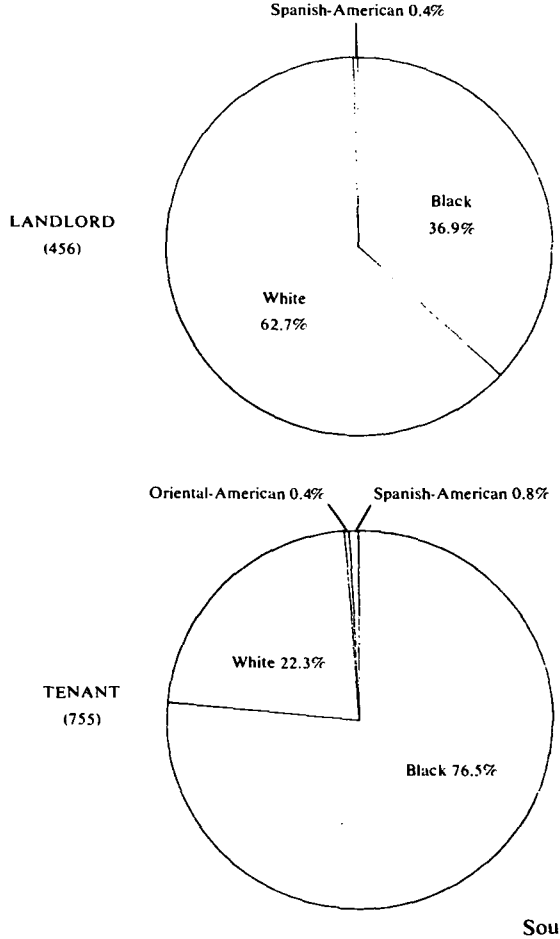
Source: File Data

*For judges hearing over 400 cases only.

The distribution by sex was also different for landlords who appeared than for tenants who appeared. For landlords, 30.8 percent were women and 69.2 percent were men. For tenants, 48.4 percent were women and 51.6 percent were men.

Figure 25 shows little difference by race of landlord in the proportion of cases, both termination and nonpayment, where the landlord won all he claimed. In such cases, the result was either all rent or possession; this outcome happened in 79.4 percent of the cases where a Nonwhite landlord appeared and 79.0 percent of the cases where White landlords appeared. Thus the study found no indication of a bias in outcomes because of the race of the landlord. Other differences by race of landlord are indicated by Figure 25, however. The race of the landlord is apparently related to the type of action brought. Nonwhite landlords brought

Figure 24. RACE OF PARTIES APPEARING PERSONALLY IN COURT



Source: In-Court Data

Figure 25. ACTION AND OUTCOMES BY RACE OF LANDLORD

	Landlord White (286)	*Landlord Nonwhite (170)*
Action		
Nonpayment	74.8%	57.1%
Termination	25.2%	42.9%
	100 %	100 %
Outcome		
For L: All Rent or Possession	79.0%	79.4%
Part Rent	9.8%	14.7%
For T: Judgment or Dismissal	3.5%	1.8%
Adjournment or Removal for Jury Trial or Pretrial	4.2%	3.6%
Other	3.5%	0.6%
	100 %	100 %

Source: File Data

almost as many termination cases as nonpayment cases (42.9 percent and 57.1 percent, respectively), while White landlords filed mainly nonpayment cases (74.9 percent).[81]

Figure 26 compares outcomes for White tenants with those for Nonwhite tenants. Nonwhite tenants' outcomes were similar in

[81] Since only a sample of cases were observed, a statistical contingency test (*see* note 67 *supra*) was applied to see if the conclusion could be drawn that White and Nonwhite landlords varied in the types of cases they brought or alternatively that the differences in our sample were probably due to chance. This test showed that there is a probability of less than 0.5 percent that the variation between the two groups in the sample would occur by chance had the action brought been independent of the race of the landlord; it can confidently be concluded that the type of action brought was related to the race of the landlord appearing.

Figure 26. ACTION AND OUTCOMES BY RACE OF TENANT

	Tenant White (173)	*Tenant Nonwhite (602)*
Action		
Nonpayment	60.7%	67.8%
Termination	37.3%	32.2%
	100 %	100 %
Outcome		
For L: All Rent or Possession	81.5%	79.3%
Part Rent	7.5%	10.9%
For T: Judgment or Dismissal	4.0%	3.5%
Adjournment or Removal for Jury Trial or Pretrial	5.8%	5.3%
Other	1.2%	1.0%
	100 %	100 %

Source: In-Court Data

proportion to those of White tenants, so the study gives no evidence of bias by race of tenant with respect to outcomes. However, the table does show the relationship between the type of action and the race of tenants: 67.8 percent of the cases against Nonwhite tenants were for nonpayment and 60.7 percent against White tenants were of this type.[82]

Figure 27 relates the defenses raised to the race of the tenant. Both categories had a similar proportion of cases in which no defense was raised, almost 70 percent. Nonwhite tenants raised

[82] The statistical contingency test (*see* note 67 *supra*) was applied and yielded a 10 percent probability that the differences between actions brought against White and Non-White tenants would occur by chance.

Figure 27. DEFENSES BY RACE OF TENANT

Defenses	*Tenant White (173)*	*Tenant Nonwhite (602)*
None	69.9%	67.5%
Notice	2.9%	4.3%
Payment	15.6%	14.4%
Landlord Breach	9.8%	12.3%
Retaliation	0%	1.2%
Other	6.9%	4.6%

Source: In-Court Data

notice defenses in 4.3 percent of their cases while only 2.9 percent of the White tenants did. White tenants claimed landlord breach in 16.2 percent of their nonpayment cases, and Nonwhite tenants did so in 18.0 percent of their nonpayment cases.

Maximum bias might be expected in cases where landlord appeared and was White and the tenant was Black. There were 167 such cases observed and they were compared with all others (Figure 28). For such cases, the landlord received judgment for all he sought in 82.0 percent of the cases as opposed to a 76.9 percent rate for the other cases, so there is a weak indication that outcome is affected by race. However, there is a good indication that the type of action is related to this division of cases. In the sample, 80.8 percent of White landlords facing Black tenants brought nonpayment actions, while in all other cases taken together, the proportion of landlords bringing nonpayment actions was 63.2 percent.[83] This disparity can perhaps be explained by the fact that White landlords with Black tenants are likely to be absentee landlords who bring nonpayment actions, while land-

[83] The statistical contingency test (*see* note 67 *supra*) indicated a probability of 20 percent that the difference in outcomes between cases where the landlord was White and the tenant was Black and all other cases would occur by chance. The contingency test also indicated a probability of less than 0.5 percent that the differences in type of action for this combination compared to all other cases would occur by chance.

Figure 28. WHITE LANDLORDS FACING BLACK TENANTS COMPARED WITH ALL OTHER CASES

	Landlord White, Tenant Black (167)	*All Other Cases (631)*
Action		
Nonpayment	80.8%	63.2%
Termination	19.2%	36.8%
	100 %	100 %
Defenses		
None	68.9%	66.1%
Notice	3.6%	4.3%
Payment	15.6%	66.1%
Landlord Breach	13.2%	11.3%
Retaliation	1.2%	.8%
Other	5.4%	7.3%
Outcome		
For L: All Rent or Possession	82.1%	76.9%
Part Rent	9.6%	10.0%
For T: Judgment or Dismissal	2.4%	4.3%
Adjournment or Removal for Jury Trial or Pretrial	4.2%	7.1%
Other	1.8%	1.7%
	100 %	100 %

Source: In-Court Data

Figure 29. ACTION AND OUTCOMES BY SEX OF LANDLORD

	Landlord Male (315)	*Landlord Female (140)*
Action		
Nonpayment	71.7%	60.7%
Termination	28.3%	37.3%
	100 %	100 %
Outcome		
For L: All Rent or Possession	78.4%	81.4%
Part Rent	12.4%	10.0%
For T: Judgment or Dismissal	2.2%	3.6%
Adjournment or Removal for Jury Trial or Pretrial	3.8%	4.2%
Other	3.2%	0.7%
	100 %	100 %

Source: In-Court Data

lords whose tenants are of the same race might live in or near the property and prefer to terminate problem tenants.

Outcomes for male and female landords are compared in Figure 29. Women landlords appeared in a higher percentage of termination actions than men (39.3 percent compared to 28.2 percent).[84] The female landlords did slightly better in getting a total judgment than male landlords did (81.4 percent compared 78.5 percent). Figure 30 relates the type of action and outcome to the sex of the tenant. Again, sex was found to be related to the type of action but not to outcome.[85]

[84] The statistical contingency test (*see* note 67 *supra*) gave a 98 percent probability that these differences would occur by chance.

[85] The statistical contingency test (*see* note 67 *supra*) was applied both for the type of

Figure 30. ACTION AND OUTCOMES BY SEX OF TENANT

	Tenant Male (399)	*Tenant Female (374)*
Action		
Nonpayment	69.9%	62.6%
Termination	30.1%	37.4%
	100 %	100 %
Outcome		
For L: All Rent or Possession	81.5%	78.1%
Part Rent	8.5%	12.0%
For T: Judgment or Dismissal	2.8%	4.3%
Adjournment or Removal for Jury Trial or Pretrial	6.1%	4.8%
Other	1.3%	0.8%
	100 %	100 %

Source: In-Court Data

The data show that a greater proportion of women tenants raised the landlord-breach defense than men, even though women appeared in a lower proportion of nonpayment cases (Figure 31). Considering only the nonpayment cases, women tenants raised landlord breach in 20.8 percent of their cases and men did so in 15.0 percent of theirs. Women are probably more likely to be affected and disturbed by the condition of the premises than are men, since as a group women spend more time there.

action and the outcome with the result that there is a 4 percent probability that the differences in action would occur by chance and a 40 percent probability that the differences in outcome for cases where the landlord received total judgment would occur by chance.

Figure 31. DEFENSES BY SEX OF TENANT

Defenses	*Tenant Male (399)*	*Tenant Female (374)*
None	71.4%	64.4%
Notice	3.8%	4.0%
Payment	13.8%	15.8%
Landlord Breach	10.5%	13.1%
Retaliation	1.3%	0.5%
Other	3.3%	7.2%

Source: In-Court Data

IV. CONCLUSIONS

A. Defaults and Summonses

Mr. Justice Douglas's recent description of summary proceedings as likely to be held in the presence of only the judge, the landlord, and the landlord's attorney is quite accurate.[86] The study showed this characterization to be correct in Detroit for the time period studied, except that the landlord was as likely as not without an attorney.

However, the type of service reported by the bailiff seemed to have no effect on whether or not the tenant appeared in court. Most defendants indicated by their absence the conclusion that a court appearance would be either futile or not worth the effort required to attend. Therefore, if the high default rate is to be decreased, ways other than merely requiring personal service must be found. Suggestions such as modifying the printed summons and complaint forms and changing what the defendants feel is to be accomplished by a court appearance are discussed below.

[86] Lindsey v. Normet, 405 U.S. at 85 (Douglas, J., dissenting in part).

B. New Defenses

One inescapable conclusion from the study results is that in 1970 and 1971 the reform legislation passed in Michigan was not meeting the goals that had been set for it in 1968.[87] The new statutory defenses and warranties affected Detroit tenants, and thus landlords, very little. As before the legislation, landlords continued filing a large number of cases in Detroit Landlord-Tenant Court, and writs of eviction actually increased slightly. The court continued to serve the landlords as before, and the new defenses were only slightly utilized. In over 90 percent of the cases filed, the landlords did not have to contend with any tenant defenses, old or new; and in only approximately 3 percent of the cases filed did landlords have one of the new defenses, either landlord breach or retaliation, raised against them. Even considering only the cases where the tenant appeared and contested the action (20 percent of cases filed), the landlords need not have expected many fierce legal battles: less than 35 percent of the tenants who appeared raised any defense, and less than 13 percent raised one of the new defenses.

The outcomes of the cases studied show even more clearly how miniscule was the effect of the new legislation. Of the cases started, 97 percent resulted in the landlord's obtaining all he sought, by voluntary dismissal, default, or taking judgment in a contested case. In contested cases, 85 percent resulted in complete victory for the landlord. So the study showed that neither the new defenses nor the old defenses significantly affected the outcome of court cases.

The study proves false the prediction of one commentator that if defenses such as Michigan enacted in 1968 were allowed, "a substantial proportion of eviction suits would become complicated by fact-dominated squabbles," and "the present court system would be swamped."[88] It can also be safely concluded from this study that this type of legislation, implemented under conditions such as those prevailing in Detroit Landlord-Tenant Court in 1970–71 and probably in most other summary proceedings courts, cannot meet the goal of improving the condition of housing.[89]

The study does indicate some reasons that the new legislation

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[87] *See* part I *B 2 supra*.

[88] *See* Gibbons, *supra* note 50, at 384.

[89] This goal is stated in the Model Residential Landlord-Tenant Code (*see* note 14 *supra*) at sections 1-102 and 1-103, and in the Uniform Residential Landlord and Tenant Act (*see* note 14 *supra*) at section 1.102(b) (2).

was so seldom used. One reason was the high proportion of defaults by tenants and voluntary dismissals by the landlord, which doubtless mean that the landlord prevailed even before the trial day. With but a small proportion of tenants appearing to contest the actions filed against them, even the best courtroom results fail to touch most tenants. This means that if reform legislation 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. Proposals for both types of reform are discussed below.

Another reason for the insignificant effect of the legislation on Detroit tenants is that while the legislation augments a tenant's possible defenses, it does not provide for representation of those tenants in court. Not surprisingly, tenants without attorneys were much less likely to use the new defenses than those with counsel. Yet in the Detroit Landlord-Tenant Court at the time of the study, only 7 percent of tenants had an attorney, while almost half of the landlords were represented. The extreme lack of legal representation for tenants should have been taken into account by those passing the tenants' rights legislation. An inescapable conclusion from the study results is that if reform legislation is to be meaningful, the legislation either must be tailored to the needs of unrepresented parties, or else the means for providing representation must be included in it. Otherwise, the passage of the statute becomes only an empty gesture, helping a few and giving false hope to many.

A third reason for the small effect of the legislation is the nature of landlord-tenant proceedings and courts. The results of the study showed that while tenants fared much worse without attorneys, landlords without counsel did slightly better than landlords with attorneys. This finding is reinforced by a similar finding in another landlord-tenant court.[90] This result can be partly explained by the fact that Michigan's summary eviction procedures place only a small burden on the landlord. If the tenant defaults, the landlord's, or his attorney's, affidavit of amount due or notice given is all that is required; no testimony is taken from the plaintiff. If the tenant appears, the landlord merely has to swear that a certain amount of rent is owing or that notice has been given. Many cases were observed where the attorney, in the

[90] *See* BROOKLYN REPORT, *supra* note 73.

absence of the landlord, gave the required testimony, often without personal knowledge. The tenants, however, had to prove the more complex defenses of retaliation or condition of the premises to prevail. In some cases, once the tenant brought up the poor condition of the premises, the landlord or his attorney had the case adjourned because he was unprepared to present any testimony other than the amount of rent due.

If a tenant was unrepresented, the judge ordinarily did not question the landlord regarding his claims, nor did the judge explain defenses to the tenant. The most common explanation given a tenant was that the law permitted him only ten days to move and thus the judge's hands were tied. In addition, judges often asked tenants for receipts for rent paid and corroboration of landlord-breach claims.

In contrast, the court supplied complaint and notice forms to the landlords, and clerks at the court helped them fill out the forms if necessary. In addition, the in-court observers noticed during the beginning of the study that the court would not dismiss a nonappearing landlord's case until completion of the docket call, which took approximately forty-five minutes (while the tenant sat and waited), but afforded no similar courtesy to tardy tenants. However, once the surprised observers questioned the court personnel about this practice, it was changed; thereafter, tenants had thirty minutes after the call within which to appear.

The disparities in help given to landlords and tenants and the treatment of late landlords and tenants are an indication of the perhaps inevitable bias of the court toward the landlord. Most of the judges and court personnel have a middle-class background, and they have become familiar with many landlords and attorneys appearing regularly in the court. The court had years of experience as a vehicle for rent collection and eviction where no defenses could be raised. The judges and clerks repeatedly hear about tenants who fail to pay rent or do damage to the premises, while they probably never have the opportunity to observe the actual conditions of the housing that the landlords are renting. Thus, another conclusion from the study is that if reform legislation is to have meaning, it must not rely on the actions of a court that has neither the experience nor the inclination to give the legislation full effect.

Some might argue that the conclusion that the legislation was meaningless is not justified because the tenants who raised no defenses probably had no defense to raise. This conclusion is rebutted by the well-based feeling prior to enactment of the legis-

lation that housing conditions in Detroit were bad.[91] In addition, recent studies by the City of Detroit show that the bad housing conditions are not abating but worsening.[92] Therefore, many defendants doubtless had valid landlord-breach defenses. These recent studies also show that the legislation did not effect any noticeable improvement in housing conditions in Detroit.

C. Effect of Attorneys

As expected the study showed huge differences between tenants with attorneys and those without. These differences were manifest in all data categories, from defenses raised, jury demands filed, outcomes, and extra days granted to whether or not a writ of eviction finally issued. The in-court observations showed tenants' attorneys more than twice as likely to raise the new statutory defenses as unrepresented tenants were. The file data showed overwhelmingly that in contested cases the outcomes for unrepresented tenants (87.7 percent all for landlord) were much less favorable than those for tenants with attorneys (46.2 percent all for landlord).

Tenants' attorneys may help the court run more smoothly. The study documented that a sizable proportion, over 17 percent, of tenants with attorneys settled their cases before trial, while less than 1 percent of unrepresented tenants settled. The low number of settlements by unrepresented tenants was probably both because these tenants did not know how to talk settlement and because they had no real bargaining position, since their landlords could expect victory in court. The attorneys did not significantly increase the proportion of jury trials conducted; only 3.1 percent of the represented tenants actually had a jury trial.

Of course many might not be surprised at the differences in outcome for represented and unrepresented tenants. The study does provide thorough documentation for the premise that even in a civil case where the issues and law are relatively simple, lack of

[91] *See* part I *B 2 supra.*

[92] Data collected by the Evidence for Community Health Organization (ECHO) Project of the Detroit Department of Health indicate that in 1972 there was less housing and less good housing in Detroit as compared to 1968:

	1968	*1972*	*Change*
Number of Residential Structures	337,997	334,336	−3,631
Well-Maintained Structures	240,163	234,978	−5,185
Deteriorating Structures	95,621	98,245	+2,624
Dilapidated Structures	2,213	1,143	−1,070 (Mainly due to demolition)
Number of Units	480,445	479,045	−1,400

legal representation operates to the great detriment of a party, especially where that party has the main burden of proof.

D. Variation Among Judges

Replicating the results of numerous studies of the criminal legal system, the study found variation in outcome among judges. For the seven judges who heard a large number of observed cases, the proportion of cases in which the landlord took judgment for all he asked ranged from 4.9 percent to 16.1 percent and the mean number of extra days ranged from four to eighteen. The study showed that none of the judges was greatly inclined to find for the tenant. The variations among the judges are no more than can probably be expected in a system where people make the decisions.

E. Race and Sex of Parties

It cannot be concluded from our study that the race or sex of the parties affected the outcome of contested cases. No discrimination by the court on these bases was found either for landlords or tenants; that is, the status of the party was more important than his race or sex.

The study also showed that race and sex had little, if any, effect on defenses raised, although women were slightly more likely to claim landlord breach than were men. It should be remembered that race and sex were recorded only for those tenants appearing in court and that the study provided no information on the tenants who did not come in.

The study gave some indication of the kind of landlord who seeks relief through each type of action. White and male landlords were more likely to bring nonpayment actions than Nonwhite and female landlords. White and female tenants were more likely to be defendants in termination actions.

V. RECOMMENDATIONS

The apparent failure of the Michigan tenants' rights legislation leads naturally to discussion of whether legislative action on behalf of a group possessing no real political or economic pressure should ever be expected to achieve meaningful results. There are two short articles[93] that present the view that statutes such as

[93] *See* Glotta, *supra* note 34; Moskovitz, *The Model Landlord-Tenant Code—An Unacceptable Compromise*, 3 URBAN LAWYER 597 (1971).

Michigan's tenants' rights legislation, the proposed Model Residential Landlord-Tenant Code, and the Uniform Residential Landlord-Tenant Act are not helpful to tenants because they stop further development of the law in the direction of increased tenants' rights and because they do not encourage colllective action. Such legislation also tends to disarm dissident tenants' groups demanding change. This political placebo effect is perhaps what happened in Detroit, where at the time of the passage of the tenants' rights legislation there was an active tenants' union, but it has since dissolved. Further analysis of the political question is left to the reader. Here, however, some recommendations will be given on the simpler question of how to make landlord-tenant legislation more meaningful, at least in court.

In order to decrease the high proportion of tenats defaulting, clearly drafted printed forms should be used for complaint, summons, and notice of judgment. Such forms have been recently put into use by the Detroit Landlord-Tenant Court (Figure 32). These court forms are doubtless some of the best in the country for communicating their true meaning to the reader and steering the defendant to legal advice. The new forms were developed by Michigan Supreme Court Justice G. Mennen Williams' Committee on the Detroit Landlord-Tenant Court, which was convened largely to respond to the problems the study had indicated were present in the court. Although these forms have been in use only a few months, there are indications thay they have caused substantial changes.[94]

A second recommendation is to provide counsel for the parties.[95] Since in landlord-tenant litigation private retention of attorneys is not economically feasible in most cases, counsel should be provided not just for the indigent, but for all who cannot afford one. Because landlord-tenant cases deal with relatively simple law, uncomplicated facts, and a fast turnover of cases, it seems well suited for the use of students or paraprofessionals. Also as the result of the problems disclosed by the study, a clinic has been set up to serve the Detroit Landlord-Tenant Court. The clinic is housed in the same building as the court and staffed by a director who is a Legal Aid attorney, an assistant director who is a paralegal, and groups of law students from local law schools. The

[94] Letter from Donald L. Hobson, Judge, Detroit Common Pleas Court, to Richard A. Soble, Oct. 3, 1973, on file with the *University of Michigan Journal of Law Reform.*

[95] The Model Residential Landlord-Tenant Code (*see* note 14 *supra*) at section 3-101 requires counsel to be provided when the expense of obtaining counsel would be a hardship to the litigant.

Figure 32. FORMS NOW USED BY DETROIT COMMON PLEAS COURT, LANDLORD-TENANT DIVISION

NOTICE TO QUIT
FOR NONPAYMENT OF RENT

TO: _____ _____
(Name of Tenant) (address of premises - apt. no.)

_____ MICHIGAN _____
(City, town or village)

1. YOUR LANDLORD OR LANDLADY SAYS THAT YOU ARE BEHIND $_____ IN YOUR RENT.
2. IF YOU OWE THIS RENT YOU MUST PAY IT BY_____OR ELSE THE LANDLORD OR LANDLADY CAN TAKE YOU TO COURT TO EVICT YOU.
3. If you have paid the rent, or if you do not owe it for some reason, such as if the landlord or landlady has not kept the place in repair, you may not have to pay the rent, or you may only have to pay some of the rent. But you should be prepared to pay all of the rent in case the Judge says you have to pay it.

_____
(signature of landlord or landlady)

_____
(address)

_____
(telephone)

IF YOU DON'T THINK THAT YOU OWE THE RENT, YOU MAY DEFEND YOURSELF OR YOU MAY HAVE A LAWYER ADVISE YOU. CALL HIM OR HER SOON.

HOW TO GET LEGAL HELP

1. CALL YOUR OWN LAWYER.
2. IF YOU DO NOT KNOW A LAWYER CALL THE DETROIT BAR ASSOCIATION, LAWYER REFERENCE SERVICE, 961-3545
3. IF YOU HAVE NO MONEY FOR A LAWYER CALL THE LEGAL AID OFFICE LANDLORD TENANT CLINIC AT 963-1375.

TENANT'S COPY

Actual size 8-1/2" × 9"

Common Pleas Court-Landlord-Tenant Division C-56

SUMMONS

State of Michigan } ss
County of Wayne }

No. _____

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

TO: _____

1. YOU ARE ORDERED TO BE AT ROOM No. 222, LAFAYETTE BUILDING, 149 MICHIGAN AVENUE, DETROIT, ON _____ AT 9:00 A.M.
2. YOUR LANDLORD OR LANDLADY, _____ WANTS TO EVICT YOU
3. IF YOU ARE IN ROOM No. 222, LAFAYETTE BUILDING, 149 MICHIGAN AVENUE, DETROIT, ON _____ AT 9:00 A.M. YOU WILL HAVE A CHANCE TO PRESENT YOUR CASE. IF YOU DO NOT APPEAR YOU CAN BE EVICTED WITHOUT TRIAL.

Given under my hand and seal this _____ day of _____, 19 _____

WILLIE L. BAXTER, CLERK

By _____
Deputy Clerk

HOW TO GET LEGAL HELP

You may defend yourself or you may have a lawyer to advise or defend you. CALL HIM OR HER RIGHT AWAY.

1. CALL YOUR OWN LAWYER.
2. IF YOU DO NOT KNOW A LAWYER CALL THE DETROIT BAR ASSOCIATION, LAWYER REFERENCE SERVICE 961-3545
3. IF YOU HAVE NO MONEY FOR A LAWYER CALL LEGAL AID OFFICE, LANDLORD-TENANT CLINIC 963-1375

DEFENDANT'S COPY

Actual size 8-1/2" × 9"

clinic represents both landlords and tenants. A clinic solution appears better suited for quickly meeting the parties' needs for a large volume of aid than are scattered community legal services offices. Parties appearing in court without an attorney should be referred to the clinic by the judge, as was not always done in Detroit in the past, or by the court's forms, which in Detroit now include the telephone number of the clinic.

A recent comment[96] has strongly criticized legal services attorneys for delaying final disposition of landlord-tenant cases by using procedural defenses and arranging stipulations or agreements. The commentator even goes so far as to recommend serious restraints on legal services attorneys, including barring them from housing litigation altogether.[97] This obviously is not a reasonable solution for the problem of providing fair and impartial justice in our courts.

If the goal of landlord-tenant legislation is more than injecting some measure of fairness into the courts and includes promoting housing code enforcement and increasing upkeep of the local housing supply, then other solutions besides giving the tenant defenses and an attorney in summary proceedings must be sought. The repair and deduct provision, under which the tenant may repair the premises and deduct the repair cost from his rent, is now becoming more common.[98] This provision is probably helpful in allowing repair of minor items without compelling litigation, but this remedy is limited to small repairs and does not deal with common areas.

A better way for landlord-tenant legislation to encourage maintenance of property is to shift the burden of showing the state of code complaince from the tenant to the landlord. The landlord should have to prove, as part of his case, that he has complied with the major provisions[99] of the local housing codes. Absent

[96] Note, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495 1497-98, 1501-03 (1973). This is a study based on an undescribed sample of 519 cases in New Haven, Connecticut, where the primary object was to examine the length of time to final disposition. Final disposition figures include cases which were settled; whether the average times in the study are mean or median is not always stated.

[97] The writer blames the delay on legal services attorneys whose legal judgments are not influenced by their own economic needs. Note, *supra* note 96, at 1499. He then concludes that such "free counsel" should be severely restricted. *Id.* at 1508-11. He avoids mention of cases such as personal injury suits where insurance companies, hardly with free counsel, often delay even after judgment to encourage settlement for a lower sum. No one would then conclude that insurance companies should therefore be denied counsel.

[98] *See* UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT, *supra* note 14, at § 4.103(a) (maximum $100); MODEL RESIDENTIAL LANDLORD-TENANT CODE, *supra* note 14, at § 2-206 (maximum $50).

[99] Major provisions would have to be defined and the codes would probably have to be modernized. Proof of compliance might be satisfied by the filing of a certificate.

such a showing, the landlord would not be permitted to take a judgment. This shift in proof burden would have to be coupled with legislation prohibiting self-help evictions and providing stiff fines or damages for violation of the prohibition.

By placing the burden of showing code compliance on landlords, all the landlords who ordinaarily would bring actions would be affected, not just those few whose tenants appear in court and raise breach of warranty of habitability defenses. Also the problems of lack of representation of the tenant and the pro-landlord attitude of the court would become less important, although the onus would then be on the code enforcement department to ensure code compliance. This plan appears to have a greater chance of improving housing than the Michigan tenants' rights legislation and the other currently popular reform proposals that rely so heavily on tenant defenses. However, such a plan would have to be accompanied by vigorous and fair enforcement by code enforcement departments, or else the problems of the landlord-tenant court would simply be shifted to the administrative agency, with no resultant improvement of housing.

A proposal to require landlords to show code compliance was considered by the drafters of the Model Residential Landlord-Tenant Code, but was rejected.[100] The reason given for rejection was that the measure would only encourage self-help evictions, but this should not be the case with proper companion statutes. Also, there is now more evidence than there was at the time the Model Code was drafted that tenants' defenses have little effect on housing and, therefore, other measures must be tried.

Another argument often advanced against a proposal to compel a showing of code compliance is that it would actually be detrimental in the long run because landlords would raise rents to an unbearable level, especially for the poorest tenants. This argument can be rejected for two reasons. First, there is no justification for exorbitant prices for minimally decent housing in our technologically advanced society. That is, if having minimum standards makes housing extremely expensive then the answer is not to suffer bad housing but to attack the reasons for the high cost. Secondly, if the resultant housing is justifiably priced at a level that some cannot afford, the solution is not to endure bad housing but to supply a guaranteed annual living or housing allowance.

[100] *See* MODEL RESIDENTIAL LANDLORD-TENANT CODE, *supra* note 14, at 18.

Society should no longer tolerate the deplorable housing conditions now found in our cities. One method that some hoped would improve the situation has been shown to be ineffectual; hopefully other more meaningful ways will be tried and will prove successful.