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The Chicago Experience

Esther R. Rothstein

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Over the years, thousands of cases have involved legal problems in the housing field. As urbanization increased, the number of housing disputes escalated. Unfortunately, litigation costs also increased. Since World War II, the problems facing landlords and tenants have been solved in trial courts which have become, for tenants at least, the court of last resort.

Fortunately, the urgency of the problem reached such serious proportions that federal legislation was introduced because "for the majority of Americans, mechanisms for the resolution of numerous types of minor civil disputes [such as landlord-tenant matters] are largely unavailable, inaccessible, ineffective, expensive, or unfair...taken collectively such disputes are of enormous social and economic consequence."[1]

A first, nationwide study of how courts handle housing matters is now underway. The study's major objective is to describe a series of alternatives for handling housing-related disputes in a more equitable, expeditious fashion.

Approximately a year ago, in the City of Chicago, several organizations undertook a study called "Judgment Landlord: A Study of Eviction

* Partner, McCarthy and Levin; J.D., IIT—Chicago Kent College of Law, 1950; Immediate Past President, Chicago Bar Association. The author expresses thanks to Terrance Murphy for his research assistance.

1. Dispute Resolution Act, S. 957, H.R. 2482, 95th Cong., 1st Sess. (1977).

Court in Chicago."[2] The study was highly critical of the court and its personnel. As a result of the study and newspaper reaction, the Chief Judge of the Circuit Court of Cook County, John S. Boyle, requested The Chicago Bar Association to consider the present operations of the Forcible Entry and Detainer Court. A Special Committee[3] was appointed to make an independent study of the court. The circuit court offered its full support and cooperation in this matter and further agreed to implement any of the Special Committee's recommendations.

The problems presented in a court such as the Forcible Entry and Detainer Court do not make for simple solutions. The social problems are horrendous. The great majority of the cases that find their way into the court involve indigent persons, broken homes, sub-standard buildings, overcrowded apartments and, for the most part, unrepresented minorities. Ninety percent of the cases are brought for nonpayment of rent. The reasons for these facts are legion and as old as time. The solutions cannot be found in the court. The problems are complex, more social than legal, and require much funding for their solution. Solutions may be expedited by approaches, alternate to the courts, not yet devised and workable.

Each Committee member personally observed the operation of the eviction courts with special emphasis on the judicial process in these courts, the judges' judicial temperament and demeanor, the court's congestion, and the tenants' basic understanding of the eviction process, including court orders. After each member observed the court over several months, each submitted his respective reports and recommendations to the chairman.

In conducting its review, the Committee was interested in knowing what other cities were doing to improve the administration of their eviction courts. The Committee examined the court forms used and the availability of legal counsel or legal service programs. Information was ob-

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2. J. BIRNBAUM, N. COLLINS & A. FUSCO, JUDGMENT LANDLORD: A STUDY OF EVICTION COURT IN CHICAGO (S. Mansfield ed. 1978). *See also* Fusco, Collins & Birnbaum, *Chicago's Eviction Court: A Tenant's Court of No Resort,* 17 URBAN L. ANN. 93 (1979).

3. Thomas F. Bridgman, a partner in the law firm of Baker & McKenzie, was appointed Chairman of the Special Committee. Thomas J. Boodell, Jr., a partner in the law firm of Boodell, Sears, Sugrue, Giambalvo & Crowley, and one of the attorneys for the Contract Buyer's League; Agnes C. Ryan, a lawyer with the Legal Aid Bureau of Chicago; Lawrence Sulzbacher, Vice President and Associate General Counsel of Chicago Title and Trust Company; and Frank L. Winter, a partner in the law firm of Kirkland and Ellis, counsel for the Chicago Real Estate Board; were appointed members of the Committee. N.A. Giambalvo, current President of the Chicago Bar Association, Richard W. Austin, First Vice President of the CBA; and Terrence M. Murphy, CBA Assistant Executive Director, participated as ex-officio members.

tained from several large cities regarding the operation of their forcible entry and detainer courts. This effort was found to be extremely helpful, and one of the Committee's recommendations was to consider the implementation of a program similar to the Los Angeles volunteer lawyer-settlement program, which utilizes lawyers from the County Bar Association to act as volunteer settlement officers in the eviction process.[4]

In formulating its recommendations, the Committee maintained the following principles as general policy considerations:

1) the tenant should not be removed from an apartment unless such removal is in strict accordance with law;
2) rental property owners have an interest in removing as expeditiously as possible non-paying tenants without lawful defense, in order to maintain the cash flow necessary to preserve rental housing;
3) the court has a vital interest in protecting all parties' legal rights and remedies and in maintaining a proper judicial decorum in the administration of justice.

In 1976, 58,681 forcible detainer actions were filed in the First Municipal District Circuit Court of Cook County (the City of Chicago). Of these, 6,691 were joint action complaints seeking an order for possession of the premises and also a judgment for rent due. In 1977, 64,748 forcible detainer actions were filed in the First Municipal District, involving 9,301 joint action cases. Approximately 20,000 of these cases were actions filed by the Chicago Housing Authority. From January through May of 1978, 24,459 forcible detainer actions were filed—7,108 were joint action cases.

This information was important to the Committee in establishing that the Chicago Forcible Entry and Detainer Court's caseload is extremely heavy, that the number of eviction actions filed appears to be increasing every year, and that the number of Joint Action filings is increasing as well. Based on these statistics the Committee concluded that the court's caseload would, most likely, continue to increase. The ever-growing number of cases will present new administrative and judicial demands on the court.

In its effort to gain additional information and insight regarding the Forcible Entry and Detainer Court, the Committee conducted a series of personal interviews of judges, lawyers, legal and lay organizations directly involved in, and familiar with, the court's operation. The Committee

4. *See* Epstein, *The Los Angeles Landlord-Tenant Court,* 17 URBAN L. ANN. 161 (1979).

received much helpful information from the Honorable Charles P. Horan, Presiding Judge of the First Municipal District. He provided a great deal of background regarding the operation of the court and explained some of the difficulties that judges encounter when assigned to the court. The Committee interviewed present and former Forcible Entry and Detainer Court judges regarding the operation of the court, the strict adherence to judicial procedures and process, availability of legal counsel for tenants, especially those with a "conditions defense" (the habitability of the premises), the clarity of judicial orders, effective administration of justice in these courts and, finally, their response and comments about recently published criticisms.

The Committee also interviewed those persons involved in "Judgment Landlord: A Study of Eviction Court in Chicago,"[5] which it considered in its entirety during its deliberations. The Alliance to Reform Eviction Court and concerned representatives from tenant organizations also met with the Committee. Lawyers whose practice consisted largely of handling landlord-tenant matters were also interviewed.

Joseph Fitzgerald, Chicago Commissioner of Buildings, met with the Committee and was questioned about the possibility of making inspection records of the Building Department more readily available to the court in eviction cases where the tenants' defense was based upon a breach of implied warranty of habitability of the premises. While these records were available upon subpoena, it was the Committee's opinion that access to this information, controlled by court order, would help improve the court's overall administration of justice. In addition, the Committee received and reviewed numerous letters from lawyers, laymen, businessmen and community groups in support of the judges assigned to these courts.

After all of this investigative work, the Committee reported its findings and recommendations to the court and to the public. The Committee pinpointed existing problem areas of the court and formulated specific recommendations to alleviate these problems. The proposed changes were both administrative and judicial in nature.

The Committee recommended that two judges be used on a full-time basis to hear the forcible entry and detainer cases, and that additional judges be assigned when and as the caseload increased. In an attempt to keep waiting periods for the tenants and landlords to a minimum, and to avoid overcrowding of courtrooms, staggered calls were initiated. Here the Committee also made the recommendation, since implemented, that

5. *See* note 2 *supra.*

the more complex, contested cases be docketed at a specific time so that proper attention could be given for the more extended evidentiary hearings.

The Committee found the forcible entry and detainer summons then in use to be confusing and concluded that it should be changed. Summons forms used by other courts were examined. In its consideration of language and information that should be contained in a new summons, the Committee decided that a change in the court's procedure for hearing these cases should also be effected. The existing system, which required the tenant to file an appearance on one date and appear for trial at a later date, was unnecessary and, in many instances, created a hardship for both the tenant and the landlord.

The recommended summons contemplated simultaneous appearance and trial, and required the clerk to direct the parties to a specific courtroom as provided in the summons itself. The use of this summons would eliminate the present distinction made in the forcible entry and detainer courts between "default calls" and the court's regular call of cases in which appearances have been filed.

The proposed changes in the court forms will have many benefits. The summons cogently tells the tenant when and where to appear, the rent amount allegedly due, and informs of the availability of legal counsel.

Because of the court's high volume of cases, the Committee recommended that the judges assigned to these courts be rotated on a regular basis. The consensus was that the judges be rotated annually, or every nine months.

Further recommendations made, and immediately implemented, included full-time court reporters assigned to each court, and the availability of foreign language interpreters.

In an effort to save time and expense in cases where "condition defenses" as to premises' habitability are raised, the Committee developed and established procedures to make available to the parties Chicago's Building Department inspection records for the premises in question. Such records covered the premises for the preceding twelve-month period.

The Committee also recommended that more formal courtroom procedures be followed by the forcible entry and detainer court. The Committee recognized the great pressures placed on the judges in these courtrooms as a result of the heavy caseload, the important interests involved, and the need for expeditious hearing of the issues. It may be that, historically, the court developed special practices and procedures to expedite adjudication of its heavy caseload. However, the rights involved in litiga-

tion in forcible entry and detainer courts are extremely important to both plaintiffs and defendants. Therefore, the Committee strongly urged the adoption of more formal and traditional courtroom procedures, allowing sufficient time for the tenants to present whatever defenses they may have. The Committe concluded that such procedures are particularly necessary in contested cases. The Committee believed adherence to such formal procedures would assure an orderly and respected determination of the issues.

Implementing Committee recommendations, the court appointed a liaison committee to work with the Chicago Bar Association's Committee to improve courtroom procedures. The two Committees are developing a training manual for use in the court. The manual will include guidelines for hearings on contested cases, opening remarks to be given daily by the court, a section reviewing the applicable law, and a section analyzing tenant defenses, with particular emphasis upon the defense of breach of warranty of habitability.

Another procedure agreed upon was to give the landlord and tenant copies of the court's order to prevent confusion as to the court's final disposition. In the event one of the parties fails to appear, a postcard notice of the order will be sent.

Probably the most important recommendation was that the court explore the possibility of establishing a "volunteer settlement program" similar to that being operated by the Los Angeles Municipal Court.[6] The Los Angeles program, established in cooperation with the Los Angeles County Bar Association, uses private attorneys as settlement officers in landlord-tenant cases. Several hundred lawyers volunteered and, after completion of an instructional orientation program, including a review of procedures, basic statutes, cases and other important reading materials, and the operation of the landlord-tenant court, they were assigned to the eviction court as settlement officers.

The volunteer settlement program has worked well, and according to Judge Norman L. Epstein, Judge of the Los Angeles landlord-tenant court, more than seventy percent of the cases assigned to such officers were settled to the satisfaction of both parties.

During discussions with judges, lawyers, and lay organizations, it became evident that many people, especially those at the poverty level, have a serious problem in getting legal advice and assistance. It was the Committee's opinion that the organized bar and local Legal Assistance offices share a collective responsibility to ensure the availability of legal

6. *See* note 4 *supra.*

counsel to the public. It was decided that the court and the organized bar should study this problem and attempt to correct it by developing new programs and expanding existing legal services for the poor. The Chicago Bar Association has developed a pro-bono program, and plans to have counsel available, on a day-to-day basis, in the court rooms for a volunteer settlement program and for on-the-spot legal representation for in-court referrals.

There is another aid soon to become a reality, to solve this problem of unavailability of legal counsel. The Chicago Bar Association is now part of a Neighborhood Justice Program,[7] soon to provide arbitration of minor disputes. Currently operating in the Uptown-Edgewater section of Chicago, the pilot program is geared to assure that all citizens will have access to justice.

The Forcible Entry and Detainer Court is one of many courts whose caseload should be more expeditiously and equitably handled. The bench, the bar, the public and community agencies must all participate to effect the necessary changes. All can have access to the justice system only if the entire community participates. The cooperation by the judges of the court, as well as related personnel, was magnificent when the bar, through volunteers, evinced an interest and desire to eradicate a situation fraught with human misery and a tangled bureaucracy.

7. *See* McGillis, *Neighborhood Justice Centers and the Mediation of Housing-Related Disputes*, 17 URBAN L. ANN 245 (1979).