Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?

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Eviction defense, one of the principal areas of housing advocacy in legal services offices throughout the country,1 strives to help poor tenants vindicate their rights and avoid the trauma and disruption,2 and possible descent into homelessness,3 which eviction can cause. Legal services attorneys are often able to defeat their clients' evictions or, if that is not possible, to delay their clients' evictions long enough to allow their clients to save money for, and move safely into, new housing. Some argue, however, that by vigorously defending poor tenants, legal services attorneys may significantly burden private landlords by delaying evictions and enabling the tenants to live rent-free during the pendency of their evictions.

Increasing landlords' costs may harm all poor tenants. Depending on their profit margins and the elasticity of the supply curve in various sections of the

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This Note was inspired by the author's experiences as a law student intern for the Jerome N. Frank Legal Services Organization and the New Haven Legal Assistance Association. Under the supervision of attorneys at both organizations, he provided legal services to numerous poor tenants in New Haven.


3. Following an eviction, many poor individuals and families are unable to find affordable housing. Scherer, supra note 2, at 559. They may be able to find temporary shelter with relatives or friends, but such precarious arrangements are usually short-lived and the evicted are likely to enter the ranks of the homeless. Indeed, several studies have identified eviction as a leading cause of homelessness. For example, a New York City study concluded that evictions are a cause of forty to fifty percent of family homelessness in the city. COMMITTEE ON LEGAL ASSISTANCE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, REPORT ON THE PREVENTION OF HOMELESSNESS BY PROVIDING LEGAL REPRESENTATION TO TENANTS FACED WITH EVICTION 10 (1988). Another found that fifty-seven percent of the homeless population in Westchester County, New York, had been evicted, both from their primary residence and by family or friends. Id.
affordable housing market, landlords may respond to increased costs by simply absorbing the costs, by raising rents and reducing maintenance to recover their losses, or by abandoning their units altogether or converting them to other uses. In any event, poor tenants as a class may ultimately suffer a reduction in the supply of decent, affordable housing. Thus, by increasing landlords' costs of doing business, legal services attorneys may enrich their clients at the expense of all other similarly situated poor tenants.

This thesis was advanced by two studies of the impact of legal services eviction defense: Legal Services and Landlord-Tenant Litigation: A Critical Analysis, by John Bolton and Stephen Holtzer, and Landlord-Tenant Litigation and the Impact of Free Legal Services, by Robert Daines. Both studies examined evictions in New Haven, Connecticut, and compared the duration, economic costs, and outcomes of evictions involving tenants represented by legal services attorneys and evictions involving unrepresented tenants. Both studies determined that legal services attorneys primarily represent tenants who fail to pay their rent and who do not have defenses to their evictions. Thus, the studies conclude, legal services attorneys are seldom able to prevent their clients' evictions; instead, the most significant impact of legal services attorneys on their clients' evictions is to delay final disposition and to enable their clients to remain in their housing units without paying rent for a considerable length of time. According to both studies, the legal services eviction defense imposes significant expenses on private landlords and may ultimately hurt all poor tenants.

This Note challenges these conclusions by reporting the findings of a study of over 200 evictions in New Haven. This study corrects several methodological flaws and limitations of the earlier studies and sets forth a more complete picture of what transpires in evictions handled by legal services attorneys. This study reveals that legal services attorneys primarily represent tenants with strong defenses to their evictions and frequently defeat their clients' evictions. In those cases where they are unable to defeat their clients' evictions, they are able to substantially delay the evictions. They do so, however, without imposing significantly greater economic costs on landlords than landlords suffer

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4. See Charles J. Meyers, The Covenant of Habitability and the American Law Institute, 27 STAN. L. REV. 879, 893 (1975). This note does not address the theoretical consequences of increasing landlords' costs, but rather contests the underlying factual assumption that legal services eviction defense does, in fact, increase landlords' costs. For an overview of the literature on the effects of increasing landlords' costs, see Lawrence Kolodney, Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement, 18 FORDHAM URB. L.J. 507, 520 n.52 (1991) (citing leading commentators).


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when evicting unrepresented tenants. In fact, legal services attorneys are often able to negotiate settlements under which their clients pay all, or substantially all, of their rent.

I. PRIOR CHALLENGES TO EVICTION DEFENSE FOR THE POOR

In the past twenty-five years, two studies have examined the impact of eviction defense for poor tenants on the affordable housing market in New Haven. In the early 1970s, John Bolton and Stephen Holtzer examined the economic impact of eviction defense representation provided by the New Haven Legal Assistance Association (L.A.A.). Bolton and Holtzer studied over 300 evictions in New Haven and reported that “[t]he involvement of L.A.A. attorneys in [eviction] cases clearly tends to increase the amount of time required for disposition of the action.” They reported that evictions in which tenants were represented by L.A.A. took 2.7 times longer to reach final disposition than evictions in which tenants represented themselves. Despite this delay, Bolton and Holtzer claimed that the end result was the same in nearly all cases: the landlord obtained a judgment of possession and the tenants were forced to move out.

Bolton and Holtzer concluded that the most significant impact of L.A.A.’s representation of poor tenants was its delay of eviction dispositions. They asserted that, because tenants seldom pay rent while their evictions are pending, such delay entails great expense for landlords. Bolton and Holtzer then speculated that landlords who are forced to absorb the costs of delay will have an incentive to raise rents, convert their buildings to non-residential uses, or abandon their buildings entirely.

Despite the salience of their conclusions, Bolton and Holtzer’s methodology was flawed in three fundamental ways. First, they included in their group of cases involving unrepresented tenants cases in which tenants did not contest their evictions. In such cases, courts typically enter judgments in favor of the landlords shortly after the actions are initiated. The inclusion of such cases artificially lowers the average disposition time for all evictions involving unrepresented tenants and, consequently, exaggerates the impact of legal services representation. Because all tenants represented by legal services attorneys contested their evictions, the most appropriate comparison group is one comprised solely of unrepresented tenants who contested their evictions.

8. Id. at 1497. For a summary of Connecticut’s eviction laws, procedures, and terminology, see infra Appendix.
10. Id.
11. The first two flaws were noted by Daines. See Daines, supra note 6, at 25-29.
12. Tenants may choose not to contest their evictions for a variety of reasons, including ignorance of their rights or of the (albeit limited) availability of free legal services representation, the belief that they have no defenses, alienation from the legal system, or a perceived inability to succeed in court.
Second, Bolton and Holtzer may have underestimated the impact that L.A.A. attorneys had in favorably affecting the outcome of their cases. For example, they arbitrarily counted those cases in which landlords withdrew their actions as cases in which landlords evicted the tenants and regained possession of the premises. However, withdrawal often follows the successful negotiation of a settlement in which a landlord agrees to drop an eviction altogether. In addition, Bolton and Holtzer ignored the actual terms of settlement agreements reached by L.A.A. attorneys. Settlement agreements often contain provisions requiring landlords to repair substandard housing conditions or requiring tenants to pay some or all of their arrears.

Third, Bolton and Holtzer assumed that, because L.A.A. attorneys delayed the final disposition of the evictions, they created “additional expense[s],” or “economic hardship[s],” for landlords in the form of lost rents. In other words, they assumed a direct relationship between the length of an eviction and the amount of rent lost by a landlord. This conclusion was not based on empirical data and ignored the possibility, alluded to above, that L.A.A. attorneys may have negotiated settlements in which their clients were permitted to remain in their apartments on the condition that they pay some or all of their arrears.

In the early 1990s, Robert Daines updated and expanded upon the findings of Bolton and Holtzer. He examined the impact of the eviction defense representation provided by L.A.A. and the Jerome N. Frank Legal Services Organization (L.S.O.), Yale Law School’s legal services clinic. He did so by studying nearly 200 evictions in New Haven, including evictions involving tenants represented by L.A.A. and L.S.O., and evictions involving unrepresented tenants. Daines corrected for two of the flaws in Bolton and Holtzer’s methodology: First, he compared those cases involving tenants represented by L.A.A. and L.S.O. with cases involving unrepresented tenants who contested their evictions. Second, with respect to the outcome of the actions, he studied the terms of settlement agreements and noted the limitations of the data regarding withdrawn actions.

Daines confirmed Bolton and Holtzer’s finding that legal services attorneys delay the final disposition of eviction actions. He reported that cases in which tenants were represented by L.A.A. or L.S.O. took thirty percent longer to reach final disposition than cases in which tenants represented themselves and contested their evictions. This delay was much smaller than that reported by Bolton and Holtzer. Nonetheless, Daines estimated that this delay cost landlords approximately $500 per eviction: landlords suffered rent losses of approximately $1,250-$1,500 per eviction in cases involving tenants represented by legal services attorneys compared to approximately $800-$900 in cases

14. See Daines, supra note 6, at 32.
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involving unrepresented tenants.\textsuperscript{15}

Daines reported several additional findings. According to his research, legal services attorneys tended not to represent tenants in evictions brought by large, corporate landlords; instead, they primarily defended tenants in evictions brought by private individual landlords, including a substantial percentage of “mom and pop” landlords who lived in the same buildings as their tenants.\textsuperscript{16} As for the tenants, many were “repeat players;” that is, they had been evicted at least once in the two years prior to the evictions in question.\textsuperscript{17} Nearly all of the evictions (97\%) were initiated because the tenants failed to pay their rent.\textsuperscript{18} Yet, very few tenants asserted defenses for their nonpayment; for example, fewer than a third complained of substandard housing conditions.\textsuperscript{19} More than four out of five of the legal services cases ended with a judgment of possession in favor of the landlords, roughly the same ratio as for unrepresented tenants who contested their evictions.\textsuperscript{20} However, in two-thirds of the legal services cases, the attorneys negotiated settlement agreements whereby the landlord regained possession only after a “stay” during which the tenant could remain in the apartment and look for new housing. Similar agreements were reached in only half of the cases where unrepresented tenants contested their evictions.\textsuperscript{21} However, tenants represented by L.A.A. and L.S.O. were approximately one and one-half times more likely than unrepresented tenants to default on the terms of their negotiated settlements, for example by failing to make required rent payments or failing to leave their apartments on the date stipulated.\textsuperscript{22}

The complete picture painted by Daines is rather bleak. According to his findings, legal services attorneys tend to represent tenants who fail to pay their rent for no good reason. These tenants generally do not have defenses to their evictions and many are “repeat players.” By contrast, their landlords are usually not large, corporate “slumlords,” but individuals struggling to make ends meet. By delaying their clients’ evictions, legal services attorneys impose significant costs on these landlords and may ultimately force them out of business. In his own words, Daines concluded that:

\textsuperscript{15} Id. at 34-35. This conclusion appears tainted by the fact that Daines included in his calculations of rent losses in cases involving unrepresented tenants those losses suffered when unrepresented tenants did not contest their evictions. Id. Rent losses in cases involving tenants who do not contest their evictions may be substantially lower than such losses in cases in which tenants do contest their evictions. Thus, the inclusion of such cases may artificially lower the estimated rent losses in cases involving unrepresented tenants.

\textsuperscript{16} Id. at 5-6.

\textsuperscript{17} On average, the tenants in Daines’s study had lived in their apartments four months or less prior to the commencement of the evictions. Id. at 8-9.

\textsuperscript{18} Id. at 15.

\textsuperscript{19} Id. at 13.

\textsuperscript{20} Id. at 39.

\textsuperscript{21} Id.

\textsuperscript{22} Id. at 41.
L.A.A. and L.S.O. lawyers are unquestionably idealistic and motivated by a desire to help poor tenants. Unfortunately, however, their strategy of delay appears to help their clients only at the expense of other rent-paying poor tenants. Because L.A.A. and L.S.O. do not significantly affect the disposition of summary process actions, their main impact is to increase the landlord's lost rent and legal fees. These increased costs decrease the amount of low income housing landlords are willing to supply. . . . [Moreover] the price of rental housing is increased, thereby . . . transferring wealth from rent-paying poor to non-rent-paying poor.23

The significance of this conclusion must not be discounted. New Haven is one of the poorest major cities in the United States.24 Its industrial and manufacturing economy has been in decline for nearly a quarter of a century, and as a result, about half of the city's residents have low incomes.25 Most residents are tenants,26 and over two-thirds of these tenants have low incomes.27 The demand for affordable housing in New Haven is high, unfortunately outstripping the supply. Approximately two-thirds of all housing units in New Haven are for rent,28 and over one-third of all rental units are subsidized in some manner.29 Despite the shortage of affordable housing, in recent decades New Haven has witnessed the demolition of several high-density affordable housing structures, the conversion of many smaller affordable housing structures to condominiums and cooperatives, and the wholesale abandonment of hundreds of residential buildings.30 As a result, the average rent in New Haven far exceeds the ability of most low-income tenants to pay.31 Any effort to improve the lives of low-income tenants in New Haven

23. Id. at 44-45.
24. CITY OF NEW HAVEN, COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY 3 (1994) [hereinafter CHAS].
25. In 1990, fifty-five percent of the city's 130,000 residents were "low-income" individuals and families, earning less 80% of the metropolitan area median income of $38,471. CHAS, supra note 24, at 6A (addendum to page 6). Forty percent of the city's residents were "very-low income" individuals and families, earning less than half the metropolitan area median income. Id. at 4. Nineteen and one-half percent of all residents had incomes below the national poverty line. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING 3, 39 (1990) [hereinafter 1990 CENSUS OF POPULATION AND HOUSING]. For certain segments of the population, the poverty rate was even higher; for example, the rate for families headed by single mothers was fifty-two percent. Id. at 5.
26. In 1990, sixty-five percent of all households in New Haven were tenant households. CHAS, supra note 24, at 6A (addendum to page 6).
27. In 1990, sixty-seven percent of all tenants in New Haven were low-income individuals and families; fifty-two percent were very-low income individuals and families; and twenty-seven percent lived in poverty. CHAS, supra note 24, at 26
28. Of the city's 54,057 total housing units, 33,331 are available for rent. 1990 CENSUS OF POPULATION AND HOUSING, supra note 25, at 63. A substantial percentage of the rental units (46%) were built before 1940; only ten percent were built after 1980. Id. at 46. Half are in small multi-family buildings with four units or less. CHAS, supra note 24, at 7. Only 10% are in large buildings with 50 or more units. Id.
29. CHAS, supra note 24, at 25.
30. Id. at 7-8.
31. In 1990, the average rental price for all rental units in New Haven was $467 per month. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, 1990 CENSUS OF HOUSING: GENERAL HOUSING CHARACTERISTICS 150 (1990) [hereinafter 1990 CENSUS OF HOUSING: GENERAL HOUSING CHARACTERISTICS]. According to federal standards, tenants can "afford to pay" no more than 30% of

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must recognize the need to preserve the supply of affordable housing in the

city. If, as Daines suggests, eviction defense substantially increases landlords'
costs of doing business, it may reduce the city’s supply of affordable housing,
hurting all poor tenants.

Daines’s methodology, however, like that of Bolton and Holtzer, was not
without its problems. First, like Bolton and Holtzer, Daines assumed a direct
relationship between the length of evictions and the amount of rent lost by
landlords. His conclusions about the economic impact of legal services eviction
defense were not based on empirical data of actual rents lost. Rather, they were
calculated by multiplying the number of days an action took to reach final
disposition by the average rental cost per day for all the cases he surveyed. 32
His conclusions, therefore, do not include tenant payments of rent during their
evictions.

Second, Daines’s conclusions about tenants’ defenses to their evictions are
misleading. Like Bolton and Holtzer before him, Daines gathered his data from
the housing court files maintained at New Haven’s Superior Court Housing
Session. 33 These files contain only information pertaining to matters litigated
or settled in court, and thus data pertaining to tenant defenses are available
only where tenants filed answers. However, as will be seen below, very few
tenants represented by legal services attorneys file answers; more often, their
cases are settled, dismissed, or withdrawn during the pretrial phases of
litigation. Accordingly, in cases involving legal services attorneys, the housing
court files contain little information on tenant defenses.

II. A CLOSER LOOK

A. Research Underlying this Note

This Note is based on data from 246 evictions which took place in New
Haven between 1989 and 1994. 34 One hundred and eighty-eight of these
evictions involved poor tenants represented by legal services attorneys from

their monthly income for rent and utilities. 42 U.S.C. § 1437a(a)(1) (1995); see also PAULA A. LEONARD
& EDWARD B. LAZERE, A PLACE TO CALL HOME: THE LOW INCOME HOUSING CRISIS IN 44 MAJOR
METROPOLITAN AREAS xii (1992) (available from the Center on Budget and Policy Priorities,
Washington, D.C.). These standards are based on the premise that while decent, safe, and sanitary
housing is essential to healthy and productive living, it should not be so expensive as to limit a person’s
ability to provide food, clothing, medical care, and other basic necessities. In 1990, 59% of all very
low-income tenant households in New Haven paid more than 30% of their income for rent, and 48%
paid more than 50% of their income for rent. CHAS, supra note 24, at 26.

32. At the time of his study, this average rental cost per day was $17. Daines, supra note 6, at 34.
33. The Housing Session handles housing-related disputes, including evictions, receivership actions,
and rent withholding actions.
34. The majority of evictions studied took place in 1993 and nearly all involved tenants living in
New Haven. Because New Haven’s Housing Session has jurisdiction over evictions involving properties
in New Haven and its surrounding communities, some of the evictions studied involved tenants living
in those surrounding communities.
L.A.A. and L.S.O. (For convenience, these tenants will be referred to as “legal services tenants.”) The data concerning these evictions were drawn from the closed case files maintained at L.A.A. and L.S.O. 35 The remaining 58 evictions involved tenants who contested their evictions without legal representation. (For convenience, these tenants will be referred to as “unrepresented tenants.”) The data concerning these evictions were drawn from closed court files maintained at New Haven’s housing court. 36

The legal services files present a much fuller and, in many respects, a much more accurate picture of what transpires in contested evictions than do the housing court files. Legal services files contain information on unraised tenant defenses as well as information on tenant demographics (race, sex, age, household composition, income, income sources, and rent burden), housing conditions (number of units in tenant’s building, condition of the premises in tenant’s housing unit, and tenant complaints about conditions and landlord’s responsiveness to such complaints), lease agreements and disputed lease provisions, the tenant’s rental payment history, and other relevant issues. The legal services files also include sources of information not available in the housing court files, including completed intake questionnaires; relevant lease materials; rent receipts; photographs of the housing units involved; documents relating to the tenants’ welfare benefits; written correspondence between the landlords and tenants, and other letters, notes, and telephone logs memorializing conversations between the parties involved; official reports of housing inspectors, police officers, and medical examiners; and attorney notes regarding available tenant defenses. The legal services files, then, provide critical information exposing the complexities and identifying the hidden controversies in what might mistakenly appear, upon examination of the housing court files alone, to be simple evictions based on tenant nonpayment of rent. 37

35. The legal services cases were selected from a random sample of 203 closed eviction cases maintained at L.A.A. and L.S.O. (The author studied these cases as part of his work as a law student intern for L.A.A. and L.S.O.) The legal services cases were selected in reverse chronological order according to the date they were closed, beginning with the closed files from 1994 and proceeding backward in time until the desired number of cases was reached. All available cases were selected regardless of their outcomes or the issues involved. However, all cases in which the landlord was the Housing Authority were removed from the sample. Accordingly, fifteen cases involving the Housing Authority were removed, yielding a total of 188 eviction cases involving private landlords and legal services tenants.

36. These cases were selected from a random sample of 150 closed eviction cases maintained at New Haven’s housing court. The cases in the random sample were selected according to docket number from the years 1993 and 1994. All available cases were selected regardless of their outcomes or the issues involved. However, all cases in which the tenant was represented by counsel, the tenant was unrepresented but did not contest the eviction, or the landlord was the Housing Authority were removed from the sample. Accordingly, ninety-two cases were removed from the sample, yielding a total pool of 58 eviction cases involving private landlords and unrepresented tenants who contested their evictions.

37. While the legal services files unquestionably contain a broader spectrum of information than the housing court files, this material is also much more biased in favor of the tenants. Some documents and materials in these files are essentially objective or neutral in nature, such as uncontested written lease agreements and addenda, rent receipts signed by the landlord, photographs of the premises, and
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B. The Tenants

In this study, most tenants who received legal assistance in defending their evictions were both extremely poor members of minority groups and women. Two-thirds reported incomes below the national poverty line, and nearly all reported incomes less than one-third the median for the New Haven metropolitan area. See Table 1. Seventy percent were members of racial or ethnic minorities, a significantly greater percentage than that of racial and ethnic minorities among all tenant households in New Haven. See Table 2. The vast majority—four out of five—were women, and nearly two-thirds of these women were single heads of households. Finally, most of the legal services tenants were between the ages of 25 and 45, and over two-thirds were adult heads of households with children.

Reports from third-party officials or agencies like housing inspectors, police officers, and medical examiners. Still other information including letters from tenants or neighbors regarding the poor conditions or upkeep of the premises, are informative insofar as they provide insight into various interactions between the tenants and landlords, regardless of the veracity of the statements and allegations they contain. However, these items are less than objective when relied upon to settle contested issues. Landlords and tenants often harbor markedly different perceptions of the issues involved in eviction actions. Indeed, "[i]n any situation where tensions are high and emotions intense, objective truth is impossible to discover. All that's left is the relative truth, with its own biases, omissions and falsehoods." Paul Ciotti, Two Tales of a City, NEW WEST, Oct. 20, 1980, at 95. Thus, unless otherwise indicated, the data presented here on controversial issues, such as housing conditions and lease disputes, are subjective and cannot be relied upon to present an objective account of the underlying facts.


39. In large part, this is due to the fact that in New Haven, "minorities are poorer than their white counterparts." CHAS, supra note 24, at 5. Roughly eighty-two percent of all Blacks, Hispanics, and American Indians in New Haven are low-income persons or families, earning less than 80% of the New Haven metropolitan area median income; of these, 80% are very low income persons or families, earning less than 50% of the area median income. Id. at 6A (addendum to page 6). The median income for all four-person households in the New Haven metropolitan area is $38,472 per year, or $3,206 per month. Very low income four-person households earn $19,236 or less per year, or $1,603 or less per month, while low-income four-person households earn $30,777 or less per year, or $2,565 or less per month. Id. Meanwhile, less than one-half of all white households in the city are composed of low-income persons and families and fully 44% earn more than 95% of the area median income. Id.

40. These figures are illustrative of the increasing "feminization" of poverty witnessed by this country in recent decades. Nationwide, the percentage of very low income single women with children increased from 16% in 1969 to 31% in 1989. CHRISTOPHER JENCKS, THE HOMELESS 55-56 (1994); see also HARRELL R. ROGERS, JR., POOR WOMEN, POOR FAMILIES: THE ECONOMIC PLIGHT OF AMERICA'S FEMALE-HEADED HOUSEHOLDS (1986). In New Haven, female-headed households suffer the highest rate of poverty for any single racial, ethnic, or household composition group in the city: 52% have incomes below the poverty line. CHAS, supra note 24, at 5.

41. Sixty-seven percent of all legal services tenants were adult heads of households with children; sixty-nine percent of these adults were single parents. The remaining thirty-three percent of all legal services tenants were households without children; of these, seventy percent were single individuals. Those households with children had an average of 2.45 children per household.
**TABLE 1. MONTHLY INCOME OF LEGAL SERVICES TENANTS**

<table>
<thead>
<tr>
<th>Household Size</th>
<th>Number of Tenants&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Median Monthly Income of Tenants&lt;sup&gt;b&lt;/sup&gt;</th>
<th>National Poverty Line&lt;sup&gt;c&lt;/sup&gt;</th>
<th>New Haven Metropolitan Area Median Income&lt;sup&gt;d&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>1</td>
<td>42</td>
<td>43</td>
<td>34</td>
<td>33</td>
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<tr>
<td>2</td>
<td>9</td>
<td>2</td>
<td>3</td>
<td>5</td>
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</tbody>
</table>

<sup>a</sup> Source: Legal Services Files.

<sup>b</sup> This figure does not include those tenants (seven in number) who reported zero income. In-kind benefits such as food stamps and housing assistance benefits were counted dollar-for-dollar as cash. The income value of rental housing vouchers or certificates was calculated as equivalent to the dollar value of the rental payment (or portion thereof) covered by the voucher or certificate. In-kind benefits from several common programs and sources were not reported by any of the tenants. The programs and sources include: Medicaid, the Special Supplemental Food Program for Women, Infants, and Children (W.I.C.), the Earned Income Tax Credit program, energy assistance and phone bill assistance programs, soup kitchens, food pantries, and school lunch programs.


<sup>d</sup> Source: CITY OF NEW HAVEN CHAS.

<table>
<thead>
<tr>
<th>Racial Composition of Legal Services Tenants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Services Tenants (n=188)&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>All Tenants in New Haven&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<sup>a</sup> Source: Legal Services Files.


Most legal services tenants were not transients. The median length of the tenancies prior to the evictions in question was eleven months. This contrasts sharply with Daines's conclusion that the majority of all evictions involving legal services tenants "were initiated less than four months after the tenant took possession." In fact, fewer than one in four legal services tenants had resided in their apartments for four months or less prior to the commencement of their evictions. See Table 3.

42. The median tenancy length for unrepresented tenants was six months.

43. Daines, supra note 6, at 8-9.
TABLE 3. LENGTH OF TENANCY PRIOR TO EVICTION

<table>
<thead>
<tr>
<th>Tenants</th>
<th>4 Months or Less</th>
<th>5 to 8 Months</th>
<th>9 to 12 Months</th>
<th>13 to 18 Months</th>
<th>19 to 24 Months</th>
<th>Over 24 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=25)*</td>
<td>37%</td>
<td>26%</td>
<td>22%</td>
<td>7%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Legal Services Tenants (n=162)*</td>
<td>24%</td>
<td>20%</td>
<td>16%</td>
<td>8%</td>
<td>5%</td>
<td>27%</td>
</tr>
</tbody>
</table>

* Data are presented only for those cases for which information on length of tenancy was available.

b Source: Housing Court Files.
c Source: Legal Services Files.

C. The Landlords

Most of the landlords, in both the cases involving legal services tenants and unrepresented tenants, were individuals, and most lived within 20 miles of their rental units. See Table 4. Only about one out of five private landlords in both groups lived out of state, or within the state but over 20 miles away from their rental units. However, contrary to Daines’s conclusions, fewer than one in ten of the private landlords lived in the same building they rented to their tenants.44 See Table 5.

TABLE 4. COMPOSITION OF LANDLORDS

<table>
<thead>
<tr>
<th>Tenants</th>
<th>Private Individuals</th>
<th>Property Management Companies</th>
<th>Realty Companies</th>
<th>Banks</th>
<th>Housing Cooperatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=58)*</td>
<td>69%</td>
<td>19%</td>
<td>2%</td>
<td>10%</td>
<td>0%</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)*</td>
<td>61%</td>
<td>21%</td>
<td>2%</td>
<td>14%</td>
<td>1%</td>
</tr>
</tbody>
</table>

* Source: Housing Court Files.
b Source: Legal Services Files.

44. This contrasts sharply with Daines’s conclusion that legal services attorneys defend evictions initiated by a “disproportionately high percentage” of owner-occupant landlords. Daines, supra note 6, at 5-6.
TABLE 5. RESIDENCE OF LANDLORDS

<table>
<thead>
<tr>
<th>Tenants</th>
<th>Same Building as Tenant</th>
<th>Not Same Building, But Same City as Tenant</th>
<th>Not Same City, But Within 20 Miles of Tenant</th>
<th>In State, But Over 20 Miles from Tenant</th>
<th>Out of State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants</td>
<td>7%</td>
<td>40%</td>
<td>33%</td>
<td>16%</td>
<td>5%</td>
</tr>
<tr>
<td>(n = 58)b</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Services Tenants</td>
<td>9%</td>
<td>39%</td>
<td>32%</td>
<td>13%</td>
<td>7%</td>
</tr>
<tr>
<td>(n = 188)c</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* This figure includes only those individual landlords who lived in same building as their tenant(s) and does not include management companies or housing cooperatives with same mailing address as that of their tenant(s).

b Source: Housing Court Files.

c Source: Legal Services Files.

TABLE 6. SIZE OF RENTAL HOUSING STRUCTURES

<table>
<thead>
<tr>
<th>Rental Housing Structures in New Haven*</th>
<th>4 Units or Less</th>
<th>5 to 9 Units</th>
<th>10 to 49 Units</th>
<th>More than 50 Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Landlords in Legal Services Cases</td>
<td>55%</td>
<td>14%</td>
<td>21%</td>
<td>10%</td>
</tr>
<tr>
<td>(n = 149)b</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Landlords in Legal Services</td>
<td>74%</td>
<td>11%</td>
<td>13%</td>
<td>2%</td>
</tr>
<tr>
<td>Cases (n = 94)c</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Source: 1990 CENSUS OF HOUSING: DETAILED HOUSING CHARACTERISTICS.

b Source: Legal Services Files. Date is presented only for those cases for which information on building size was available. Such information was not available for 39 of the 188 cases; 21 of these cases involved individual landlords.

Most of the private landlords in the legal services cases rented small residential buildings. In fact, most of these landlords rented out buildings with four or fewer units. Fewer than one-half of all private landlords in the legal services cases rented out major residential structures of four or more units, and less than one in ten operated buildings with more than 50 units. The size of the housing structures rented out by these private landlords corresponds

45. These data were not available for the cases involving unrepresented tenants.

46. Data were not available regarding the number of buildings these private landlords owned and rented. Although most of the private landlords in the study owned and rented small buildings with four or fewer units, it is quite possible that many owned and rented more than one such small building.
Eviction Defense for Poor Tenants

to the general make-up of New Haven’s rental housing market. See Table 6.

D. The Grounds for Eviction

Most legal services and unrepresented tenants were being evicted for not paying their rent. Indeed, in ninety-four percent of the cases involving unrepresented tenants and in eighty-six percent of the cases involving legal services tenants, nonpayment of rent was one, if not the only, ground for eviction. Nevertheless, as Table 7 demonstrates, a significant percentage of the legal services cases involved evictions for reasons unrelated to the nonpayment of rent. This challenges Daines’s conclusion that almost one hundred percent of the tenants represented by legal services attorneys face eviction solely for failing to pay their rent.

<table>
<thead>
<tr>
<th>Table 7. Grounds for Evictiona</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenants</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>Unrepsentanted Tenants (n=58)d</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)e</td>
</tr>
</tbody>
</table>

a Because more than one ground may be alleged per eviction, the total percentage for all grounds exceeds 100%.
b These figures include all cases in which nonpayment was one, if not the only, ground for eviction.
c These figures do not include cases in which nonpayment of rent was also alleged as a ground for eviction.
d Source: Housing Court Files.
e Source: Legal Services Files.

E. The Tenants’ Defenses

In discussing the tenants’ defenses, it is helpful to separate the evictions into two categories—those involving the nonpayment of rent and those unrelated to the nonpayment of rent—because the defenses involved in both categories of cases are often very different.

47. It is also consistent with the size of rental housing structures nationwide. Nationwide, one-half of all rental units are in buildings with four or less units. Buildings with 20 or more units comprise only 17% of the nation’s rental housing stock. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 731 (113th ed. 1983).
48. This is consistent with patterns documented in other major cities. For example, in 1991, more than 90% of the evictions in Cleveland were based on nonpayment of rent. Angela D. Chatman, Downturn Squeezing Renters, Leading to More Evictions, CLEVELAND PLAIN DEALER, Oct. 19, 1991, at Mag. 31.
49. Daines, supra note 6, at 15.
1. Nonpayment of Rent Cases

The tenants in the legal services cases involving nonpayment of rent offered many explanations as to why they were being evicted. Most legal services tenants offered one or more legally cognizable defenses to nonpayment evictions, including: landlord breach of the implied warranty of habitability; landlord breach of other statutory responsibilities or lease agreements; landlord refusal to accept tenders of rent; absence of a lease agreement; and tenant payment of rent. See Table 8.

**TABLE 8. LEGAL SERVICES TENANTS' EXPLANATIONS FOR NONPAYMENT EVICTIONS**

<table>
<thead>
<tr>
<th>Explanation(s)*</th>
<th>Percentage of Cases (n=161)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Did Not Pay Because Landlord Breached Lease or Statutory Responsibilities</td>
<td></td>
</tr>
<tr>
<td>Landlord Failed to Repair Substandard Housing Conditions</td>
<td>42%</td>
</tr>
<tr>
<td>Landlord Required Tenant to Pay for Utilities Throughout Building</td>
<td>2%</td>
</tr>
<tr>
<td>Landlord Locked Tenant Out of Apartment</td>
<td>1%</td>
</tr>
<tr>
<td>Landlord Breached Other Lease Provisions</td>
<td>1%</td>
</tr>
<tr>
<td>Tenant Did Not Pay Because No Lease Existed Between the Parties</td>
<td></td>
</tr>
<tr>
<td>Landlord Unilaterally Increased Rent</td>
<td>6%</td>
</tr>
<tr>
<td>Dispute Over Amount of Monthly Rent</td>
<td>2%</td>
</tr>
<tr>
<td>New Landlord Did Not Identify Self to Tenant*</td>
<td>6%</td>
</tr>
<tr>
<td>Landlord Refused Tenant's Tender of Rent</td>
<td></td>
</tr>
<tr>
<td>Landlord Refused to Accept Rent when Offered on Time</td>
<td>5%</td>
</tr>
<tr>
<td>Landlord Authorized, but then Refused to Accept, Bi-Monthly Payments</td>
<td>6%</td>
</tr>
<tr>
<td>Tenant Did Pay Rent</td>
<td></td>
</tr>
<tr>
<td>Tenant Paid Rent in Full on Time*</td>
<td>5%</td>
</tr>
<tr>
<td>Tenant Paid, but Paid Late</td>
<td>4%</td>
</tr>
<tr>
<td>Tenant Did Not Have Sufficient Financial Resources to Pay Rent</td>
<td></td>
</tr>
<tr>
<td>Tenant Could Not Afford to Pay Rent</td>
<td>30%</td>
</tr>
<tr>
<td>Tenant's Housing Benefits Arrived Late</td>
<td>1%</td>
</tr>
<tr>
<td>Unknown</td>
<td>5%</td>
</tr>
</tbody>
</table>

* Source: Legal Services Files. Explanations were taken from tenant responses to intake questionnaires and attorney notes from initial client interviews.
  * Because tenants may have offered more than one explanation for their evictions, the total value for all explanations exceeds 100%.
  * These cases all involved landlords who had very recently acquired the property in question—either banks who took possession through foreclosure or private individuals who had recently purchased the property.
  * This figure includes tenants who paid in cash as well as tenants who made in-kind payments, such as repairs or work for the landlord, in cases where the landlord and tenant agreed that such in-kind payments would suffice.
Eviction Defense for Poor Tenants

Thirty percent of the tenants explained that they could not afford to pay their rent. See Table 8. For approximately one-quarter (23%) of all tenants in nonpayment cases, this was their sole explanation for their evictions. These tenants reported a number of reasons for not having enough money to cover their rent payments, including: recent loss of employment, welfare benefits; child support payments or a paying roommate; hospitalization during the period of nonpayment or unexpected medical or death-related expenses; theft; and outstanding debts.

Extremely high rent burdens may also help explain why many tenants did not have sufficient financial resources to pay their rent. Just over one-quarter of the legal services tenants reported receiving some form of housing assistance.50 With few exceptions, these “subsidized” tenants were obligated to pay no more than thirty percent of their monthly household incomes toward rent and utilities.51 However, the remaining “unsubsidized” tenants reported paying substantially more than thirty percent of their incomes toward rent, not including utilities. Indeed, the average reported rent burden for these unsubsidized tenants was sixty-four percent of income.52 See Table 9. After rent payments, individuals living alone had an average of $171 per month to pay for food, utilities, clothing, transportation, and other necessities. Households with two to five members, many of them single mothers with one or more young children, had an average of $85 per person after rent. See Table 9. With so little disposable income, it is not surprising that, when faced with unexpected expenses, emergencies, or losses, many tenants did not have enough money to pay their rent.

50. Twenty-six percent of the legal services tenants reported that they were living in housing projects funded with federal Section 8 Project-Based Assistance or H.U.D. mortgage subsidies, or that they were receiving rental assistance certificates or vouchers administered by the federal Section 8 Existing Housing program, the state Rental Assistance Program, or the City Welfare office.

51. NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS, § 1.2.4 (1994). According to federal standards, tenants can “afford to pay” no more than that amount for rent and utilities. 42 U.S.C. § 1437a(a)(1) (1995). See generally LEONARD & LAZERE, supra note 31. These standards are based on the premise that while decent, safe, and sanitary housing is essential to healthy and productive living, it should not be so expensive as to limit a person’s ability to provide food, clothing, medical care and others of life’s basic necessities for herself or her family. Nearly all federal and state housing assistance programs pay for the rental and utilities charges in excess of 30% of their recipients’ monthly incomes.

52. These data are consistent with general patterns among extremely poor tenant households in New Haven. Almost three-quarters (72%) of all very low income tenant households in New Haven paid more than 30% of their income for rent in 1990, and roughly half (48%) paid more than 50% of their income for rent. CHAS, supra note 24, at 26. The data are also consistent with growing patterns across the country. During the 1970s and 1980s, rent claimed a growing share of poor tenants’ incomes. During this period, average rents for tenants without housing assistance benefits and with annual incomes below $10,000 increased by 33% and the average rent burden grew by 38%—from 49.5% in 1973 to 68.1% in 1989. JENCKS, supra note 40, at 83, Table 8.
### TABLE 9. AVERAGE MONTHLY INCOME, RENT, DISPOSABLE INCOME AFTER RENT, AND RENT BURDEN FOR UNSUBSIDIZED TENANTS

<table>
<thead>
<tr>
<th>Household Size</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6 or More</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Tenants Without Housing Assistance Benefits&lt;sup&gt;a&lt;/sup&gt;</td>
<td>32</td>
<td>33</td>
<td>25</td>
<td>26</td>
<td>14</td>
<td>9</td>
<td>139</td>
</tr>
<tr>
<td>Average Monthly Income&lt;sup&gt;b&lt;/sup&gt;</td>
<td>$566</td>
<td>$649</td>
<td>$760</td>
<td>$876</td>
<td>$945</td>
<td>$1384</td>
<td>$771</td>
</tr>
<tr>
<td>Average Monthly Rent&lt;sup&gt;c&lt;/sup&gt;</td>
<td>$395</td>
<td>$480</td>
<td>$515</td>
<td>$558</td>
<td>$532</td>
<td>$516</td>
<td>$491</td>
</tr>
<tr>
<td>Average Monthly Disposable Income&lt;sup&gt;d&lt;/sup&gt;</td>
<td>$171</td>
<td>$169</td>
<td>$245</td>
<td>$318</td>
<td>$413</td>
<td>$868</td>
<td>$280</td>
</tr>
<tr>
<td>Average Rent Burden&lt;sup&gt;e&lt;/sup&gt;</td>
<td>76%</td>
<td>80%</td>
<td>75%</td>
<td>69%</td>
<td>62%</td>
<td>42%</td>
<td>64%</td>
</tr>
</tbody>
</table>

<sup>a</sup> Source: Legal Services Files.

<sup>b</sup> This figure does not include those tenants (seven in number) who reported zero income.

<sup>c</sup> This figure represents average monthly income minus average monthly rent.

<sup>d</sup> This figure represents average monthly rent as a percentage of average monthly income.

The reasons tenants offered for not paying their rent, however, did not always coincide with the defenses available to them in fighting their evictions. In many cases in which tenants offered as their reasons legally cognizable defenses, the reasons were not substantiated by information available in the files. For example, many tenants who explained that they refused to pay rent based on claims of substandard conditions were not, according to available information, living in apartments with serious substandard conditions. In other cases, however, the tenants offered no legally cognizable explanations for their evictions, but nonetheless had one or more defenses. In total, sixty-nine percent of the 161 tenants being evicted for nonpayment of rent had one or more strong substantive defenses to their evictions, while thirty-one percent did not. For a complete breakdown of the tenants' defenses, see Table 10.

Seventy-one percent of the legal services tenants in nonpayment evictions complained to their landlords that conditions "materially affecting health and safety" existed in their units during the month or months for which they did not pay rent. These tenants gave their landlords notice of the housing problems, but the landlords failed to make necessary repairs. A complete breakdown of the substandard conditions is set forth in Table 11.

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53. "Strong substantive defenses" are those recognized by law (either statutory provisions or judicial decisions) and substantiated by information available in the files, including documented tenant complaints, official reports of housing inspectors and medical examiners, photographs, relevant lease materials, rent receipts, written correspondence between the parties, logs of oral correspondence between the parties, and attorney notes.
Eviction Defense for Poor Tenants

### TABLE 10. DEFENSES IN NONPAYMENT OF RENT CASES

<table>
<thead>
<tr>
<th>Defense(s)^a</th>
<th>Percentage of Cases (n=161)^b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord Breach of Implied Warranty of Habitability</td>
<td>48%</td>
</tr>
<tr>
<td>Landlord Breach of Duty to Maintain Safe and Secure Premises</td>
<td>5%</td>
</tr>
<tr>
<td>Landlord Harassment, Unauthorized Entry, and Illegal Lockout</td>
<td>9%</td>
</tr>
<tr>
<td>No Lease Agreement</td>
<td>15%</td>
</tr>
<tr>
<td>Estoppel</td>
<td>18%</td>
</tr>
<tr>
<td>Illegal Lease Terms</td>
<td>3%</td>
</tr>
<tr>
<td>Landlord Breach of Specific Lease Agreement</td>
<td>1%</td>
</tr>
</tbody>
</table>

^a Source: Legal Services Files.

^b Because tenants may have had more than one defense to their evictions, the total percentage of defenses exceeds the percentage of tenants in nonpayment cases who had defenses to their evictions.

### TABLE 11. PERCENTAGE OF TENANTS WHO COMPLAINED OF SUBSTANDARD CONDITIONS REPORTING SELECTED HOUSING PROBLEMS^a

<table>
<thead>
<tr>
<th>Housing Problem(s)^a</th>
<th>Percentage of Cases (n=118)^b</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Heat</td>
<td>19%</td>
</tr>
<tr>
<td>No Hot Water</td>
<td>9%</td>
</tr>
<tr>
<td>Intermittent Heat</td>
<td>13%</td>
</tr>
<tr>
<td>Intermittent Hot Water</td>
<td>3%</td>
</tr>
<tr>
<td>No Water</td>
<td>3%</td>
</tr>
<tr>
<td>Roach Infestation</td>
<td>44%</td>
</tr>
<tr>
<td>Rodent Infestation</td>
<td>25%</td>
</tr>
<tr>
<td>Garbage in Common Areas</td>
<td>11%</td>
</tr>
<tr>
<td>Lead Paint</td>
<td>9%</td>
</tr>
<tr>
<td>Holes in Walls</td>
<td>23%</td>
</tr>
<tr>
<td>Rotting or Deteriorating Walls</td>
<td>4%</td>
</tr>
<tr>
<td>Holes in Floors</td>
<td>16%</td>
</tr>
<tr>
<td>Broken Windows</td>
<td>34%</td>
</tr>
<tr>
<td>Collapsing Ceiling</td>
<td>13%</td>
</tr>
<tr>
<td>Collapsing Stairs</td>
<td>2%</td>
</tr>
<tr>
<td>Doors Missing or Off Hinges</td>
<td>19%</td>
</tr>
<tr>
<td>Broken Locks</td>
<td>20%</td>
</tr>
<tr>
<td>Faulty or Inoperative Plumbing</td>
<td>17%</td>
</tr>
<tr>
<td>Water Leaks (Through Walls or Ceilings)</td>
<td>25%</td>
</tr>
<tr>
<td>Flooding</td>
<td>3%</td>
</tr>
<tr>
<td>Inoperative Electrical Outlets and Exposed Wiring</td>
<td>31%</td>
</tr>
<tr>
<td>Gas or Chemical Leaks</td>
<td>3%</td>
</tr>
<tr>
<td>No Lights</td>
<td>12%</td>
</tr>
<tr>
<td>Absence of Working Smoke Detector</td>
<td>30%</td>
</tr>
<tr>
<td>No Working Cooking Facilities</td>
<td>25%</td>
</tr>
<tr>
<td>No Working Bathing Facilities</td>
<td>1%</td>
</tr>
<tr>
<td>Lack of Two Fire Exits</td>
<td>14%</td>
</tr>
</tbody>
</table>

^a Source: Legal Services Files.

^b Data are presented only for those tenants who were facing eviction for nonpayment and had complained to their landlords of substandard housing conditions. Because tenants may have complained of more than one housing problem, the total percentage for all housing problems exceeds 100%.
In fifty-five percent of these cases, official inspection reports verified the substandard conditions. As shown in Table 12, these reports came from a variety of neutral agencies, individuals, and companies, including the City’s Office of Building Inspection and Enforcement (OBIE), the City Health Department, the Housing Authority and Section 8, medical examiners at Yale-New Haven Hospital, and gas, utility and other companies. These reports are extremely valuable in verifying the existence of housing code violations and substandard conditions. In fact, courts often look first to such inspection reports, or the testimony of housing inspectors, to decide the merits of a tenant’s uninhabitability defense.

**TABLE 12. OFFICIAL INSPECTION REPORTS IN NONPAYMENT CASES WHERE TENANTS COMPLAINED OF SUBSTANDARD CONDITIONS**

<table>
<thead>
<tr>
<th>Inspector(s)</th>
<th>Percentage of Cases (n=116)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Building Inspection and Enforcement</td>
<td>52%</td>
</tr>
<tr>
<td>City Health Department</td>
<td>8%</td>
</tr>
<tr>
<td>City Fire Department</td>
<td>3%</td>
</tr>
<tr>
<td>Housing Authority and Section 8</td>
<td>2%</td>
</tr>
<tr>
<td>Hospital Medical Examiners</td>
<td>6%</td>
</tr>
<tr>
<td>Gas, Utility, and Other Companies</td>
<td>9%</td>
</tr>
</tbody>
</table>

Source: Legal Services Files.

Because more than one agency may have inspected any given unit, the total percentage of inspection reports exceeds the percentage of nonpayment cases in which inspection reports verified substandard conditions.

Connecticut’s Landlord and Tenant statute provides that all leases for residential property in the state contain an implied warranty of habitability.

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54. Not all inspection reports verified each of the substandard conditions reported by the tenants. At the same time, many reports noted substandard conditions not detected by the tenants. Only those reports which confirmed the existence of the serious conditions problems reported by the tenants are included here. For a discussion of the match between tenant complaints and housing inspections, see Allan D. Heskin, *The Warranty of Habitability Debate: A California Case Study*, 66 CAL. L. REV. 37, 45-55 (1978).


56. More than 40 states and the District of Columbia have adopted an implied warranty of habitability. Edward H. Rabin, *The Revolution in Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 526-27 (1984). In these states “the tenant’s obligation to pay rent is predicated on the landlord’s obligation to deliver and maintain the premises in habitable condition.” Boston Housing Authority v. Hemingway, 293 N.E.2d 831, 842 (Mass. 1973). Lease agreements are no longer deemed conveyances of real property under which landlords have no recurring duty to render the premises habitable, but rather agreements between landlords and tenants under which landlords have a duty to provide, for certain consideration, “safe, sanitary and comfortable housing.” Hilder, 478 A.2d at 207.

Safe, sanitary, and comfortable housing includes “not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation and proper maintenance.” Javins v. First Nat’l Realty Corp., 428 F.2d 1071, 1074 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970). The implied warranty of habitability is concerned primarily with conditions vital to the reasonable suitability of the premises—that is, those conditions which materially affect health, safety or sanitation of the apartment as a residential dwelling. Donaldson v. Auger Assoc., No. CVBR-9112-01302, 1993 WL 171337 (Conn. Super. Ct. Apr. 13, 1993). Defects must be
Under this warranty, a landlord is required to “make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition” and to comply with housing or other codes “materially affecting health and safety.” A landlord’s failure to do so relieves a tenant of the duty to pay rent, and bars eviction for nonpayment of rent.

In order to establish an uninhabitability defense to a nonpayment action, a tenant must demonstrate that conditions “materially affecting health and safety” existed during the period for which rent was not paid. The tenant must also show that the landlord had notice of the defects and failed to repair them within a reasonable time. Once the tenant makes these showings, the court must make a factual determination as to whether or not the claimed defects warranted the tenant’s withholding of rent. Connecticut courts have found that no rent is due for housing units in which the following uninhabitable conditions exist: no heat; no heat or hot water; excessive garbage strewn in common areas; deteriorating walls and ceilings; no functioning cooking facility; severe roach and rodent infestation; broken septic or sewage substantial in order to constitute a breach of the warranty. See Hilder, 478 A.2d at 208-209 (“One or two minor violations [of the applicable housing code] standing alone which do not affect the health or safety of the tenant, shall be considered de minimis and not a breach of the warranty.”). The warranty “generally includes latent and patent defects existing at the outset of the tenancy and subsequent deterioration.” JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 482 (2d ed. 1988).

57. CONN. GEN. STAT. § 47a-7 (1995).
58. CONN. GEN. STAT. § 47a-4a (1995).
59. See Donaldson v. Auger Assoc., No. CVBR-9112-01502, 1993 Conn. Super. LEXIS 1265, at *7 (Fairfield Housing Session, Apr. 13, 1993) (“Landlords have always been afforded a reasonable time to repair a defective condition before liability is triggered.”); Miller v. Benton, 13 A. 678, 681 (Conn. 1888). Until recently, this requirement did not apply in cases in which the premises were made uninhabitable by lead paint. See infra note 73.
60. "Whether the premises are [uninhabitable] is a question of fact . . . to be decided in each case after a careful consideration of the situation of the parties to the lease, the character of the premises, the use to which the tenant intends to put them, and the nature and extent by which the tenant’s use of the premises is interfered with by the injury claimed." Thomas v. Roper, 294 A.2d 321, 324 (Conn. 1977).
61. Connecticut law allows for full rent withholding in cases where housing conditions do not meet certain minimum standards. CONN. GEN. STAT. § 47a-4 (1995). In this respect, Connecticut law provides an unusually generous remedy to tenants living in housing units with substandard conditions. Most other states allow only partial reductions, or abatements, of rent such that tenants pay only for "the reasonable rental value of the property in its imperfect condition during [the] period of occupancy." Berzito v. Gambino, 308 A.2d 17, 22 (N.J. 1973) (citing cases). While nearly all jurisdictions agree that tenants should not pay more than the "reasonable rental value" of the premises in their imperfect condition, there is considerable disagreement regarding the extent of the rent reduction tenants should be allowed. For a summary of five of the most common approaches, see DUKEMINIER & KRIER, supra note 56, at 484-85.
66. Id.
systems,\textsuperscript{68} faulty or inadequate locks;\textsuperscript{69} broken doors and windows;\textsuperscript{70} exposed wiring which creates a fire hazard;\textsuperscript{71} the lack of a working smoke detector;\textsuperscript{72} hazardous levels of lead paint,\textsuperscript{73} and numerous significant housing code violations.\textsuperscript{74}

Assuming the veracity of the tenants' complaints and the available inspection reports, two-thirds of the tenants who complained to their landlords of substandard conditions—or forty-eight percent of all tenants facing eviction for nonpayment—had strong defenses that the conditions in their housing units were so deplorable that, by law, no rent was due. See Table 10. These tenants lived in units with no heat, no heat or hot water, severe roach and rodent infestation, excessive garbage strewn in common areas, collapsing ceilings, no functioning cooking facilities, broken locks, missing or unhinged doors, no working smoke detectors,\textsuperscript{75} hazardous levels of lead paint, and multiple serious housing code violations.\textsuperscript{76} The median number of housing code violations was 68. Fulghum v. Apanovitch, No. CVH-8006-259 (Hartford Housing Session, June 21, 1980).


Connecticut's landlord-tenant law requires landlords to comply with local building and housing codes materially affecting health and safety, and to "do whatever is necessary to put and keep the premises in a fit and habitable condition." CONN. GEN. STAT. §§ 47a-7(a)(1), (2) (1995). If a landlord fails to do so, § 47a-4a prohibits the collection of rent. Until recently, CONN. GEN. STAT. § 47a-8 made the existence of lead paint in any residential unit a per se violation of § 47a-7 which justified tenant withholding of rent. In order to show that no rent was due under § 47a-8, tenants were not required to show that the lead paint in their units materially affected their health and safety or that they notified their landlords and allowed time for the landlord to correct the defect. See Gore v. People's Savings Bank, 644 A.2d 945, 950 (Conn. App. 1994); Housing Authority of the Town of East Hartford v. Olesen, 624 A.2d 945, 950 (Conn. App. 1994); Housing Authority of the Town of East Hartford v. Olesen, 624 A.2d 920, 922 (Conn. App. 1993).

In 1994, the Connecticut State Legislature repealed § 47a-8. However, the presence of lead paint in a residential dwelling unit still may constitute a health and safety hazard in violation of § 47a-7. CONN. GEN. STAT. § 21a-82 (1995) prohibits the use of lead paint in any rental housing. CONN. GEN. STAT. § 47a-4f (1995) prohibits "cracked, chipped, blistered, flaking, loose or peeling [paint] . . . [which] constitute[s] a health hazard." CITY OF NEW HAVEN, CODE § 16-50 (1962) prohibits the use of lead paint in any building intended to be used in whole or in part for human habitation. These statutes and this ordinance establish health and safety standards and are arguably incorporated by § 47a-7.

For more information on the rights and responsibilities of landlords and tenants surrounding lead paint in residential housing, see Getting the Lead Out, 20 CONN. L. TRIB. 1 (Aug. 15, 1994). For general information on the prevalence of lead paint in residential housing in the United States and the medical and social consequences of lead poisoning, see Steven Waldman, Lead and Your Kids, NEWSWEEK, July 15, 1991, at 42.


75. In one case, a tenant suffered third degree burns when her inoperative smoke detector failed to warn her of a fire in her building and, as a result, she was not able to vacate the building in a safe and timely fashion.

76. The following are illustrative examples of units with combinations of problems warranting the withholding of rent. One unit was without heat, hot water, cooking facilities, or electricity. Another lacked a functioning toilet, running water, functioning electrical outlets, a refrigerator, windows, and locks. Still another unit—ridden with roaches, broken windows, broken window frames, holes in the...
Eviction Defense for Poor Tenants

violations in these units was five.

The remaining third of the tenants who complained of substandard conditions did not have strong conditions defenses to their evictions. However, roughly three-quarters of these tenants—or seventeen percent of all tenants who faced eviction for nonpayment—were nonetheless living in units with problems sufficient to warrant an abatement of their rent, or a reduction of their rent to “the fair rental value of the property after taking into account the diminution in such value” resulting from the substandard conditions.77 These units suffered problems such as intermittent lack of heat,78 intermittent lack of hot water,79 serious water leaks,80 broken appliances,81 broken windows,82 defective plumbing,83 loud and raucous noises in adjacent units,84 deteriorating exterior stairs and railings,85 and defective bathing facilities.86 Connecticut’s courts have authorized abatements of approximately ten to forty percent of contract rent in cases with conditions such as these.87 Altogether, almost two-thirds (65%) of all legal services tenants facing eviction for nonpayment were living in units with reported substandard conditions which warranted either the complete withholding of rent or partial rent abatement.

In addition to conditions defenses, the tenants in nonpayment evictions had numerous other defenses. See Table 10. Five percent of these tenants had strong defenses that no rent was due because their landlords failed to curb serious drug-trafficking or other dangerous, criminal activity on the premises.88 A landlord’s duty to provide safe and habitable housing includes, in certain circumstances, the “duty to take those steps within his [or her] power

walls, holes in the ceilings, inadequate lighting in the common hallways, and faulty plumbing—saw its basement flooded and infested with rodents. In at least three cases, units with inoperative locks and unhinged doors were broken into, ransacked, and robbed. In a particularly egregious case, the problems of roach and vermin infestation, no heat or hot water, no locks, and exposed wiring were so deplorable that the unit was condemned. Similarly, another unit was so plagued with problems of deteriorating walls, broken windows, broken doors, inoperative electrical outlets, the lack of hot water, accumulated garbage and debris in the common courtyard that housing inspectors declared, “this house is falling apart,” and later condemned the unit.

83. Ciavaglia v. Bolles, supra note 82.
87. See supra notes 77-86.
88. For example, one tenant reported that her landlord had done nothing to prevent transients from selling drugs in the common courtyard of her apartment building, climbing on the roof of her apartment, banging on her windows, and making rude gestures and exposing themselves to her two young children.
to minimize the predictable risk to other tenants” of the dangerous or criminal
acts of independent persons on the premises. Where violation of this duty
renders the premises unsafe, such violation is tantamount to a breach of the
implied warranty of habitability and justifies a tenant’s withholding of rent.

Nine percent of the tenants had strong defenses that no rent was due
because their landlords physically or sexually harassed them, entered their
dwelling units without consent or notice, or locked them out of their
dwellings. A landlord’s duty to provide safe and habitable premises prohibits
the landlord from harassing his or her tenants, sexually harassing his or her
tenants, entering the tenants’ dwelling units without consent or notice
(except in emergencies), or denying the tenants access to their units or
personal possessions. Again, violation of this duty is equivalent to a breach
of the implied warranty of habitability and justifies a tenant’s withholding of
rent.

Fifteen percent of the tenants had strong defenses that no rent was due on

89. Kline v. 1500 Massachusetts Ave. Apt. Corp., 439 F.2d 477, 481 (D.C. Cir. 1970); see CONN.
GEN. STAT. § 47a-7 (1995). Most states expressly recognize that a landlord is responsible, in certain
circumstances, for criminal acts perpetrated on the premises by an independent party. Madeline Johnson,
Landlord’s Responsibility for Crime: Determining Legal Causation, 17 REAL ESTATE L.J. 234, 234
(1989).

90. See Reste Realty Corp. v. Cooper, 251 A.2d 268 (N.J. 1969); CONN. GEN. STAT. §§ 47a-42
and 47a-7 (1995).

91. For example, one tenant—a 20-year-old single mother with two children—reported that her
landlord harassed her and her children by turning off their water, removing their front door, entering
their apartment and throwing the children’s toys away, and shutting off their electricity. Another tenant
reported that her landlord, this time an owner-occupant, entered her apartment, physically assaulted her,
and attempted to rape her in front of her one-year-old baby. Still another tenant—a 41-year-old pregnant
woman—reported that her landlord entered and ransacked her apartment, locked her out, welded her
back door shut, and attempted to prevent a fire marshall from opening the front or back doors.

92. As a general rule, a landlord may not enter a tenant’s dwelling unit without the consent of the
tenant except in emergency situations. Moreover “[a] landlord shall not abuse the right of entry or use
such right of entry to harass the tenant.” CONN. GEN. STAT. § 47a-16 (1995).

93. See Robert Rosenthal, Landlord Sexual Harassment: A Federal Remedy, 65 TEMP. L. REV. 589,

According to recent surveys and reports, sexual harassment by residential landlords is a serious
nationwide problem. E.g., Regina Cahan, Comment, Home is No Haven: An Analysis of Sexual
Harassment in Housing, 1987 WIS. L. REV. 1061, 1066 (1987) (citing nationwide survey of 87 housing
agencies which revealed 288 reported incidents of sexual harassment); Blair, Anti-Sexual Harassment
Unit Aids Tenants, N.Y. TIMES, Nov. 2, 1986, at 60 (reporting New York State’s creation of unit
designed to assist victims of sexual harassment by landlords); Kathleen Butler, Sexual Harassment In
Rental Housing, 1989 U. ILL. L. REV. 175, 179 (1989) (“Although few victims of sexual harassment
in housing have filed suit, individuals and organizations who work closely with women tenants—
attorneys, housing officials, women’s support groups, civil rights activists, and the tenants
themselves—agree that sexual harassment by landlords pervades the housing market.”). This problem
is especially pervasive among impoverished women. Rosenthal, supra, at 589 (citing Nancy Blodgett,

94. See supra note 92.

95. See CONN. GEN. STAT. § 53a-214 (1995) (a landlord who “without benefit of a court order,
. . . deprives a tenant . . . of access to his dwelling unit or his personal possessions” is guilty of
criminal lockout, a class C misdemeanor).

96. See CONN. GEN. STAT. § 47a-18a (1995) (If a landlord makes an unauthorized entry, the tenant
“may recover actual damages not less than an amount equal to one month’s rent and reasonable
attorney’s fees.”).
Eviction Defense for Poor Tenants

the ground that they had no lease agreements with their landlords and, thus, were under no obligation to pay rent. See Table 10. It is axiomatic that, in order to evict a tenant for nonpayment of rent, a landlord must first prove the existence of a lease binding the parties.97 In about five percent of all the nonpayment cases, however, the landlords unilaterally raised the tenants’ rents. In these cases, there was no “meeting of the minds” regarding the terms of the lease, and thus there was no lease.98 In an additional six percent of the cases, landlords who had recently acquired properties failed to identify themselves to their tenants and thus had no lease agreements with their tenants.99 Nearly all of these landlords were financial institutions which recently had acquired the property in question through foreclosure and had sought to evict the occupying tenants before renewing their leases. Finally, in four percent of the cases, there was a serious dispute between the parties over one or more terms of the lease, such as the amount of rent, the date on which payment was due, and the method of payment. See Table 10. Where the terms of a lease are in dispute, there is no “meeting of the minds,” and thus no lease agreement.100

Tenants in eighteen percent of the nonpayment evictions had strong defenses that their landlords were estopped from evicting them for nonpayment by virtue of the landlords’ actions or prior dealings. See Table 10. In five percent of the cases, the landlords refused to accept the tenants’ tender of rent, even when such tender was made in full and before the expiration of the statutory nine-day grace period for payment of rent.101 Because they refused full payment when made on time, these landlords were estopped from evicting the tenants for nonpayment of rent.102 In an additional eight percent of the cases, the landlords repeatedly had accepted late or bi-monthly rent payments, indicating that such late payments were acceptable, and thereby relinquished the right to insist on prompt payment of rent in full at the beginning of the month. A landlord who repeatedly accepts or authorizes late or bi-monthly payments is estopped from terminating the lease for nonpayment when payment is not made on the first of the month or nine days thereafter.103 In another

97. E.g., Simpson v. Meade, No. SPNH-8302-3691 (New Haven Housing Session, March 23, 1983); Millington Realty Corp. v. Frankel, 261 A.2d 868, 870 (Conn. Cir. 1969) (burden of proving existence of lease agreement is on landlord).
98. Burke v. Schand, 15 CONN. L. TRIB. No. 24 (Mar. 29, 1989); Millington, 261 A.2d at 870.
99. The Landlord and Tenant Statute requires landlords to identify themselves to their tenants before a tenancy may commence. CONN. GEN. STAT. § 47a-6 (1995).
100. See Welk v. Bidwell, 73 A.2d 295, 297 (Conn. 1950).
101. In several cases, the landlords reportedly told the tenants to save their money for a new place because they could not stay in their present apartments any longer. For an explanation of the nine-day grace period, see infra Appendix, note 8, and accompanying text.
five percent of the cases, the landlords accepted their tenants' tender of rent after the expiration of the statutory nine-day grace period, but before terminating the tenants' leases. In these cases, the landlords waived their right "to terminate the rental agreement for the tenant's failure to pay such rent when it was due," and were therefore estopped from bringing evictions based on nonpayment.

Finally, three percent of the tenants had defenses that no rent was due because their landlords illegally required them to pay for utilities used in common areas or by other occupants of the building. See Table 10. Such a requirement is considered an illegal lease condition and may relieve a tenant of the obligation to pay rent.

In sum, almost seventy-percent of the legal services tenants facing eviction for not paying their rent had one or more of the above valid, substantive defenses to their evictions. These defenses, if true, demonstrate that, more often than not, the alleged nonpayment by legal services tenants was justified or excused by the landlord's breach of the implied warranty of habitability, other statutory duties, or specific lease provisions.

2. Evictions Not Involving Nonpayment

Approximately one in seven legal services evictions were based on grounds other than nonpayment of rent. See Table 7. The grounds for eviction in these cases were lapse of time, no right or privilege to occupy, nuisance, and material noncompliance with lease provisions. Most of the tenants in these evictions had defenses. In the nuisance and material noncompliance cases, nearly all of the tenants had defenses. Many disputed the allegations of misconduct levied against them, including loud and raucous behavior, violent or criminal conduct, and drug use; others alleged instead that they had remedied their behavior within the time period allowed by law. For example, at least two tenants facing eviction for having pets in violation of their leases remedied their noncompliance by finding alternate homes for their pets during the time allowed by law.

In the lapse of time and no right or privilege cases, forty percent of the tenants had one or more defenses to their evictions. The breakdown of these

105. In one such case, a tenant who occupied one floor of a three-floor building was required to pay for gas and electricity throughout the building; his bill for one three-month period was over $880.
108. Eleven of the twelve legal services tenants being evicted for nuisance or material noncompliance had defenses to their evictions.
Eviction Defense for Poor Tenants

defenses is set forth in Table 13. Twenty percent of the tenants were elderly or physically disabled, and as such could not be evicted except for "good cause."111 "Good cause" for eviction includes nonpayment of rent, nuisance, and material noncompliance, but not lapse of time or no right or privilege.112 Thirteen percent of the tenants were tenants at sufferance—that is, remaining household members of deceased leaseholders—and, as such, also could not be evicted other than for "good cause."113 Another seven percent of the tenants had strong claims that their landlords initiated the evictions in retaliation for the tenants’ prior complaints about substandard housing conditions.114 Landlords are precluded from evicting tenants for lapse of time when the tenants have requested repairs or made a good faith complaint to a public official about housing code violations or substandard conditions within the previous six months.115 Finally, seven percent of the tenants being evicted had strong claims that their landlords were motivated by discrimination against children. The Fair Housing Act makes such discrimination illegal and prohibits eviction on the basis of "family status."116

<table>
<thead>
<tr>
<th>Defense(s)</th>
<th>Percentage of Cases (n = 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protected Class Member</td>
<td>20%</td>
</tr>
<tr>
<td>Tenant at Sufferance</td>
<td>13%</td>
</tr>
<tr>
<td>Retaliatory Eviction</td>
<td>7%</td>
</tr>
<tr>
<td>Discrimination Against Children</td>
<td>7%</td>
</tr>
</tbody>
</table>

* Source: Legal Services Files.

b Because tenants may have had more than one defense to their evictions, the total percentage of defenses exceeds the percentage of tenants in lapse of time and no right or privilege cases who had defense to their evictions.

111. CONN. GEN. STAT. § 47a-23c (1995); see also Waterbury Housing Authority v. Lebel, No. SPWA-9008-08613 (Waterbury Housing Session, July 5, 1991).
114. In one such case, a tenant who was current in her rent payments was served with eviction papers shortly after she called the Office of Building Inspection and Enforcement (O.B.I.E.). to document the cracked and rotting walls and broken windows in her apartment as well as the absence of any bathing facilities or weather-stripping. The tenant reported that she had asked her landlord to repair these conditions for nearly a year prior to calling O.B.I.E., but that her landlord did nothing.
115. CONN. GEN. STAT. § 47a-20 (1995). The rationale behind laws prohibiting retaliatory evictions is well-settled: To permit retaliatory evictions would inhibit tenant complaints about substandard housing quality and thus "clearly frustrate the effectiveness of the housing code as a means of upgrading the quality of housing . . . . There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains about them if he fears eviction as a consequence." Edwards v. Habib, 397 F.2d 687, 701 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969).
116. Connecticut's Fair Housing Act, makes it illegal for a public or private landlord to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, or familial status." CONN. GEN. STAT. § 46a-64(a)(1) (1995) (emphasis added).
In sum, the data presented here refute Daines's conclusion that "[discussion of summary process must . . . begin and end with the realization that it is primarily a procedure for dealing with non-payment of rent—not housing complaints and not hold-over tenants."117 Indeed, the data suggest the contrary. A great percentage of nonpayment cases handled by L.S.O. and L.A.A. involved serious conditions problems,118 and two-thirds (67%) of the tenants in all legal services evictions, regardless of the grounds for the action, had valid substantive defenses.

F. The Litigation

1. Representation of the Parties

Most landlords (78%) in the sample of legal services cases were represented by attorneys. The decision to hire an attorney is somewhat costly for landlords. Most attorneys charge a flat rate of $250-$500 per eviction, and this rate may be higher in cases in which tenants contest their evictions. However, nearly all of the landlords who were represented made the decision to retain legal counsel at the outset of the eviction and not in response to the involvement of a legal services lawyer. Indeed, as Table 14 demonstrates, only two percent of all landlords sought legal representation following an appearance by L.S.O. or L.A.A.

<table>
<thead>
<tr>
<th>Tenant Representation</th>
<th>Landlord Not Represented by an Attorney</th>
<th>Landlord Represented by an Attorney</th>
<th>Landlord Sought Representation After Tenant's Attorney Filed Appearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=58)*</td>
<td>36%</td>
<td>64%</td>
<td>—</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)b</td>
<td>22%</td>
<td>78%</td>
<td>2%</td>
</tr>
</tbody>
</table>

* Source: Housing Court Files.

b Source: Legal Services Files.

Frequently in New Haven eviction actions, landlords are represented by attorneys and tenants are not. In the complete random sample of 150 evictions

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117. Daines, supra note 6, at 5.

118. This is also true of legal services evictions based on grounds other than nonpayment. Forty-two percent of these tenants complained to their landlords or official inspection agencies of substandard conditions in their units. Of these, one in six reported no heat, hot water, or working smoke detectors; half reported roach infestation, broken windows, and faulty plumbing; and one in five reported missing doors, broken hinges, no working locks, and inoperative electrical outlets. These substandard conditions were verified in over forty percent of the cases by one or more inspection reports from official inspection agencies.
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selected from New Haven's housing court,119 seventy-three percent of the landlords were represented by counsel, while eighty-three percent of the tenants were not.120 In over sixty percent of the cases, represented landlords faced unrepresented tenants. In sharp contrast, represented tenants faced unrepresented landlords in only five percent of the cases.

2. Pleadings, Hearings, and Trials

Daines reported that evictions "are generally resolved without much court activity."121 The data presented here confirm this finding. In the legal services cases, tenants and their lawyers filed an average of only 1.36 motions per case while landlords filed approximately 3.16 motions per case (including complaints and subsequent motions for default judgment for failure to appear and failure to plead).122 See Table 15. These numbers were significantly larger than those for cases involving unrepresented tenants who contested their evictions.

TABLE 15. AVERAGE NUMBER OF MOTIONS FILED PER EVICTION

<table>
<thead>
<tr>
<th>Tenant Representation</th>
<th>Tenants' Motions</th>
<th>Landlords' Motions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=58)*</td>
<td>0.99</td>
<td>1.95</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)b</td>
<td>1.36</td>
<td>3.16</td>
</tr>
</tbody>
</table>

* Source: Housing Court Files.

b Source: Legal Services Files.

Legal services tenants were much more likely to file discovery requests and procedural motions, such as motions to dismiss, requests to revise, and motions to strike, than unrepresented tenants. In contrast, unrepresented tenants were over three times as likely to file answers than legal services tenants. It is noteworthy that a substantial percentage of the legal services cases were resolved without the tenant filing a single motion. See Table 16.

119. See supra note 36.

120. This is consistent with patterns reported in other areas of the country. See AMERICAN CIVIL LIBERTIES UNION, JUSTICE EVICTED: AN INQUIRY INTO HOUSING PROBLEMS 42 (1987) (finding that vast majority of tenants in eviction cases appear without representation according to national survey of legal services attorneys working in federally funded programs); Julia R. Birnbaum et al., Chicago's Eviction Court: A Tenants' Court of No Resort, 17 Urb. L. Ann. 93, 114-15 (1979) (only about 7% of tenants in Chicago's Housing Court are represented by attorneys).

121. Daines, supra note 6, at 5.

122. See infra, Appendix, for definitions of the technical terms used, as well as for a summary of Connecticut's eviction laws and procedures. Whether or not legal services tenants had strong substantive defenses did not substantially affect the number of motions they filed. For example, in nonpayment of rent evictions, legal services tenants with strong substantive defenses filed an average of 1.34 motions per eviction, while legal services tenants without strong substantive defenses filed an average of 1.19 motions per eviction.
TABLE 16. PERCENTAGE OF TENANTS FILING SELECTED MOTIONS* 

<table>
<thead>
<tr>
<th>Motions</th>
<th>Unrepresented Tenants (n=58)*</th>
<th>Legal Services Tenants (n=188)*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3%</td>
<td>63%</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>7%</td>
</tr>
<tr>
<td></td>
<td>91%</td>
<td>29%</td>
</tr>
<tr>
<td></td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>3%</td>
<td>22%</td>
</tr>
</tbody>
</table>

Because tenants may file more than one motion per eviction, the total percentage exceeds 100%.

Curiously, landlords seldom took steps to avoid rent losses and delays while their evictions were pending. As shown in Table 17, very few filed use and occupancy motions. Such motions allow a landlord to request the court to order a tenant to pay rent during the pendency of an eviction. If the motion is granted and a tenant fails to pay, the tenant must file an answer within four days and proceed to trial. Thus, the motion helps landlords either secure rent payments or speed up the eviction process. Given that rent losses and delays are two of landlords' biggest concerns, it is surprising that they did not utilize this procedure more often. Perhaps many did not expect that they would receive payments from indigent tenants. Furthermore, in those cases involving unrepresented tenants, landlords may have seen no value in using the motion for use and occupancy to speed up the process since these tenants were already quick to file answers and proceed to trial. However, given that most legal services tenants filed one or more pretrial motions, it is surprising that more landlords did not use the motion to force tenants to dispense with such procedural motions and proceed directly to trial.

TABLE 17. LANDLORDS' USE AND OCCUPANCY MOTIONS

<table>
<thead>
<tr>
<th>Tenant Representation</th>
<th>Percentage of Landlords Utilizing Motion</th>
<th>Percentage of Motions Granted</th>
<th>Average Amount of Use &amp; Occupancy Ordered as Percentage of Contract Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=58)*</td>
<td>0%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)*</td>
<td>12%</td>
<td>39%</td>
<td>82%</td>
</tr>
</tbody>
</table>

* Source: Housing Court Files.
* Source: Legal Services Files.
3. The Outcomes

Landlords regained possession of the contested premises in over seventy-five percent of all cases, as indicated in Table 18. However, legal services attorneys still had a significant impact on the outcomes of the evictions they handled. First, legal services attorneys successfully helped twenty-three percent of their clients avoid eviction and remain in their apartments as tenants in good standing. Thus, legal services tenants were more than three times as likely to avoid eviction as were unrepresented tenants. This directly contradicts the argument advanced by Bolton and Holtzer and Daines that, while legal services attorneys do affect the outcome of summary process actions by increasing delay and landlord costs, they do not increase the chances that tenants will defeat their evictions. The tenants in this study were most frequently reinstated in cases where they were being evicted for nuisance or for nonpayment of rent when they had no substantive defenses. Reinstatement was least frequent in nonpayment cases among legal services tenants who had one or more strong substantive defenses, perhaps because these tenants simply did not want to remain in their units any longer. See Table 18.

Second, where reinstatement was not possible or desired by the tenant, legal services attorneys nonetheless helped their clients avoid immediate evictions resulting from default judgments. Nearly one in five unrepresented tenants faced immediate eviction for failing to appear in court or to file pleadings when required. None of the legal services tenants faced such immediate eviction. Instead, those legal services tenants who did not defeat their evictions either voluntarily vacated during the course of their evictions or were evicted pursuant to settlement agreements which allowed them to remain in their apartments long enough to secure alternate housing. See Table 18.

Third, among the cases which ended in settlement agreements, legal services attorneys helped their clients reach agreements which provided for longer stays of execution, and which more frequently required landlords to make essential repairs to the contested premises than the agreements.

123. It is worth noting that the effectiveness of legal services attorneys in defeating their clients' evictions was even more pronounced in cases in which their clients were being evicted by the Housing Authority. Of the fifteen such cases present in the random sample of evictions collected from L.A.A. and L.S.O., see supra note 35, legal services attorneys were able to defeat one hundred percent of the evictions. Nine of these evictions involved nonpayment of rent; the remaining six were founded on charges of nuisance, material noncompliance with lease provisions, lapse of time, and no right or privilege to occupy.

124. See Daines, supra note 6, at 44; Bolton & Holzer, supra note 5, at 1498.

125. See infra, Appendix, for definitions of technical terms used here.

126. On average, stays for legal services tenants were twenty-five percent longer than those for unrepresented tenants.

127. Ten percent of all settlement agreements in legal services cases required landlords to make repairs. Only two percent of the settlement agreements in cases involving unrepresented tenants had similar requirements.
reached by unrepresented tenants. Moreover, in sharp contrast with Daines’s findings, legal services tenants were far less likely to default on the terms of their settlement agreements—for example, by failing to make required use and occupancy payments or by failing to vacate on time—than unrepresented tenants. Only twelve percent of the legal services tenants who related settlement agreements with their landlords defaulted, while thirty-four percent of the unrepresented tenants defaulted.

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Tenant Evicted Pursuant to Settlement Agreement</th>
<th>Tenant Evicted Pursuant to Default Judgment</th>
<th>Tenant Left Before Case Disposed of in Court</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=58)*</td>
<td>7%</td>
<td>66%</td>
<td>19%</td>
<td>2%</td>
</tr>
<tr>
<td>Legal Services Tenants (n=188)*</td>
<td>23%</td>
<td>57%</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Nonpayment Cases in which Tenants Had Strong Defenses (n=112)*</td>
<td>15%</td>
<td>60%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Nonpayment Cases in Which Tenants Did Not Have a Strong Defense (n=49)*</td>
<td>35%</td>
<td>51%</td>
<td>0%</td>
<td>14%</td>
</tr>
<tr>
<td>Nuisance and Material Noncompliance Cases (n=12)*</td>
<td>58%</td>
<td>33%</td>
<td>0%</td>
<td>9%</td>
</tr>
<tr>
<td>Lapse of Time and No Right or Privilege Cases (n=15)*</td>
<td>20%</td>
<td>60%</td>
<td>0%</td>
<td>20%</td>
</tr>
</tbody>
</table>

* Source: Housing Court Files.
* Source: Legal Services Files.

4. The Length of the Actions

In the words of former Supreme Court Justice Thurgood Marshall, “[s]ome delay . . . is inherent in any fair-minded system of justice. . . . Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a [person] is evicted.
Eviction Defense for Poor Tenants

from his home." In an effort to "see that justice be done" for their clients, legal services attorneys filed a greater number of motions and pleadings than unrepresented tenants and, in those cases where they could not prevent their clients' evictions, delayed their clients' ultimate departure. In fact, evictions involving legal services tenants took an average of twenty-six percent longer to resolve than actions involving unrepresented tenants. On average, evictions involving unrepresented tenants took approximately three months to resolve, while evictions involving legal services tenants took approximately four months to resolve. See Table 19.

<table>
<thead>
<tr>
<th>TABLE 19. DISPOSITION TIMEa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenants</td>
</tr>
<tr>
<td>Unrepresented Tenants (n = 50)b</td>
</tr>
<tr>
<td>Legal Services (n=144)c</td>
</tr>
</tbody>
</table>

a Days between service of notice to quit possession and final tenant departure.
b Source: Housing Court Files.
c Source: Legal Services Files. This table includes data only from those cases in which tenants were not reinstated in their apartments.

In legal services cases, the length of the actions varied greatly depending on the grounds for eviction and the underlying issues. Among legal services cases, nonpayment evictions in which tenants had substantive defenses took the least amount of time to resolve. In these cases, the time between service of the notice to quit and the tenant's final departure was on average fifteen percent shorter than in nonpayment cases in which tenants did not have defenses on the merits, and almost thirty percent shorter than in nuisance or lapse of time cases. See Table 20. Presumably, this is because tenants in apartments with poor conditions or troublesome landlords did not want to stay in their units any longer than necessary. Nuisance, material noncompliance, lapse of time, and no right or privilege cases lasted the longest, perhaps because tenants in these cases were more likely to pay rent during the pendency of their evictions and thereby secure additional time to move. See Tables 20 and 25.

129. This figure is based on average values of disposition times. When median values are used, the amount of delay in legal services cases is even larger (40%).
130. It is important to note that the disposition time (or amount of lost rent) in any single case may vary significantly from the averages presented here. A number of factors are involved in each case; the end results depend on "a complex combination of actions by tenants, landlords, attorneys, process servers, court clerks, judges, and [sheriffs]." Randy G. Gerchick, No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help, 41 UCLA L. REV. 759, 809-10 (1994).
TABLE 20. DISPOSITION TIME (IN DAYS) FOR LEGAL SERVICES EVICTIONS

<table>
<thead>
<tr>
<th>Type of Eviction</th>
<th>Average</th>
<th>Median</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonpayment of Rent (n= 127)</td>
<td>114</td>
<td>100</td>
<td>66</td>
</tr>
<tr>
<td>Tenants Had Strong Defenses (n=95)</td>
<td>102</td>
<td>90</td>
<td>72</td>
</tr>
<tr>
<td>Tenants Did Not Have Strong Defenses (n=32)</td>
<td>120</td>
<td>99</td>
<td>63</td>
</tr>
<tr>
<td>Nuisance and Material Noncompliance (n=5)</td>
<td>147</td>
<td>135</td>
<td>41</td>
</tr>
<tr>
<td>Lapse of Time and No Right or Privilege (n=12)</td>
<td>145</td>
<td>109</td>
<td>76</td>
</tr>
</tbody>
</table>

* Source: Legal Services Files. This table includes data only from those cases in which tenants were not reinstated in their apartments.

G. *The Economic Costs to Landlords*

Before analyzing the economic costs to landlords of legal services eviction defense, it is imperative to define what costs are "eviction-related," or attributable to the eviction process and the defense of evictions. At the time an eviction is initiated, a tenant may owe his or her landlord one or more months of back rent, or arrears. 131 Most landlords rely on security deposits to recover such arrears; 132 however, in many cases, the security deposit is not sufficient to cover all arrears. Because losses of arrears precede the commencement of an eviction, they are not affected by the outcome of the eviction and thus are not properly considered eviction-related costs.

Eviction-related costs are those costs landlords suffer after initiating an eviction. These costs include the amount of rent, or "use and occupancy," lost during the pendency of an eviction; 133 the cost of providing moving allowances or other sums of money, if any, to the tenant in order to facilitate the tenant's ultimate departure; and the cost of securing legal representation, if any. Because data were not available regarding the actual costs to landlords of securing legal counsel, the analysis which follows focuses solely on rent, or use and occupancy, lost during the evictions and moving allowances. 134 (For

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131. In the case of nonpayment evictions, such arrears include the amount due in the month of alleged nonpayment.
132. See, e.g., Rabin, supra note 56, at 539.
133. The term "use and occupancy" is used because the commencement of an eviction generally terminates any existing lease agreement between a landlord and a tenant and, in the absence of a new lease agreement, any further payments during the pendency of the eviction are generally for use and occupancy only and not for rent. A tenant may be required to pay use and occupancy by the court or by a settlement agreement between the parties. Whether required to pay or not, though, a tenant's failure to pay use and occupancy effectively deprives a landlord of rent during the course of an eviction.
134. Seventy-eight percent of all landlords in the legal services cases were represented by an attorney. See Table 14. Ninety-eight percent of these landlords made the decision to hire counsel before legal services became involved. Id. Thus, the representation of tenants by legal services attorneys did not significantly affect the landlords' decisions to hire attorneys. To the extent that the landlords'
Eviction Defense for Poor Tenants

convenience, these costs are jointly referred to as "eviction-related rent losses.") Thus, the amount of use and occupancy a landlord does not recover, combined with any moving allowances or other amounts paid by the landlord to the tenant, represents the total amount of eviction-related rent losses suffered by the landlord during the pendency of the eviction. Of course, as with arrears, a landlord may utilize any unused portion of a tenant's security deposit to recover these eviction-related rent losses.

Among nonpayment evictions, the cases handled by legal services attorneys did not create greater eviction-related rent losses for landlords than the cases involving unrepresented tenants who contested their evictions. Indeed, landlords lost almost exactly the same amount of use and occupancy in legal services cases as in cases where tenants represented themselves. This is true when such losses are measured in both absolute terms (1993 dollars) and relative terms (percentages of the amounts which were due). See Table 21.

**TABLE 21. AVERAGE RENT LOST IN NONPAYMENT EVICTIONS (IN 1993 DOLLARS)**

<table>
<thead>
<tr>
<th></th>
<th>Unrepresented Tenants (n=54)</th>
<th>Legal Services Tenants (n=161)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrears: Rent Due When Eviction Initiated</td>
<td>$877</td>
<td>$953</td>
</tr>
<tr>
<td>Amount Lost</td>
<td>$447</td>
<td>$532</td>
</tr>
<tr>
<td>Percent Lost</td>
<td>51%</td>
<td>56%</td>
</tr>
<tr>
<td>Use and Occupancy: &quot;Rent&quot; Due After Eviction Initiated</td>
<td>$1463</td>
<td>$1501</td>
</tr>
<tr>
<td>Amount Lost</td>
<td>$1092</td>
<td>$1090</td>
</tr>
<tr>
<td>Percent Lost</td>
<td>75%</td>
<td>73%</td>
</tr>
<tr>
<td>Total Arrears and Use and Occupancy</td>
<td>$2340</td>
<td>$2454</td>
</tr>
<tr>
<td>Amount Lost</td>
<td>$1539</td>
<td>$1622</td>
</tr>
<tr>
<td>Percent Lost</td>
<td>66%</td>
<td>66%</td>
</tr>
</tbody>
</table>

*Adjustments for dollar values from other years were made according to the Consumer Price Index's published rates of cost increases for housing in urban areas in the Northeast region of the United States between 1989 and 1993. See BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 492 (114th ed. 1994).

b This figure includes the amount of rent due in the month of alleged nonpayment.

c This figure represents arrears less payments made by the tenant (or subsidizing agencies) and security deposit money retained by the landlord.

d This figure represents use and occupancy less payments made by the tenant (or subsidizing agencies) and security deposit money retained by the landlord which was not already used to recover arrears. This figure includes moving allowances and other sums paid by the landlord to the tenant.

...
Legal services tenants paid a significant percentage of the use and occupancy due during their evictions. As a result, the eviction-related costs of their evictions generally were no greater than those of unrepresented tenants. Legal services attorneys often negotiated settlement agreements whereby their clients were reinstated in their apartments on the condition that they pay most or all of the use and occupancy due during their evictions and, in some cases, make arrangements to repay all of their arrears. Further, legal services attorneys often helped their clients navigate the public assistance bureaucracy and secure emergency rental assistance from subsidizing welfare agencies.

A close analysis of eviction-related costs in legal services nonpayment cases reveals that landlords' losses were not uniform. In fact, in the majority of cases, landlords either lost no use and occupancy at all, or they lost over ninety percent. In contrast, the distribution was much more consistent in cases involving unrepresented tenants: in over eighty-three percent of these cases, landlords lost over sixty percent of the use and occupancy due. See Table 22.

### Table 22. Distribution of Eviction-Related Losses in Nonpayment Cases

<table>
<thead>
<tr>
<th>Tenants</th>
<th>Percentage of Use and Occupancy Unpaid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrepresented Tenants (n=54)</td>
<td>Zero</td>
</tr>
<tr>
<td>Legal Services Tenants (n=161)</td>
<td>22%</td>
</tr>
</tbody>
</table>

The legal services tenants in nonpayment cases who paid the least amount of use and occupancy were those with substantive defenses to their evictions, including tenants living in units with uninhabitable conditions and tenants living

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135. It appears that Daines suspected such a result when he conceded that, "[i]t may be argued that delays are not as costly to landlords as appears . . . because actions often end in stipulations in which the tenant agrees to pay for at least some of the back rent and legal fees." Daines, supra note 6, at 34.

It is also true that there may have been unobserved payments of use and occupancy and arrears in the cases involving unrepresented tenants examined in this study. Only the housing court files were available for these cases. Thus, only payments observed in the housing court files were counted. Such payments included those required by court orders and stipulated judgments, regardless of whether or not the files contained corroborating evidence of actual payment by the tenants.

136. This was especially true in the legal services cases in which the tenants were being evicted by the Housing Authority. See supra notes 35 & 123. For example, in eight of the nine Housing Authority cases, the legal services attorneys reached settlement agreements pursuant to which the tenants repaid all of the use and occupancy and arrears they owed, and were reinstated in their apartments.

137. The most frequently-used program was the Rent Bank program, which provides grants of up to $1,200 to low-income families who are "at risk of becoming homeless or in imminent danger of eviction or foreclosure." Conn. Gen. Stat. § 17-619 (1995).
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without lease agreements in buildings acquired by banks through foreclosure. See Table 24. The legal services tenants most likely to pay full use and occupancy were those without any substantive defenses to their evictions. See Tables 23 and 24.

### Table 23. Average Rent Lost in Legal Services Nonpayment Evictions (in 1993 Dollars)^a

<table>
<thead>
<tr>
<th></th>
<th>Tenant Did Not Have Strong Defense (n=49)</th>
<th>Tenant Had a Strong Defense(s) (n=112)</th>
<th>Tenant Had Conditions Defense (n=77)^b</th>
<th>Foreclosure Eviction (n=22)^b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrears: Rent Due at Time Notice to Quit Served</td>
<td>$1280</td>
<td>$839</td>
<td>$963</td>
<td>$787</td>
</tr>
<tr>
<td>Amount Unpaid</td>
<td>$789</td>
<td>$421</td>
<td>$521</td>
<td>$490</td>
</tr>
<tr>
<td>Percent Unpaid</td>
<td>62%</td>
<td>50%</td>
<td>54%</td>
<td>62%</td>
</tr>
<tr>
<td>Use and Occupancy: “Rent” Due After Notice Served</td>
<td>$1359</td>
<td>$1564</td>
<td>$1538</td>
<td>$1847</td>
</tr>
<tr>
<td>Amount Unpaid</td>
<td>$901</td>
<td>$1174</td>
<td>$1218</td>
<td>$1724</td>
</tr>
<tr>
<td>Percent Unpaid</td>
<td>66%</td>
<td>75%</td>
<td>79%</td>
<td>93%</td>
</tr>
<tr>
<td>Total Rent at Stake: Arrears and Use and Occupancy</td>
<td>$2639</td>
<td>$2403</td>
<td>$2501</td>
<td>$2633</td>
</tr>
<tr>
<td>Amount Unpaid</td>
<td>$1690</td>
<td>$1595</td>
<td>$1739</td>
<td>$2214</td>
</tr>
<tr>
<td>Percent Unpaid</td>
<td>64%</td>
<td>66%</td>
<td>69%</td>
<td>84%</td>
</tr>
</tbody>
</table>

^a Source: Legal Services Files.

^b These categories of cases are subsets of all cases in which tenants has one or more strong defenses.

### Table 24. Distribution of Eviction-Related Losses in Legal Services Nonpayment Cases^a

<table>
<thead>
<tr>
<th>Tenants</th>
<th>Percentage of Use and Occupancy Unpaid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Involving Tenants with No Substantive Defenses (n=49)</td>
<td>30% 5% 4% 8% 53%</td>
</tr>
<tr>
<td>Cases Involving Tenants with One or More Substantive Defenses (n=112)</td>
<td>17% 2% 8% 8% 66%</td>
</tr>
<tr>
<td>Cases Involving Tenants with Conditions Defenses (n=77)</td>
<td>12% 2% 8% 8% 70%</td>
</tr>
</tbody>
</table>

^a Source: Legal Services Files.

Thus, landlords suffered the greatest eviction-related losses in those cases where tenants had strong substantive defenses to their evictions. Conversely, they suffered the least eviction-related losses in those cases where the tenants had no substantive defenses. In fact, in this latter group of cases, almost half (45%) of the tenants paid all of their arrears and almost a third (30%) paid full use and occupancy during their evictions. The data therefore suggest that the
landlords who suffered the greatest amount of eviction-related losses were those least entitled to collect rent.

Much like the legal services tenants without substantive defenses in nonpayment evictions, the legal services tenants in evictions based on nuisance, material noncompliance, lapse of time, and no right or privilege paid significant percentages of the arrears and use and occupancy they owed their landlords. See Table 25.

| Table 25. Average Rent Lost in Legal Services Cases Not Involving Nonpayment (in 1993 Dollars) |
|---------------------------------|---------------------------------|
| **Nuisance and Material Noncompliance (n=12)** | **Lapse of Time and No Right or Privilege (n=15)** |
| Arrears: Rent Due When Eviction Initiated | $0 | $267 |
| Amount Unpaid | $0 | $32 |
| Percent Unpaid | 0% | 12% |
| Use and Occupancy: "Rent" Due After Eviction Initiated | $2356 | $2112 |
| Amount Unpaid | $196 | $1188 |
| Percent Unpaid | 8% | 56% |
| Total Rent at Stake: Arrears and Use and Occupancy | $2356 | $2379 |
| Amount Unpaid | $196 | $1220 |
| Percent Unpaid | 8% | 51% |

* Source: Legal Services Files.

These cases, together with the nonpayment cases in which tenants had no defenses on the merits, demonstrate the inaccuracy of the theory advanced by Bolton and Holtzer and Daines that eviction-related costs incurred by landlords are proportionate to the length of the actions. Indeed, the data show that tenants paid the greatest overall percentage of use and occupancy in those cases which took the longest to reach final disposition: nuisance; material noncompliance; lapse of time; and no right or privilege cases; and nonpayment actions in which the tenants did not have substantive defenses. See Tables 20, 23, and 25.

III. CONCLUSION: A DEFENSE OF EVICTION DEFENSE

The tenants represented by legal services attorneys in the cases studied here were generally extremely poor individuals and heads of households, many of them single mothers. While the majority of these tenants faced eviction for not paying their rent, fully two-thirds had valid substantive defenses to their evictions, including landlord breach (including breach of the implied warranty
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of habitability), as well as unlawful harassment, retaliation, discrimination, and other wrongs.

In representing these tenants, legal services attorneys were able to prevent or delay their evictions, helping the tenants either to remain in their homes or to secure alternate housing without suffering sudden dislocation or homelessness. Many tenants paid the full amount of use and occupancy during the pendency of their evictions. Moreover, the eviction-related losses suffered by landlords in legal services cases were, on average, no greater than those incurred in cases where tenants fought their evictions without lawyers. Nearly all of the legal services cases in which the landlord's losses exceeded the norm involved landlords who had breached their contracts or responsibilities.

In sum, legal services eviction defense provides an essential service to poor tenants facing eviction and to society at large. Eviction defense holds landlords accountable for failing to meet their contractual or statutory duties and vindicates the rights of poor tenants. In the process, eviction defense helps many tenants to avoid eviction and helps countless others avoid the trauma, dislocation, and possible entry into homelessness that immediate eviction can cause. These benefits are not outweighed by the costs imposed on landlords. Eviction-related costs suffered by landlords are no greater in cases handled by legal services lawyers than they are in cases in which tenants represent themselves.
APPENDIX: CONNECTICUT'S EVICTION LAWS AND PROCEDURES

Connecticut's Landlord and Tenant Statute1 provides landlords with an expedited judicial procedure,2 or "summary process," for evicting tenants who have breached their lease agreements or whose tenancies have terminated.3 The time allowed for pleadings and discovery is abbreviated in order to facilitate rapid disposition of eviction actions. The following is a brief synopsis of the procedure:4

(1) Notice to Quit

In order to evict a tenant, a landlord must first serve the tenant with a notice to quit possession.5 This notice requests that the tenant voluntarily vacate the premises by a designated "quit date"—a date assigned by the landlord which may be no less than five days after the notice is served on the tenant—and provides the tenant with the reason or reasons why her landlord is requesting her departure.6 Such reasons must be legally cognizable grounds for eviction as enumerated in the Landlord and Tenant Statute.7 If the landlord's reason is nonpayment of rent, the notice to quit may be served only after the expiration of the statutory nine-day grace period for payment following the date

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2. Like most states, Connecticut forbids landlords from using any form of extra-judicial "self-help" in evicting tenants, unless the tenant has abandoned or voluntarily surrendered the premises or unless the living arrangement is exempt from the summary process statute. See CONN. GEN. STAT., § 53a-214 (a landlord who "without benefit of a court order, . . . deprives a tenant . . . of access to his dwelling unit or his personal possessions" is guilty of criminal lockout, a class C misdemeanor); see also DePriest, Self-Help Eviction, 25 CLEARINGHOUSE REV. 798, 800 (1991) ("The general rule of law . . . is that in reference to residential leases, where no abandonment has taken place, the landlord is barred from using self-help to accomplish the eviction of the tenant, but must resort to judicial process.").
3. CONN. GEN. STAT., §§ 47a-23 to 47a-42. Connecticut's eviction laws are similar to those found in other jurisdictions. See, e.g., MASS. GEN. L. ch. 239, §§ 1-13 (1994); CAL. CIV. PROC. CODE §§ 1161, 1179a (West 1982).
5. CONN. GEN. STAT., § 47a-23(a) (1995). If the landlord seeks to evict a tenant for breach of the tenant's statutory responsibilities or material noncompliance with the lease, he may serve the notice only after giving the tenant a written pretermination notice specifying the acts or omissions constituting the breach or noncompliance and allowing the tenant 21 days to remedy her alleged wrongful behavior. CONN. GEN. STAT., § 47a-15 (1995); KAPA v. Flores, 408 A.2d 22 (Conn. 1979). This requirement does not apply to tenant conduct which constitutes "serious nuisance." Serious nuisance, as defined by CONN. GEN. STAT., § 47a-15 (1995), includes conduct which threatens the health or safety of other tenants in the building, such as the commission of dangerous criminal activity on the premises or the sale or use of illegal narcotics on the premises.
6. For convenience, this Appendix will refer to landlords as males and tenants as females.
rent became due.\textsuperscript{8}

The notice to quit officially terminates any existing lease agreement between the parties. Any money paid by the tenant to the landlord following the issuance of the notice is considered payment for use and occupancy of the premises only, and not for rental payments under a lease.

(2) \textit{Summons and Complaint}

If the tenant does not voluntarily relinquish possession of the premises by the quit date, the landlord must initiate a summary process action in the Superior Court's Housing Session to evict the tenant. To do so, the landlord must file a summons and complaint in court. The complaint must "set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy."\textsuperscript{9} The court clerk will assign a return date to the action.\textsuperscript{10} The return date is the date on which the tenant's time to respond to the action begins tolling.\textsuperscript{11} After filing the summons and complaint in court, the landlord must serve a copy of same on the tenant.

(3) \textit{Tenant's Appearance}

If the tenant wishes to contest the eviction, she must file an appearance in court no later than two days after the complaint's return date.\textsuperscript{12} If she fails to do so, her landlord may file a motion for default judgment for failure to appear.\textsuperscript{13} This motion is granted immediately by the court, which then issues a judgment awarding possession of the premises to the landlord, subject to an applicable stay of execution (as described below).

(4) \textit{Tenant's Pleadings}

Having filed her appearance, the tenant must file a responsive pleading to the landlord's complaint within three days of the return date.\textsuperscript{14} If she fails to do so, her landlord may file a motion for default judgment for failure to plead.\textsuperscript{15} Upon receipt of such a motion, the court will allow the tenant a three-day grace period to file a pleading. If she fails to file a pleading during this grace period, the court will automatically enter judgment for possession of the premises for the landlord, subject again to an applicable stay of execution.

\begin{thebibliography}{15}
\bibitem{8} CONN. GEN. STAT. § 47a-15a (1995).
\bibitem{9} CONN. GEN. STAT. § 47a-23a (1995).
\bibitem{10} MANUAL FOR HOUSING MATTERS, \textit{supra} note 4, at 4.
\bibitem{11} \textit{See generally} CONN. GEN. STAT. § 52-48 (1995); CONN. PRACTICE BOOK § 66 (1995).
\bibitem{12} CONN. GEN. STAT. § 47a-26 (1995).
\bibitem{13} \textit{Id}.
\bibitem{14} CONN. GEN. STAT. § 47a-26a (1995).
\bibitem{15} \textit{Id}.
\end{thebibliography}

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A tenant may file any of four responsive pleadings to the landlord's complaint: a motion to dismiss, a request to revise, a motion to strike, or an answer (with or without special defenses). The motion to dismiss is used to contest the court's personal or subject matter jurisdiction; the request to revise, to obtain a more complete, precise or accurate statement of the allegations or charges in the landlord's complaint; the motion to strike, to contest the legal sufficiency of the allegations in the landlord's complaint; the answer, to deny (or admit) some or all of the allegations in the landlord's complaint; and special defenses, to allege facts consistent with the allegations in the landlord's complaint which nonetheless show that the landlord "has no cause of action." The tenant may file more than one motion in a given action, but must file each motion separately and in the sequence listed above. The motion to dismiss, request to revise, and motion to strike are commonly considered "procedural motions," while the answer and special defenses are considered "substantive responses" that challenge the merits of the landlord's case.

(5) Procedural Motions and Hearings

If the tenant initially files a procedural motion, the court will schedule a hearing. Prior to the hearing, the landlord may file an objection to the tenant's allegations. At the hearing both parties may present evidence and conduct oral argument. After hearing the evidence and arguments, the court will either grant or deny the tenant's motion. If the court grants a tenant's motion to dismiss, the eviction is dismissed and the tenant reinstated in her apartment as a tenant in good standing. (The landlord may respond to the court's dismissal by initiating a another eviction action, but must do so by filing a new notice to quit.) If the court grants a tenant's request to revise or motion to strike, the landlord must file an amended or revised answer before the action may continue. If the court denies a tenant's procedural motion, the eviction action continues and the tenant is required to file an additional pleading within three days.

21. The Court will set a request to revise down for a hearing only if the landlord files an objection to the requested revisions within 30 days of the date the request was filed. Otherwise, the request is deemed granted when filed and the court will order, or approve any requested changes.
22. CONN. PRACTICE BOOK §§ 171-72 (1995) require a landlord to file a reply to any special defenses asserted by the tenant before the court may set the matter down for trial.
23. CONN. GEN. STAT. § 47a-26c (1995). If the tenant fails to file a pleading within three days, the landlord may file a motion for default judgment for failure to plead, in which case the tenant will be allowed a three-day grace period in which to file a pleading before the court enters judgment for possession of the premises to the landlord.
(6) Discovery

Both the landlord and the tenant may file discovery motions in summary process actions. Although the time requirements for pleading are expedited in summary process actions, the court may not deny discovery motions concerning disputed factual issues without abusing its discretion. If necessary, and upon motion of the tenant, the court may suspend the time requirements for pleading pending the completion of needed discovery.

(7) Motion for Use and Occupancy

Once the tenant has filed an appearance, or any time thereafter, the landlord may file a motion for use and occupancy. This motion asks the court for an order requiring the tenant to deposit use and occupancy payments with the court during the pendency of the action in the amount of the last agreed-upon rent. The motion allows landlords to avoid significant rent losses while the eviction action is pending. The tenant may file an objection to the motion within five days of its filing, in which case the court will set the matter down for a hearing. If the tenant does not object, the motion is automatically granted by the court five days after it is filed, and the tenant is required to make her first payment no later than five days thereafter. If the tenant fails to make use and occupancy payments as ordered, the court will require her to file an answer to the landlord’s complaint within four days. Failure to file an answer within that time period will result in automatic judgment for the landlord for possession of the premises, subject to an applicable stay.

(8) Answers, Special Defenses, and Trial

After exhausting her procedural motions or failing to make use and occupancy payments as ordered by the court, the tenant must file an answer to the landlord’s complaint. At this time, she may also assert any available special defenses. If the tenant files special defenses, the landlord must file a reply before the court will set a date for trial; otherwise, the court will set the case


26. CONN. GEN. STAT. § 47a-26b(a) (1995). In her objection, the tenant may ask the court to reduce the amount of the requested use and occupancy payments so as to reflect the fair market rental value of the premises or to order the landlord to make repairs before any money may be collected. See CONN. GEN. STAT. § 47a-26b(c) (1995); Gambardella v. Bell, No. SP-NH-8507-9514-NH (New Haven Housing Session, Aug. 20, 1985).

27. CONN. GEN. STAT. § 47a-26(d) (1995).
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down for trial shortly after the tenant files her answer. At trial, as at hearings on procedural motions, both parties may present evidence and conduct oral argument. Having heard the evidence and arguments of both parties, the court will issue and enter judgment on behalf of either the landlord or the tenant.

(9) Settlement

In most cases, the parties reach a settlement agreement before the action goes to trial. Normally, such a settlement agreement is entered into by the parties in the halls of the Housing Session before an impending hearing or trial. Frequently, Housing Specialists will assist the parties in negotiating a mutually agreeable resolution to the action. At the request of the parties, settlement agreements are entered by the court as stipulated judgments.

In most cases, the parties reach settlement agreements allowing the landlord to regain possession following a designated stay during which the tenant may remain in the premises. In many cases, the tenant must tender reasonable use and occupancy payments to the landlord during the pendency of the stay.

(10) Judgment and Stays of Execution

As noted above, the court may enter judgment for the landlord in a number of circumstances: following the landlord’s motion for default judgment against the tenant for failure to appear or plead; following the tenant’s failure to make court-ordered use and occupancy payments or to answer the landlord’s complaint within the required time after trial; or pursuant to a stipulated agreement of the parties. Such a judgment entitles the landlord to regain possession of the premises following a stay of execution. Where the parties do not agree to the length of the stay by stipulation, execution is automatically stayed for five days in nonpayment and nuisance cases and for fifteen days in all other cases.
(11) Execution

If the tenant remains in the premises beyond the expiration of the stay, the landlord may seek an execution order from the court.33 An execution order authorizes the landlord to request that a sheriff remove the tenant and her belongings from the premises.34 Before putting the tenant out, the sheriff must make reasonable efforts to notify the tenant; in most cases, this is accomplished by serving the execution order on the tenant one day in advance. If the tenant does not voluntarily vacate the apartment, the sheriff will remove her possessions and place them in the street.35

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33. If the tenant is in breach of a stipulated judgment, the landlord must file an affidavit regarding the tenant's noncompliance with the stipulation before the court will issue an execution order.
34. CONN. GEN. STAT. § 47a-42(a) (1995).
35. CONN. GEN. STAT. § 47a-42(b) (1995). If the tenant does not immediately remove her possessions from the street, the City's Department of Public Works will remove them, store them for fifteen days, and then sell them at a city auction. CONN. GEN. STAT. § 47a-42(c) (1995).