


Navigating an Overburdened Courtroom: How Inconsistent Rules, Shadow Procedures, and Social Capital Disadvantage Tenants in Eviction Court

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Abstract

Landlords and tenants in eviction court navigate a complex legal and administrative process. Eviction courts are overburdened and under pressure to process enormous numbers of cases each day. From inside one such courtroom, we draw on in-depth ethnographic observations and administrative court records from before the pandemic to examine how everyday practices shape courtroom experiences for tenants and landlords. From the moment they enter the courtroom, tenants encounter unwritten rules and informal processes that prove difficult to navigate. Confusing and inconsistently applied rules leave unrepresented tenants at a disadvantage relative to landlords, who are much more likely to have legal counsel. Courtroom actors rely on shadow procedures such as settlement agreements to save time and improve courtroom efficiency, which reinforce power asymmetries between landlords and tenants. While landlords and their attorneys rely on their familiarity with courtroom actors to garner systematic advantages, tenants lack these social capital resources. Our theory of systematic disadvantage shows how these rules, practices, and procedures come together in an overburdened courtroom to amplify the disadvantages faced by tenants at risk of an eviction.

Keywords

eviction, landlords, court

INTRODUCTION

When renters receive an eviction notice in Washington, DC, they are summoned to appear at Landlord-Tenant Court. Like similar eviction courts throughout the United States, this court is among the busiest in the city. In 2018, the court processed nearly 31,000 residential eviction filings against renter households (McCabe and Rosen 2020). While existing scholarship documents the hardship for tenants experiencing the eviction process and the consequences of eviction for

their communities (Desmond 2012, 2016; Desmond and Gershenson 2017; Desmond, Gershenson, and Kiviat 2015; Desmond and Kimbro 2015; Desmond and Shollenberger 2015; Purser 2016), there has been limited

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work examining how these institutions process evictions and how the legal process itself shapes outcomes for poor renters (cf. Nelson 2021; Summers forthcoming).

In this article, we cast a distinctly sociological lens on the eviction courtroom to understand how institutional processes and procedures shape the experience of landlords and tenants. In an overburdened courtroom pressured to process cases quickly, we identify four ways that rules and procedures come together to systematically disadvantage tenants. First, the unwritten rules and processes of the courtroom are often confusing to tenants, especially those with disabilities. From the physical layout of the courtroom to the attendance procedures, tenants experience ambiguity in navigating the courtroom. Second, the inconsistent application of the rules disadvantages tenants, who typically lack the tools (e.g., legal expertise, courtroom experience) to navigate this bureaucratic environment. Landlords and their attorneys, on the other hand, are quite adept at doing so. Third, to manage the burdens of a system without enough resources to adjudicate excessively high numbers of eviction filings, the courtroom relies on shadow procedures, including the widespread use of consent judgments and settlement agreements. These shadow procedures reinforce power asymmetries between parties and render worse outcomes for tenants. Finally, we show how landlords and their attorneys garner systematic advantages by drawing on their social capital resources and familiarity with courtroom actors. These resources and relationships are largely unavailable to tenants. Importantly, we acknowledge that many of the processes and procedures that disadvantage tenants are *not designed* to create inequalities. Instead, they enable an overburdened courtroom to function with inadequate resources to adjudicate every case.

Our analysis draws on observational data collected by the lead author during a year-long ethnography of Landlord-Tenant Court in Washington, DC. This ethnographic data focuses largely on the process that unfolds

during the initial eviction hearing. We augment these ethnographic observations with detailed administrative records that enable us to corroborate ethnographic observations and understand the courtroom experience more broadly. This mixed-methods analysis reaches between the lines of the law to understand how everyday procedures shape the courtroom experience and outcomes for tenants. In doing so, it offers researchers a unique opportunity to consider how complimentary methodological approaches deepen sociological understandings of the quotidian experience of eviction court.

Drawing on these observations from an overburdened courtroom, we emphasize the compounding effects of unequal access to legal representation. Since eviction proceedings are adjudicated under civil jurisprudence, most tenants lack access to legal counsel and simply do not have the tools or expertise to decode, clarify, and understand the courtroom's institutional processes. Landlords, on the other hand, are almost always represented by an attorney. This unequal access to legal representation compounds the disadvantages we observe throughout the courtroom.

Our analysis builds on the concept of procedural hassle in the criminal courtroom to explain how everyday procedures disadvantage tenants. We show how courtroom procedures reproduce existing inequalities between landlords and tenants and shape case outcomes beyond the punishment itself (Clair 2020; Feeley 1979; Gonzales Van Cleve 2016; Kohler-Hausmann 2018). While there has been substantial research on procedural burdens in the criminal court system, there has been little empirical work on how they operate in civil court—and specifically, in the eviction courts that impact the lives of millions of poor households each year. We demonstrate how ambiguous rules and inconsistent procedures exacerbate the high opportunity costs for tenants to appear in court. The prospect of missing work or family obligations to spend the day in court leads many tenants to not show up for their case, resulting in default judgments against them. By contrast,

the opportunity costs for landlords, who are almost always represented, are smaller. We show how landlords' attorneys draw on their familiarity with courtroom actors to garner systematic advantages. Our data reveal that just a small number of lawyers represent the vast majority of landlords in court, enabling them to acquire institutional knowledge and forge personal relationships with court actors. Their accumulated social capital reinforces knowledge asymmetries and improves landlord outcomes.

Putting these pieces together, we develop a theory of systematic disadvantage in eviction court to emphasize how everyday features of the courtroom create procedural inequalities and deepen burdens for tenants. While existing research documents how tenants are disadvantaged before they enter the courtroom as well as after they leave it (Desmond 2016; Dreier 1982; Hartman and Robinson 2003; Purser 2016; Rosen and Garboden 2022), we shine a light on what happens within the courtroom. Importantly, we identify how the conditions of an overburdened courtroom—where the legal system simply cannot adequately handle the number of cases on the docket—lead courtroom actors to rely on inconsistent rules and shadow procedures that disadvantage tenants from the moment they enter the courtroom.

EVICITION IN THE LIVES OF POOR FAMILIES

Given the nature of property law in the United States, including the power of landlords to initiate eviction proceedings against tenants for a wide range of reasons, tenants are at a broad legal disadvantage relative to landlords (Dreier 1982). While previous research describes eviction as the “hidden housing problem” (Hartman and Robinson 2003), a growing body of scholarship now examines the negative effects of eviction in the lives of the poor (Desmond 2012; Desmond and Kimbro 2015; Garboden and Rosen 2019; Phinney 2013; Purser 2016). Low-income women with children and renters of

color are more likely to face eviction than are other groups of renters (Hepburn, Louis, and Desmond 2020). Traits such as family size, employment status, and neighborhood poverty are important predictors of eviction (Desmond 2012; Desmond and Gershenson 2017; Lens et al. 2020).

Households facing an eviction experience a range of negative consequences: they are more likely to suffer material hardship, more likely to report poor mental or physical health, more likely to experience unexpected moves, and more likely to end up in high-poverty neighborhoods (Desmond et al. 2015; Desmond and Shollenberger 2015). Eviction also creates a permanent record that restricts opportunities to find stable housing in the future (Desmond 2012; Rosen, Garboden, and Cossyleon 2021). Children living in households with high levels of residential instability experience more frequent disruptions in their school environment and peer networks that lead to poor academic achievement and behavioral problems (Alexander et al. 1988; Garboden, Leventhal, and Newman 2017; Schwartz, Stiefel, and Cordes 2017; Ziol-Guest and McKenna 2014).

Extending research on the negative experience of housing instability, an additional body of work considers the legal process of eviction, including variation in the rights of landlords and tenants across states. In Hatch's (2017) taxonomy of state-level approaches to eviction, “protectionist” states have laws designed to protect tenants, including those that require longer pre-filing notification periods; allow tenants to make counterclaims related to housing quality based on the *warranty of habitability*; regulate what landlords can do with a tenant's personal property; and provide a legal right to redemption for tenants to stay the execution of an eviction by paying rent owed. In contrast to these tenant-friendly states, “pro-business” states tend to protect the landlord's right to their property. These states tend to expedite evictions by reducing the costs and time associated with removal of a tenant. Within this taxonomy, Washington, DC, classifies as predominantly “contradictory” because

it has strong tenant protections, including a right to redemption; guaranteed opportunities for tenants to purchase properties that go up for sale; *just-cause* eviction protections that limit evictions to a narrow set of reasons; and regulations around the removal of belongings. Even so, the low eviction filing fee in Washington, DC—one of the lowest in the country at only \$15¹—makes it cheap and easy for landlords to file for eviction. By minimizing the financial burden imposed on landlords who file for an eviction, this low filing fee contributes to the overburdened courtroom at the core of our analysis (Garboden and Rosen 2019; McCabe and Rosen 2020).

While Hatch (2017) offers an important framework to understand variation in the legal context across jurisdictions, very little research considers how the legal process unfolds in the courtroom (Nelson 2021). In nearly all jurisdictions, tenants experiencing eviction are not afforded a legal right to an attorney, thereby limiting their ability to successfully navigate eviction proceedings (Desmond 2016; Nelson 2021). Some recent local efforts to guarantee a right to counsel suggest small, but significant changes in the experience of tenants facing an eviction. In New York City, Ellen et al. (2021) reported that guaranteed right to counsel leads to an increase in legal representation for tenants—a fact that is likely to reshape their experience navigating the courtroom. The study identifies a small decline in the number of executed evictions as a result of guaranteed legal representation, but no change in the number of tenants appearing in court to respond to their eviction notice. Although the results provide limited evidence that equipping tenants with legal counsel substantially improves their outcomes, it leaves open the possibility of improvements in the tenant experience in the courtroom. The positive impact of a right to counsel program on the share of tenants with legal representation suggests an opportunity to revisit *how* tenants navigate Landlord-Tenant Court with the assistance of legal counsel.

Given the volume of cases in the typical eviction court, judges are often forced

to focus exclusively on the question of rent arrears while ignoring legitimate counterclaims regarding housing conditions (Bezdek 1992; Public Justice Center [PJC] 2015). However, little is known about how landlords and tenants experience and respond to the formal rules and informal procedures within the courtroom. While the literature has largely focused on the actual eviction and repercussions of housing instability, executed evictions occur in only a minority of cases in which an eviction proceeding has been initiated (Garboden and Rosen 2019; Leung, Hepburn, and Desmond 2021; McCabe and Rosen 2020). Understanding these court procedures and how they shape the experience of the courtroom is thus crucial for developing a more nuanced understanding of the eviction process (Summers forthcoming).

PROCEDURES AND PROCESSES IN EVICTION COURT

To explain how ambiguous rules and inconsistent procedures produce inequality in eviction court, we begin with a parallel concept of hidden curriculum from the sociology of education. The hidden curriculum describes the unwritten rules, social norms, and informal practices that shape classroom dynamics. It points to ways that middle- and upper-class students benefit from their cultural capital by translating it into educational success and ultimately reproducing class advantage (Khan 2011). Looking to the courtroom, we apply elements of this theory to another institutional setting that rewards unequal access to knowledge and information. We ask how tenants, who typically enter the courtroom with little knowledge of courtroom rules and low levels of social capital, are disadvantaged throughout the courtroom process. We show that hierarchies in eviction court, which mirror those in the outside world, quickly translate into the reproduction of inequality and systematically disadvantage tenants.

While both tenants and landlords (or more often, landlord attorneys) encounter procedural

burden in Landlord-Tenant Court, the experience of these burdens—and their ability to respond to them—is remarkably uneven. For both groups, formal legal standards create burdens as they seek to get a case heard or bring motions to the court (Monsma and Lempert 1992; Nelson 2021). But beyond the burdens imposed by these formal standards, we broaden our gaze to encompass both the inconsistent application of rules and the informal procedures that disproportionately impact tenants. The day-to-day application of courtroom rules and procedures are not simply dormant or mundane features of the court (Gonzales Van Cleve 2016). Instead, they are operationalized in a range of ways that increase the burden of compliance for low-income tenants facing an eviction. In describing these procedures, our analysis builds directly on recent studies of the criminal court system that demonstrate how the legal norms of the courtroom reproduce social advantages (Clair 2020; Gonzales Van Cleve 2016). Although the typical American household is more likely to experience civil courts, like eviction court, there has been little effort to understand the procedural inequalities produced in these institutional settings.

Our evaluation of the impact of these inconsistencies in eviction court draws on existing analyses of the procedural hassles and administrative burdens experienced by low-income households. In social policy, the concept of administrative burden points to the way that excessive paperwork, steep learning curves, or unnecessary documentation requirements burden the experience of citizens interacting with the state to receive assistance (Herd and Moynihan 2019). These burdens produce inequalities in access to government assistance by discouraging eligible citizens—especially those from disadvantaged backgrounds, persons of color, and those with disabilities—from applying, or by hampering their successful application (Herd et al. 2013; Herd and Moynihan 2019; Moynihan, Herd, and Ribgy 2016). Theories of procedural hassle identify ways that institutions impose compliance costs on indigent clients as they abide by the procedures and

rules of state institutions, including the criminal court system. Kohler-Hausmann (2018) shows how defendants in misdemeanor courts are often required to rearrange their work or personal responsibilities to comply with frequent court appearances. These procedures become a mechanism for social control, transforming defendants into compliant citizens and adjudicating their ability to comply with the expectations of citizenship. The costs of procedural compliance, including lost time or wages from employment, become the penalty themselves (Feeley 1979; Kohler-Hausmann 2013, 2018).

While theories of administrative burden and procedural hassle underscore how institutions shape the lives of the poor, we know little about how they operate in eviction court. In contrast to criminal courts, where the defendant is up against the state, defendants in eviction court are battling their own landlords. Without guaranteed legal representation in civil courts, tenants almost always proceed without a lawyer. Given the sheer volume of cases that pass through these courts, the site offers a unique opportunity to understand how the overburdened courtroom shapes processes and procedures. Since large eviction courts process tens of thousands of cases annually, they have an institutional imperative to mitigate costs, rather than substantively assess the merits of each case (Feeley 1979). The burden of processing the volume of cases each day in the courtroom puts pressure on the court to rely on parallel procedures, including settlement agreements and mediation sessions, to help reach resolution (Summers forthcoming). In Baltimore, research documents how unbearable caseloads forestall efforts to follow traditional legal procedures or adjudicate individual cases (Donovan and Marbella 2017; PJC 2015). Constrained by time, money, and staffing resources, eviction courts employ procedures strategically to speed through their caseload as efficiently as possible. A case study in Massachusetts illustrates how settlement agreements—the most common disposition of a case in that dataset—constitute a sort of “civil probation” because they contain terms that, if violated, result in swift eviction

(Summers forthcoming). Cases adjudicated through settlement agreements—informal and unsupervised negotiations between tenants and landlords, or their attorneys—create a “shadow” legal process that puts tenants at a distinct disadvantage (Summers forthcoming).

Without access to legal representation, tenants often navigate their legal cases without fully understanding the gravity of their situation or the courtroom process required to resolve their cases (Nelson 2021). As tenants feel pressure to get their case resolved as quickly as possible, they are unable to legibly articulate their claims to the court or access their full set of rights (Bezdek 1992; Golio et al. 2022; Lempert and Monsma 1994). Our research on the everyday workings of Landlord-Tenant Court expands on this research by highlighting how ambiguities, informalities, and asymmetric social relations increase the cost of complying with legal proceedings. We also show how informal procedures shape interpersonal interactions, social relationships, and social hierarchies within the court. Importantly, while these inconsistencies and informalities are, by and large, not intentionally designed to disadvantage tenants, they nonetheless result in worse outcomes for them. Operating under constraints and pressures from the sheer volume of cases, the court begins to act more as a debt collector for landlords, rather than as a legal arbiter of housing disputes (Donovan and Marbella 2017; Garboden and Rosen 2019; PJC 2015).

DATA AND METHODS

In this section, we describe the qualitative fieldwork and administrative records used to tell the story of Landlord-Tenant Court. In addition, we provide a preliminary sketch of the legal process for tenants in Washington, DC, as they navigate the eviction process. We note that all of our data was collected before the COVID-19 pandemic, and there are aspects of the court process that may have changed since then, largely in response to the public health crisis. Since our data collection took place before this period, we cannot speak to the effect of these changes. Our goal with

this analysis is to point to the kinds of practices and procedures that are common in eviction courtrooms across the country, in order to better understand how they shape experiences in eviction court for landlords and tenants.

Qualitative Fieldwork

From February 2018 to February 2019, the first author spent over 420 hours in Landlord-Tenant Court. He observed court throughout the day, between 8:30 a.m. and 5:00 p.m., on every day of the work week. Observations were made while waiting in security lines, lingering in the hallways, frequenting the clerk’s offices, viewing the court docket, and sitting in the courtroom. During this yearlong ethnography, he regularly observed court proceedings and interactions between court actors, both formally inside the courtrooms and informally in the hallways. He spoke regularly with tenants, landlords, attorneys, and court staff.

While making observations in the court, the lead author also conducted approximately 200 informal interviews with tenants, landlords, attorneys, and other court actors (e.g., social workers, process servers, law students). The majority of tenant respondents were African American women, while the majority of landlord and attorney respondents were white men. Each respondent was asked about their case and experience in Landlord-Tenant Court. Conversations with court parties complement the ethnographic observations to provide insight into how parties understand the procedures of the court. In addition to the hours spent in Landlord-Tenant Court, the lead author conducted 14 hours of fieldwork in three mediation sessions. The court provides these pre-trial mediation sessions to help landlords and tenants resolve disputes before seeing the judge.

Throughout this fieldwork, the lead author took brief, contemporaneous notes about processes, people, and situations. He recorded by hand verbatim quotes from courtroom actors and typed these notes in full at the end of each day. The lead author also systematically collected data about various aspects of the court, including the number of cases on the docket, the time spent waiting in the courtroom, the rate of no-shows

during roll call, rates of legal representation, auditory issues in the courtroom, and judicial intervention in the courtroom process.

Administrative Records from the DC Courts

Extending the ethnographic observation of the courtroom, we draw on an administrative dataset of all eviction filings in Washington, DC, in 2018.² We geocode these records based on the residential address of the defendant to map the location of eviction filings. For each case, our records include every legal action taken, including the date of the initial hearing and the final outcome.

To supplement these records, we coded a random sample of 14,000 records from the *Summons to Appear in Court* and the *Verified Complaint for Possession of Real Property* forms filed with the Landlord-Tenant Court.³ These forms are the first step in the legal process of eviction taken by landlords. They include information on the amount of outstanding rent and fees owed by tenants, the dates over which rent was not paid, whether or not a defendant was recorded as pro se—indicating the absence of legal representation, whether or not the plaintiff had legal representation, and the Unified Bar Number of the representing attorney. This final piece of information enabled us to map the cluster of legal firms representing landlords in eviction court—a key intervention in understanding the concentration of plaintiff lawyers in Landlord-Tenant Court.

Notably, this unique combination of administrative records and rich ethnographic data offers an unusually nuanced look into the court system. These records allow us to quantify core features of eviction court to provide a complementary quantitative context for the ethnographic observations. For example, while we know that eviction proceedings overwhelmingly ended with a default judgment, court records enable us to precisely identify the share of filings that ended in default. These administrative records extend the ethnographic analysis by quantifying courtroom events and verifying information collected through the ethnographic research in the administrative records.

Official Procedures in Landlord-Tenant Court

The Landlord-Tenant Branch of the Civil Division of the Superior Court, where all eviction cases are heard in Washington, DC, handled more than 30,000 eviction filings in 2018.⁴ In the District, landlords may only evict a tenant for “just-cause,” which includes 10 specific reasons detailed by statute.⁵ About 93 percent of these cases involved filings for nonpayment of rent, while the remaining cases were filed for other reasons.

In nonpayment of rent cases, the eviction process begins when the landlord submits a written *Notice to Quit* to the tenant and provides the tenant 30 days to pay the outstanding rent or vacate. Under DC law, most tenants in nonpayment of rent cases (except those in public housing) can waive the right to receive this 30-day notice.⁶ After submitting a *Notice to Quit*, the landlord can file a *Verified Complaint for Possession of Real Property*, the legal filing of the eviction suit. Then a plaintiff must file a *Summons to Appear in Court* and *Notice of Hearing*, the official court documents requiring the tenant to appear in court. Next, the Clerk’s Office provides the plaintiff with a court date to insert on the summons. Typically, initial hearings are scheduled within three weeks of filing the complaint. While many cases are dismissed in Landlord-Tenant Court, as we describe below, the court may also enter a judgment in the case. Once a judgment for possession has been entered, the plaintiff must obtain a *writ of restitution*, a document that authorizes the execution of a judgment for *Possession of Real Property*, in order to evict the defendant. The court then files the writ with the U.S. Marshals office for the eviction to be scheduled and carried out, unless the writ is canceled.⁷

FINDINGS

We begin this section by describing the caseload in the overburdened Landlord-Tenant Court. In 2018, the court handled 30,955 eviction filings. While the volume of cases underscores the burdens of the courtroom, this does

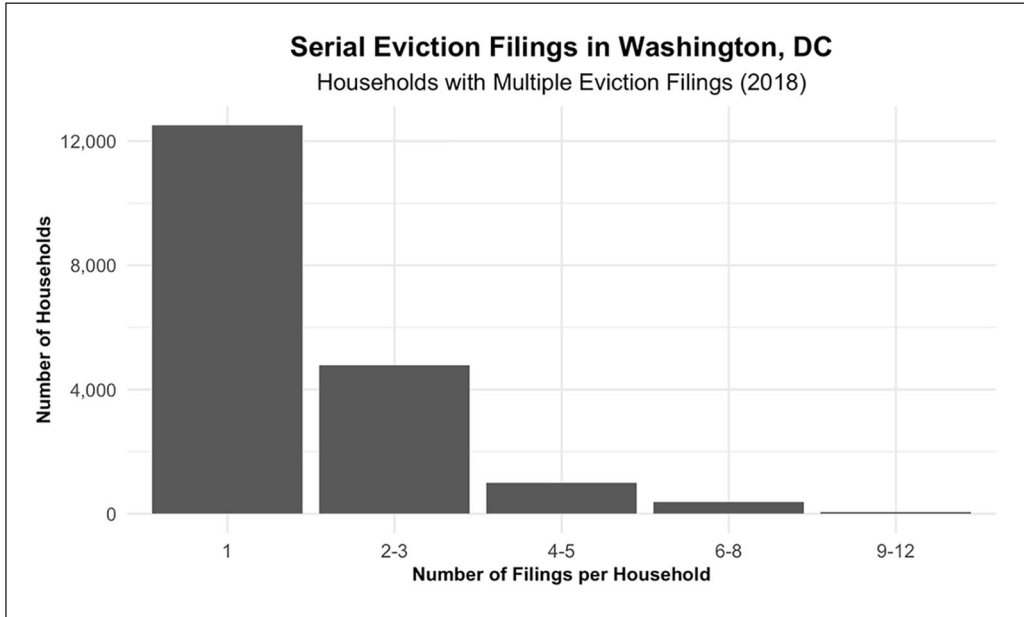


Figure 1. Serial eviction filings in Washington, DC.

Source. DC Court System. Court records are linked on exact matches of last name, first two characters of first name and numerical address.

not equate to 30,955 unique households summoned to appear in court. Instead, given the prevalence of serial eviction filing—a process by which landlords file eviction notices against the same household repeatedly within a year (see Garboden and Rosen 2019; Immergluck et al. 2019; Leung et al. 2021 for more on serial filing)—we estimate that 18,719 unique households—or about 11.3 percent of all renter households in the District⁸—received at least one summons to appear in court.⁹ Even so, as we show throughout this section, the volume of cases shapes the experience of tenants appearing in Landlord-Tenant Court. As we report in Figure 1, two-thirds of these households—about 12,505 in total—received only a single eviction filing against them in 2018. The remaining one-third of households received two or more filings that year. Although tenants experiencing serial filings are visible in the administrative data, they remain fairly invisible to judges and court staff. Judges and court staff regularly rotate through the court, either weekly or monthly, and they process hundreds of cases each week (and sometimes, daily). It is unlikely that a tenant with multiple filings

would appear in front of the same judge; even if they did, it is unlikely that court staff would recognize them given the volume of tenants in Landlord-Tenant Court. In contrast, the number of landlords filing a case in eviction court is quite small, and the pool of attorneys representing them in the courtroom is even smaller. In 2018, around 2,000 unique landlords filed at least one residential eviction notice in Washington, DC, but our analyses of administrative records show that just 10 of these landlords (or companies) were responsible for 40 percent of eviction filings. Lawyers from just 15 firms were responsible for representing landlords in 95 percent of these filings.

Tenants experiencing eviction proceedings in Landlord-Tenant Court come from the poorest communities in Washington, DC. Address records provided by the court show the spatial concentration of evictions in census tracts located predominantly in racially segregated neighborhoods east of the Anacostia River. In Figure 2, we plot the rate of eviction filings (per hundred renter households) in a census tract against two demographic measures of a neighborhood—the poverty

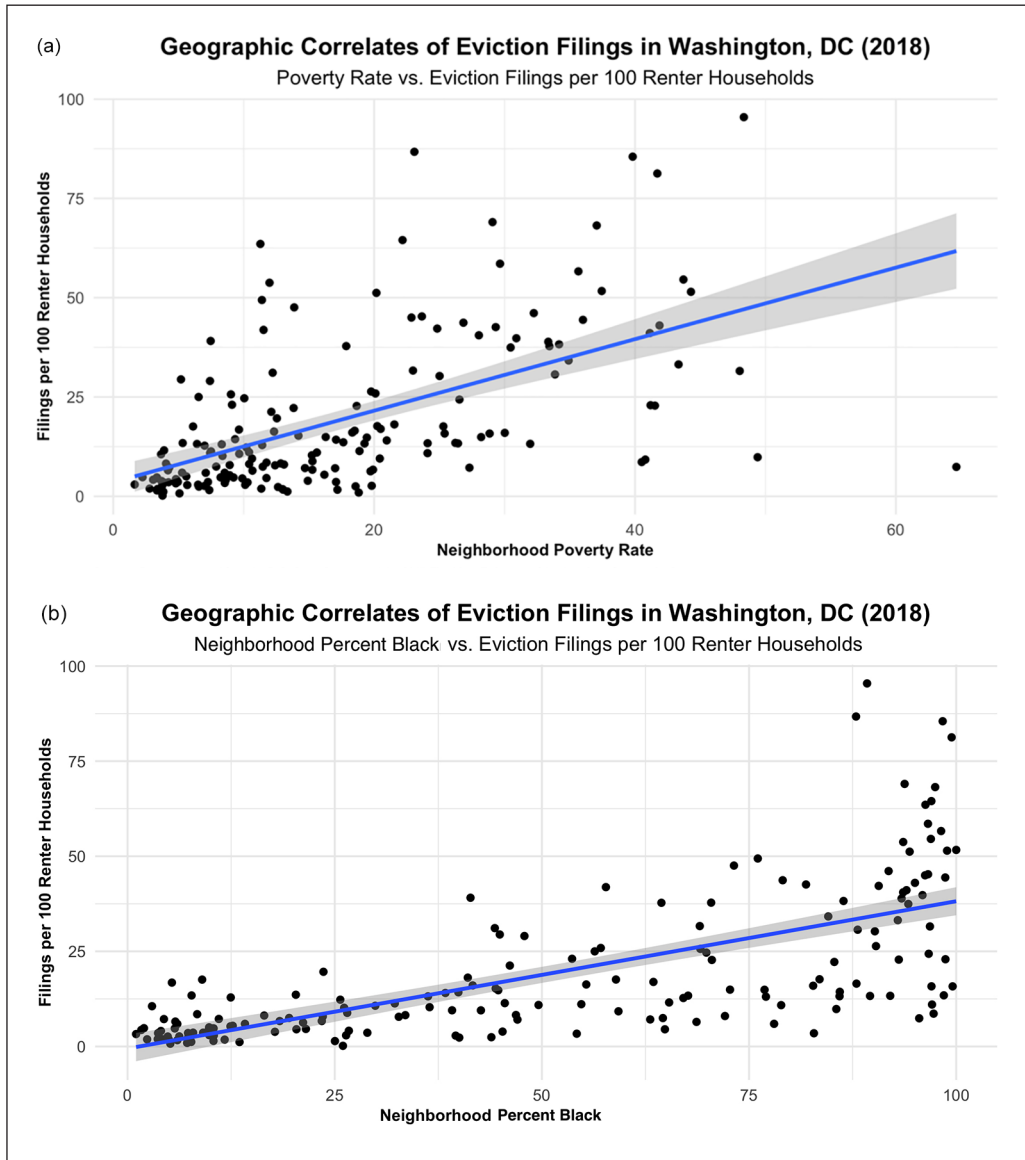


Figure 2. (a) Scatterplot of neighborhood eviction filing rate by poverty rate. (b) Scatterplot of neighborhood eviction filing rate by share African American.

Source. Data are merged from the DC Court System and the 2017 Five-Year Estimates of the American Community Survey.

rate and the share of Black households. These scatterplots confirm that the rate of eviction filings is higher in Black and socio-economically disadvantaged neighborhoods compared with other neighborhoods throughout the city. Tracts with the highest rate of eviction filings are located in sections of the city with

the largest Black populations and the highest poverty rates. Although our administrative records do not provide information on the race or income of the tenant, households arriving at Landlord-Tenant Court are coming overwhelmingly from poor, predominantly Black communities throughout the city.

Inadequate Accommodations and Confusing Procedures

Each morning, scores of people file into the front doors of 510 4th Street NW, the building that houses Landlord-Tenant Court in the District of Columbia. They go through the metal detectors and into the hallway before finding a seat in the building's main Landlord-Tenant Courtroom on the first floor, B-109, or the secondary courtroom on the second floor, B-53. On any given day, we observed dozens of people navigating the courtroom: elderly women with walkers, middle-aged men wearing the uniforms of health care providers, construction workers, security guards, transit workers, mothers and fathers pushing strollers. Coming overwhelmingly from the neighborhoods east of the Anacostia River, almost all tenants are Black, as are many of the court's staff—the security marshals, clerks, administrators, and janitors that keep the courtroom functioning. By contrast, attorneys and judges are almost entirely white.

The spaces of the courtroom are chaotic and busy. Some cases are intimate and dramatic affairs: brothers and sisters file evictions against one another as their mothers watch, young women stand in for incarcerated boyfriends, recently divorced men file against ex-wives. Organizers and activists argue with the court's staff and get kicked out of the building. In the hallways, attorneys and clerks sprint between rooms carrying papers and manila folders. The hallway and the courtroom are a sea of yellow papers—the color of the *Summons* forms that tenants receive notifying them of the eviction suit filed against them. Given the volume of cases processed every day, Landlord-Tenant Court has been described as “a theatre of conflict” (Bezdek 1992; Purser 2016).

Each week, landlords in Washington, DC, file an average on 574 evictions with the court, or about 115 cases every day. On the busiest week in 2018—a week in late-July—landlords filed against nearly 1,200 tenants. On an average day in Landlord-Tenant Court, we observed 74 individuals sitting in the main courtroom, B-109, during roll call.

Proceedings begin late and run late. Like the hallways, it is often loud and difficult to hear in B-109. Babies crying, cell phones ringing, people coughing, and hushed conversations compete with court proceedings on any given day. Parties frequently enter and exit the courtroom through one of its two heavy doors. The sheer size of the courtroom makes court procedures difficult to hear and follow.

Upon entering the building, the courthouse provides few instructions for navigating both the physical layout and its proceedings. There is little signage about where to go, who to speak with, or where services are located. When there are instructions, they are often inconsistent and confusing. Michaela, an African American tenant in her thirties, told us,

When you go in the court, they tell you to go across the hall [to the clerk's office]. When you there, they tell you to go upstairs [to the resource center]. And when you up there, they tell you to come all the way back down [to B-109]. It's just a big run around!¹⁰

There is no centralized or clearly delineated place to “check in.” Like many others, Claudia, an African American tenant in her thirties pushing a baby in a stroller, asked audibly to no-one in particular, “Where do I go to check in?” Janae, an African American tenant in her 70s, explained,

Okay, so you go through the front door and it really does not point you to where you got to go. It don't say with, like, a sign that's ‘*This way is the Landlord-Tenant.*’ You're already embarrassed, so you don't want to ask where to go.

In fact, tenants are assigned to a courtroom based on their case and they receive this information on the summons compelling them to appear in court, but it's easy to miss.

The confusion of the courthouse poses a particular challenge for tenants with physical disabilities. The doorways into B-109 and B-53 are narrow and the doors are difficult for individuals in wheelchairs to open without

the assistance of another person. Because the main entrance to the court is not handicapped-accessible, individuals in wheelchairs enter via a small, ramped entrance on the F Street-side of the building, but there is no signage at the front of the building indicating where this ramp entrance is located, or even that it is available. Since these conditions create extraordinary challenges for tenants with disabilities, they often result in tardiness to the roll call proceedings.

Once a party makes it into the correct courtroom, the instructions do not become any clearer. In B-109, there is no sign-in sheet. In contrast, all parties in the upstairs courtroom, B-53, *do* need to sign in to have their case called. On multiple occasions, we witnessed tenants wait for more than 30 minutes in B-53 because they did not know that they needed to sign in.

Information within the noisy and fast-paced courtroom is easily misunderstood or missed completely. Even before roll call begins, the judge asks the language interpreter in the room and the mediators to announce their services, but it is difficult to disseminate this information over the noise. Court officials (excluding judges) do not use microphones, and parties sitting near the middle or back of the room often cannot hear the announcement. Tenants in the courtroom regularly told us they had not heard this critical information, denying them access to interpretation or mediation services that could be beneficial to their case.

Each morning, the presiding judge takes the bench to give an opening statement. After explaining the timeline for the day, they provide an overview of the basic laws and procedures that govern landlord and tenant matters. Following these announcements, the court begins with a roll call. During roll call, the clerk calls every case on the docket and allows parties to state their name to announce their presence. On average, we observed the court speed through 148 cases each day—a clear indication of the caseload burden in Landlord-Tenant Court. There were 22 days during 2018 when the court processed more than 175 cases in a single day.

Proceedings move very quickly and without much instruction. On average, we observed that the roll call takes 27 minutes from start to finish. From our observation, at least twice per day, a tenant called out their name to state their presence during roll call but was not heard. On one day, we saw this happen six times. Given the legal consequences of being recorded absent during roll call, noise in the courtroom can have important legal implications for tenants.

When a tenant fails to appear at roll call for whatever reason, a default is entered against them, often in a matter of seconds. Administrative records from the court reveal that a default was entered at the time of roll call in 6,038 cases—about 20 percent of all cases—because the defendant was not present at the initial hearing. (This number also captures the fact that many tenants simply do not show up to court because of the opportunity costs associated with being absent from work and family obligations.) In DC, this default judgment sets into motion the eviction process unless the tenant exercises their *right to redemption* by paying arrearage.¹¹ This process marks a tenant's residential history and credit record, regardless of whether the tenant is ultimately evicted (Garboden and Rosen 2019; Rosen et al. 2021). Landlords benefit tremendously from the fact that tenants are frequently recorded as absent. As David, a white landlord attorney in his forties told us, “Hopefully they [the tenant] don't show up 'cause then the default is a lot easier. It's a harsh reality, but that's basically how it works.”

Meanwhile, if the landlord does not appear or is not present during roll call, the case can be *dismissed*. A dismissal means the case is closed without judgment against either party. Dismissals can also occur when tenants pay their arrears before showing up to court or if the court determines that there are not sufficient grounds to proceed with the case. Notably, a dismissal yields no significant consequences for a landlord except that he or she will lose the eviction filing fee—only \$15 at the time of this research—and will be required to re-file to proceed with the eviction case. While about one-third of filings each year—or 10,039 cases

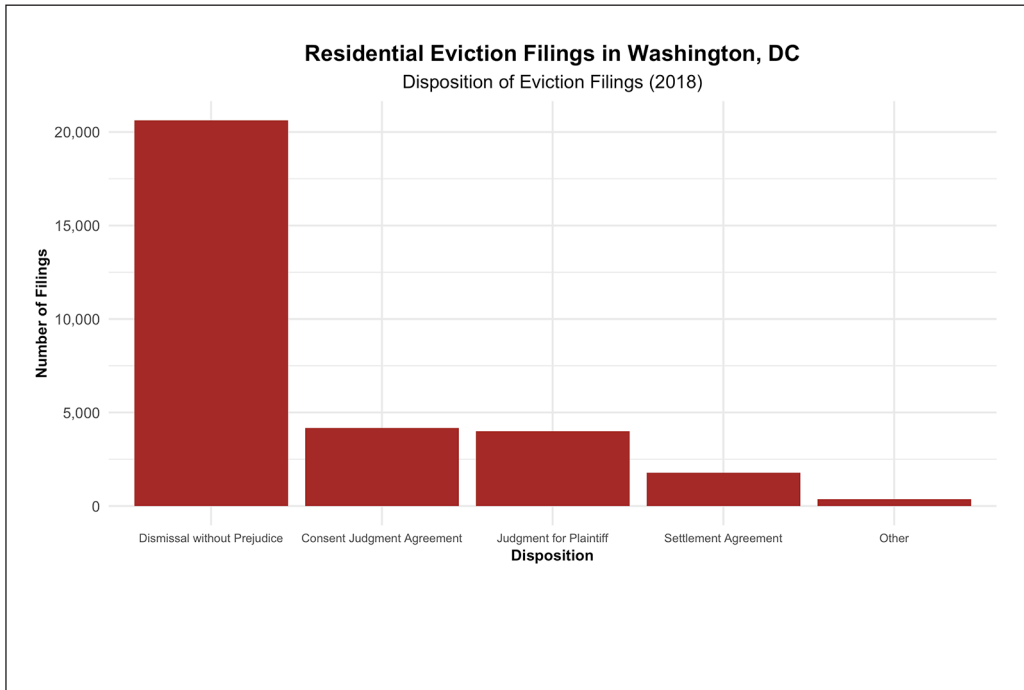


Figure 3. Dispositions of evictions filings in Washington, DC.

Source. DC Court System.

Note. Confession, Confession with Stay, Dismissal with Prejudice, Unclassifiable, Undisposed, and Judgment for Defendant are recoded as Other. Consent Judgment Agreement with Stay recoded as Consent Judgment Agreement.

in 2018—are dismissed at roll call, another one-third of cases are ultimately dismissed, thereby rendering *dismissals* as the modal disposition (59 percent) for cases filed in Landlord-Tenant Court.

We report this, along with other categories of case disposition, in Figure 3. We observed that an average of 46 cases per day are dismissed by the landlord or their attorney immediately during roll call. This is about 28 percent of the total cases on the docket each day, according to our observations. Reading and dealing with these cases during roll call consumes a significant portion of time—time that might be better allocated to slowing down proceedings or explaining aspects of the court procedure to unrepresented parties.

Procedural Inconsistencies

In addition to inadequate instruction and confusing procedures, we also observed numerous

procedural inconsistencies in the application of formal rules. During the morning roll call, some judges ask for parties to stand up when they state their name, but most judges do not. Some judges ask for tenants to state their name alone to announce their presence during roll call, but others ask tenants to state their name followed by the word “here.” Although cell phone use in the court is technically prohibited, attorneys are frequently on their phones in the room. Food and drink are prohibited, but many attorneys carry around a cup of coffee. Over the course of our fieldwork, we never observed these rules posted in the court. While some of these rules are outlined in the “Code of Conduct for the Public” available online from the DC Superior Court, the rules are primarily learned through a judge or clerk admonishing a party for their breach. This ambiguity empowers the staff of Landlord-Tenant Court with broad discretion to apply rules, dole out punishments, or render admonishments as they

see fit. These actions create power imbalances within the courtroom.

On average, we observed that proceedings in B-109 begin 15 minutes late. Once proceedings start, the judge takes the first 10 to 15 minutes to read morning announcements before a roll call that lasts an average of 27 minutes. On an average day in Landlord-Tenant Court, the first initial hearing—scheduled for 9 a.m.—is not called until at least 9:52 a.m. The court goes on recess at the judge's discretion at various times throughout the day—often, between two to five times per day—and these unexpected interruptions prolong proceedings for tenants waiting in the courtroom. Occasionally, the judge or clerk will announce the duration of the recess; other times, they do not. The court does not identify the reason for the recess, what parties should do during the recess, or where they should be during the recess. We observed recesses that ranged in duration from 15 minutes to over an hour. Because the vast majority of landlords have lawyers who are paid to represent them and spend time in court resolving cases, landlords do not suffer in the same way from opportunity costs experienced by tenants.¹²

On one October morning, Lindsey, an African American woman in her thirties, sat down in a chair toward the middle of the hallway outside of B-109 during a recess. She was soon joined by Justin, a white man in his forties, dressed semi-professionally in khakis and a red, button-down shirt. Upon sitting down, Lindsey turned to Justin and asked if he was a landlord. He told her that he was. She shook her head and said, "I'd be doin' much better if I was at work. How you gonna get your rent if people ain't at work?" Clearly flustered and caught off guard, Justin did not respond. Like Lindsey, thousands of tenants with cases in Landlord-Tenant Court have responsibilities outside of the courtroom. They care for their children, go to work every day, and fulfill regular family obligations. For every tenant in Landlord-Tenant Court, there are opportunity costs of compliance. Inconsistent procedures in the courtroom heighten the opportunity costs as

tenants are forced to choose between appearing in court or spending time on responsibilities outside the courtroom. Spending excessive time in court often comes at the expense of outside responsibilities, but prioritizing outside responsibilities increases the risk of a tenant losing their case.

Procedural inconsistencies also have consequences for the proceedings themselves. For example, parties may call in to the clerk's office by phone at any time before their case or during the proceedings to explain their absence and ask to continue the case to a later date due to illness, family responsibilities, failure to receive notification, or travel. There are no official criteria with which to determine whether a tenant's request should be granted. We saw judges both grant and reject these requests. Some judges simply noted that the party called during proceedings when a case was called. "The tenant called to say that her daughter was sick and asked that we continue any time after next week," one noted. In contrast, others called the party's phone number over the courtroom's speaker system during proceedings to talk to them about why they were not in court. The vast majority of call-in requests that we observed were made by tenants, and the majority were not granted.

When tenants are present in the courthouse, but not inside the courtroom during roll call—or when a tenant is running late, but has alerted their landlord or their landlord's attorney—the landlord's attorney can let the court know that the tenant is present during roll call. This allows the tenant to avoid having a default judgment entered against them. However, a landlord or their attorney does this on behalf of the tenant of their own volition, thereby forcing tenants to rely on the generosity of the opposing party. In this way, a landlord could easily withhold from the judge her knowledge that a tenant is, for example, in the hallway or in the bathroom.

The negative effects of procedural inconsistencies disproportionately impact some tenants more than others: We consistently observed a failure to make proceedings accessible to

individuals with disabilities, mental illness, or illiteracy. Since individuals with disabilities and mental illness experience homelessness and housing instability at disproportionate rates, their experiences in Landlord-Tenant Court are especially important (American Public Health Association 2017; National Coalition for the Homeless 2009). When we observed a tenant who appeared to be struggling with mental illness, the court frequently lacked the institutional expertise to accommodate them. For example, we observed Jacelyn, an African American tenant in her forties, over multiple days during October and November. The first time we observed her in court, Jacelyn talked loudly over the judge's announcements and roll call. A clerk called two of the court's security officers into B-109 to watch her. Just as the officers were moving into the courtroom to remove Jacelyn for her "disruptions," her social worker arrived in B-109 and sat with her to de-escalate the tension. On the second occasion, when Jacelyn's social worker was absent, she was physically removed by the court's staff before the 9 a.m. proceedings started because she would not stop talking to one of the courtroom clerks. As with many other instances we observed in the courtroom, we did not observe any systematic practice or policy to coordinate with social workers, provide additional instructions, or make resources available for tenants, other than using the court's security marshals to remove individuals who were "disrupting" proceedings.

The added complexity of navigating the courtroom for clients with visual impairments or literacy concerns compounded the challenges of inconsistent rule applications. Tenants overwhelmingly come to Landlord-Tenant Court from neighborhoods with the lowest adult literacy rates in the city.¹³ On one October morning, we observed Alex, an African American tenant in his sixties, receive a consent magistrate form from the clerk in B-109.¹⁴ In frustration, he yelled at the clerk, "I can't spell or read, so I ain't going to be able to do this thing [fill out the form]!" The clerk did not turn around to look at Alex, and, almost inaudibly, whispered,

"Okay." So Alex said again, more loudly, "You hear me?!" The clerk, this time, turned around and said, "Yes, I heard you." He did not offer any alternative, nor did he acknowledge the concern Alex raised. Alex sat back down, resigned to the fact that he could not get any help.

While procedural inconsistencies may appear mundane, they create an institutional environment in which rights are poorly articulated and procedures are difficult to navigate. Although judges note that parties can bring questions to courtroom staff, judges commonly refuse to answer questions. In November, an African American judge in his sixties told a tenant: "Ma'am, the court does not take the time to explain the rules. I am not going to answer any more of your questions." This example underscores the crucial role that tenant attorneys could play as advocates to help tenants navigate both formal and informal rules and procedures.

Offloading Cases through Shadow Procedures

"Shadow" procedures—the parallel processes designed to help process the high volume of cases on the docket—additionally disadvantage tenants (Summers forthcoming). Given the significant congestion in Landlord-Tenant Court and the lack of sufficient resources to evaluate substantive evidence in each case, courtroom actors encourage the use of "shadow" processes, such as mediation and settlement agreements, to resolve cases more quickly. Both judges and clerks regularly prompt plaintiffs and tenants to resolve their cases outside the courtroom without judicial monitoring. If the parties resolve their dispute, they file either a settlement agreement or a consent judgment agreement. Administrative data reveal that about 19 percent of all cases result in a consent judgment agreement or a settlement agreement, accounting for approximately half of all cases not dismissed by the court. As Summers (forthcoming) argues, the prevalence of these types of agreements constitutes a "shadow" courtroom in which

landlords (or their representatives) and tenants make agreements *outside* the presence of the judge or other court staff. These agreements are then formalized and sanctioned by the court.

Both settlement and consent judgment agreements stipulate terms under which the landlord will *not* evict the tenant—typically, the tenant agrees to pay back rent by a given date and the landlord agrees to pause the eviction process until then. But there is a key difference between the two. While a settlement agreement *may* specify a remedy in the event that one party violates the terms of the agreement, a consent judgment *necessarily* involves the legal filing for possession of the property if the tenant fails to meet their terms. While settlement agreements are non-binding attempts to create payment plans, consent judgments are particularly risky agreements for tenants because they automatically set into motion the eviction process under a specified set of criteria. However, tenants often don't know the difference between these types of agreements.

We regularly observed how consent judgment agreements and settlement agreements led to case resolutions. Cases in Landlord-Tenant Court typically lead to settlement agreements through judicially unmonitored conversations between the parties in room B-113—a large sitting area attached to four smaller rooms that are designated for case resolution. These negotiations are predicated on an immense power imbalance between the two parties. Tenants often have very little information about their rights, and landlord attorneys are under no obligation to inform them of these rights. They can offer tenants any deal without court oversight. As one African American tenant in his fifties, Tim, told us,

[Talking with my landlord's attorney] was a bad move. I'll never talk to the attorney of an opposing team ever again. He serves his purpose, not mine. [He'd] screw me over and get me out of here in two days if he thought he could, with no regards for the reality of packing and becoming homeless.

Through shadow processes that bring these private parties together, the court reinforces the private system of property relations and enforces these agreements with the authority of the state.

Take the example of Paulos, a Latino man in his forties, whose ceiling collapsed from water damage. Despite his requests for repairs, his landlord had not fixed the damage. Not knowing his options, Paulos stopped paying his rent. While there are avenues for rent withholding in Washington, DC, based on the warranty of habitability, tenants without legal representation often experience difficulty in having their counterclaims properly accounted for after withholding rent outside of the proper legal channels. As in Paulos' case, settlement agreements are frequently used when a tenant claims that their landlord has failed to maintain the unit under the warranty of habitability.¹⁵ Since these tend to be complicated cases, these tenants would benefit immensely from the arbitration of a judge.

When he came to court, Paulos was ready to argue his case. He carried a manila folder with pictures of his roof and screenshots of text messages from his landlord. But Paulos' conviction waned when he spoke with his landlord's attorney in the hallway. Given his nonpayment over the previous 8 months, the attorney assured him that his eviction was inevitable. The lawyer continued piling on the pressure: "Having an eviction on your credit is not going to help when you try to get another place. It'll be much easier if you move out now and avoid the eviction," she told him. Paulos tentatively agreed to sign an agreement that he would leave, but asked for additional time to gather his belongings and find a new residence. Swayed by the lawyer's warnings that he would lose the case, he had lost the confidence to fight the eviction. He preferred to move out preemptively and avoid the official eviction record. When we asked about his interactions with his landlord's attorney, Paulos remarked, "It's a big fish eating a small fish. But I just don't want no hassle . . . I just don't have any power, man." Although Paulos might have had a

shot in court, signing his name to the consent agreement meant that he would not get the chance to argue his side.

Notably, there is no mechanism for monitoring what goes on in these informal conversations. Tenants often emerge with an agreement that they do not fully understand. This kind of procedure uses the veneer of consent to justify the unmonitored procedures that produce settlements. Settling often involves tenants' giving up significant legal pathways, especially when judgment is entered against them as part of the consent judgment agreement. These judgments—and the evictions that result from them—appear on a tenant's permanent rental history and credit. However, most tenants are unaware of these consequences.

Settlement agreements via judicially unmonitored conversations serve a functional purpose for the state by enabling the court to offload some of the cases in their caseload. Since the court does not have the capacity—in terms of physical space, staffing (e.g., number of judges) or business hours—to substantively and fully adjudicate each of the more than 30,000 cases filed annually, these agreements function to free up time and space in the courtroom. Rather than adjudicating each dispute, judges encourage landlords (or their representatives) and tenants to engage in private negotiations that are then backed by the enforceable power of the state.

Judges and clerks regularly prompt tenants to enter into settlement negotiations through informal mechanisms. Although this appeared to be motivated by the impetus to move cases through the courtroom as quickly as possible, the resulting binding legal agreements were clearly detrimental to tenants, given their lack of legal counsel during the negotiations. For example, one morning at 10:06 a.m., as the court took a recess, the clerk announced the recess would extend until 10:30 a.m., giving no explanation for the prolonged recess. The clerk then called the names of a couple tenants whose cases had not been called in front of the judge yet. He told them that they should go to room B-113 to meet with an attorney who commonly represents landlords

in Landlord-Tenant Court. The tenants nodded and headed out of B-109. Since tenants lack legal representation, this type of informal practice to encourage face-to-face meetings can leave tenants in a vulnerable position.

Without access to legal representation in these shadow proceedings, tenants in Landlord-Tenant Court often have little understanding of their legal rights. John, a 42-year-old African American tenant, received an eviction notice after he lost his job and got behind on rent. He showed up on time and sat through the judge's announcement and roll call. After the judge's prompting, he headed into room B-113 to try to reach a settlement with his landlord's attorney. After some conversation, John emerged from B-113 with a signed agreement. Before heading back into the courtroom to have the agreement signed off on by the judge, John remembered a piece of advice one of his neighbors offered—that he should check with an attorney in the Resource Center on the second floor before signing anything. The Resource Center provides attorneys from the DC Bar Association to advise parties without attorneys on their cases, but they do not represent parties during proceedings, and their capacity is limited, helping just a tiny fraction of tenants who make their way through the court.¹⁶

The agreement John had signed required him to move out of his apartment in three weeks. The attorney in the Resource Center told John that he was entitled to more time and was not required to agree to the move. John was shocked. The attorney in the Resource Center encouraged John to ask for more time—and he did. Ultimately, John got seven weeks, rather than three, and this time enabled John to find a new job and earn enough to pay his rent. At the attorney's advice, John entered into a settlement agreement, which would avoid an eviction on his residential history and credit records. Although he only spent 10 minutes with the attorney in the Resource Center, John noted that he would have otherwise been lost because of the "jargon" used throughout court proceedings. "I didn't understand that I had more rights when

it came down to landlord-tenant civil issues, that we [tenants] have a lot more rights than most people know.”

When tenants participate in these shadow procedures without legal advice, they are more likely to waive their rights and forgo resources. Tenants may elect to settle immediately as the most direct route to completing a case, and its attendant costs, expeditiously. One November morning, we spoke with two African American tenants, Jill in her forties and Emily in her seventies. Since both had cases in the court previously, they were familiar with the time and costs associated with compliance. As a result, both tenants planned to settle as quickly as possible. Although consent judgment agreements require tenants to give up significant legal rights, including the right to withhold rent if repairs are not made, many tenants are willing to make this trade-off to simply get out of court. Jill told us, “I don’t care anymore. I’m so done with this shit.”

How Landlords Benefit from Social Capital Resources

Since landlords and their representatives come to court frequently, they experience particularly high visibility and form connections with other court actors and familiarity with the procedures and staff in Landlord-Tenant Court. This social capital confers a set of advantages, both logistical and substantive, and shapes the underlying environment of the court in ways that advantage plaintiffs. Notably, given the speed with which eviction cases are called and processed by the court, these social capital advantages often generate quick but clear benefits to plaintiffs. And given the burdens of the system, landlord attorneys often rely on their relationships with courtroom actors to move their cases forward.

Social capital advantages are magnified by the small number of landlords—and the even smaller number of attorneys—handling eviction filings in Landlord-Tenant Court. In 2018, around 2,000 unique landlords filed at least one residential eviction notice in

Washington, DC, but our analyses of administrative records show that just 10 of these landlords (or companies) were responsible for 40 percent of these residential eviction filings.¹⁷ Six of these landlords each filed at least 1,000 evictions with the court in 2018. Together, these six plaintiffs are responsible for more than one-third of eviction filings in the city. The plaintiff with the largest number of filings—a well-known property manager and developer in the District—filed more than 4,200 alone, or one in seven eviction filings in the city. Beyond the concentration of filings with a small number of landlords, an even smaller number of attorneys represent the vast majority of plaintiffs. Analyses of administrative records reveal that lawyers from just three firms filed more than 62 percent of all eviction filings. Lawyers from just 15 firms were responsible for a full 95 percent of all filings in 2018.

In the courtroom, this plays out in clear ways: we commonly observed only one or two attorneys representing every landlord with a hearing on the docket in a day. Each of these attorneys is known by—and knows—the staff in Landlord-Tenant Court, including the judges and clerks. They greet each other on a first name basis, exchange fist bumps, and ask about each other’s personal lives. One cold December morning around 8:50 a.m., we watched as a white plaintiff’s attorney in his fifties was waived through a 14-person line to get through the metal detectors and security line stretching out the door. As he cut the line, one of the security guards asked the attorney, “How was the weekend?”

Because of their regular presence in court, plaintiff attorneys know the courtroom staff and their roles intimately. They know which clerks are responsible for different kinds of filings or questions. Unlike tenants, they know how the procedures of the courtroom function. While the informal procedures are hidden from unrepresented tenants, plaintiff attorneys know the language of the court and how to use the procedures of the court for the benefit of their clients. The reciprocal relationships are true, too. Court staff know

the plaintiff attorneys, and they know which attorneys are supposed to come to court on certain days of the week. When attorneys don't show, the courtroom staff often know how to reach them. Through the familiarity of their attorneys, landlords benefit from this social capital accrued with court actors in ways denied to unrepresented tenants.

The benefits derived from this social capital confer advantages to plaintiffs, including scheduling support and a network of last resort, in ways that do not accrue to tenants. The court regularly calls initial hearings based on the availability of plaintiff attorneys, and it groups together cases to permit these attorneys to handle all of their cases at one time, rather than waiting between cases. We observed that if a judge or clerk knows an attorney is occupied—for example, in the hall speaking with another tenant or working to reach settlements with tenants—the court will not call the cases for that attorney, even if the tenant is present. Similarly, when calling *Bell* hearings, *ex parte proof* hearings, or trials, the court organizes cases to ensure that an attorney's cases are clustered together, rather than calling them by case number.¹⁸ This is in stark contrast to the rare accommodations that are made for tenants, as we saw in the previous section.

In addition, the court regularly accepts informal requests from landlord attorneys to change the order of cases because of scheduling conflicts—a privilege that is not granted to tenants. In late September, an Asian landlord attorney in his forties motioned to one of the clerks before the judge had arrived. When the clerk came over, the attorney explained that he needed to leave by noon because he had an appointment that he could not miss. After a quick, 45-second conversation, the clerk responded, “Okay, I'll start with you first,” implicitly assuring the attorney that he would be out of there by noon. These kinds of informal requests led to a reorganization of the court's schedule in ways that were detrimental to tenants. Cedric, an African American tenant in his thirties, explained, “I took off work to make it down here today.

And then he [his landlord's attorney] called in to say he can't come and the judge continued it. What am I supposed to tell my boss?”

While scheduling flexibility eases the burdens on plaintiff attorneys, the vast social network within the courtroom creates a safety net to lessen the impact of any mistakes they make. When a landlord attorney is running late or is unable to show up in court, other attorneys in the court that day can fill in for their missing colleague. Landlord attorneys often duck into the hallway outside B-109 to make phone calls to colleagues who were supposed to be in court, but were absent. Attorneys take on cases in the place of a missing colleague to ensure that a case is not dismissed or improperly handled as a result of the absence. In September, we observed the clerk call a case for a large property management company that filed the largest number of cases in Landlord-Tenant Court in 2018. When no one responded, he waited a couple seconds before scanning his eyes down the aisles, searching for a white attorney in her sixties who often represents this company. To the whole audience, he asked, “Ms. Adams? This is your case. Are you here?” When it became clear that she was not in the courtroom, another white landlord attorney in her fifties looked up, raised her hand and told the clerk, “Adams stepped out. I can take the case.” The clerk nodded. This attorney said, “Emily French, for Adams, for the plaintiff.” The clerk nodded again and said, “Plaintiff present.” The tenant was absent, so French asked for a default—which the clerk granted. Defendants in Landlord-Tenant Court do not benefit from these types of advantages.

This kind of exchange is predicated on proximity between attorneys and clerks. French knew Adams, recognized she was not in B-109, and felt comfortable to cover the case. French also demonstrated proximity to the court as she interrupted the clerk during roll call to insert herself into the case. The clerk showed sufficient familiarity with the property management company and Adams to know that she represents the company regularly. He also showed familiarity with French

to recognize her and know that she could stand in for Adams.

In this way, landlords benefit from their relationships with one another. These relationships can help an individual landlord attorney when they may not know an answer to a question or the best way to handle a particular procedure, as they can draw on the network of knowledge from their colleagues in the court. Moreover, the court often disseminates information informally to individual landlord attorneys, who in turn share the information with other attorneys. Landlord counsel often consult with one another in the hallways of the court about how to deal with a particular case in the way most likely to elicit a desirable response from the court. This kind of advice-giving and mentoring relies on a familiarity with and proximity to the court's procedures, staff, language, and precedent.

Plaintiff attorneys also rely on their proximity to judges and other courtroom actors to garner systematic advantages in the courtroom. When the clerk or judge covers for a landlord, it highlights the institutional advantages garnered by landlords who spend a significant amount of time in Landlord-Tenant Court. We call these informal procedures that are dependent on social capital "prompts." Prompts happen when the court preemptively alerts a landlord or their attorney that a case is theirs when they had failed to notice, when the court enters an appearance for a plaintiff even when they have not stated their presence, when the court returns to a previous case after realizing that the plaintiff was present or wished to make a different request, or when the court stops proceedings to assist a plaintiff in getting more information about a case. Prompts are predicated on social capital because they require that the court and its staff recognize individual landlords or their lawyers. There exists no such equivalent for tenants, who are in court far less frequently, even if they have a serial filing. These informal prompts can occur during any stage of a case's proceedings, but they often occur during roll call. On average, we observed nine prompts per day.

On one day in November, the clerk called three cases for which the management company did not respond. The attorney for the company had stepped out of the room and had not yet returned. Although he was not present, the clerk announced, "Plaintiff present," rather than dismissing each of the three cases. On the first case for which this happened, the judge asked the clerk, turning his head away from the microphone, "Who called for that?" meaning, "Whose case is that?" The clerk responded, "That's Mr. Drew's case." The judge nodded and moved on.

One morning in February, the clerk called a case for which an African American tenant in his forties responded that he was present. When there was no response from the property management company or their attorney, the tenant paused and asked, "Can I request that it's dismissed?" The clerk paused and looked at the judge, who scanned the room. The management company files many cases with the court, so the regular attorney—a white man in his sixties—was well-known to the court staff. Upon seeing the attorney, the judge nodded to the clerk, who called out to the attorney. The attorney looked up, startled, "Jim Smith for ABC Management." The case was not dismissed, and the clerk moved on with the roll call.

DISCUSSION: TENANT'S LACK OF LEGAL REPRESENTATION AND COURTROOM DISADVANTAGE

As tenants in Landlord-Tenant Court navigate eviction proceedings, they typically do so without the assistance of an attorney. As we show throughout the article, the lack of legal representation compounds the disadvantages experienced by tenants in the courtroom. Previous estimates suggest that 90 percent of landlords have access to legal representation, but only 10 percent of tenants do (Engler 2010a). Without representation, tenants are more likely to lose their cases and be evicted (Donovan and Marbella 2017; Engler 2010b; Grenier, Wolos Pattanayak, and Hennessy 2013; Seron et al. 2001). In Washington, DC,

administrative records from Landlord-Tenant Court show that very few tenants are represented by counsel. In fact, in our administrative sample of DC cases from 2018, only 1.78 percent of tenants arrived to court with legal representation. The remaining 98 percent of tenants appear *pro se*, or without the legal representatives that most plaintiffs benefit from.¹⁹

Without the legal assistance to navigate courtroom procedures, tenants have difficulty decoding the “legalese” of the courtroom and negotiating with landlord attorneys. These difficulties are compounded by the pressures of poverty and the constraints of limited formal legal education. Michaela, an African American tenant in her thirties, summed up these dynamics well.

You got so many folks in here—they ain’t stupid, they just ain’t been in school for this stuff. They don’t have all the language and know all the lingo that you gotta know in there. Without a lawyer, they just walk all over you. They chew you out in there.

Although there is limited evidence that tenant legal representation leads to a substantial decrease in executed evictions, it is still likely to strengthen tenants’ position within the courtroom and mitigate the burdens of appearing in court (Ellen et al. 2021). Legal counsel could help tenants address concerns about the quality of their housing, thereby leading to broader citywide improvements in housing conditions in the low-income housing market (Sabbeth 2019). Given the disproportionate representation of Black women in Landlord-Tenant Court, expanded access to legal assistance is an important racial equity issue, too (Sabbeth 2018).

The lack of legal representation compounds the extraordinary opportunity costs to tenants of complying with the mandates of the court system. As tenants maneuver through a myriad of obstacles in their cases, they feel pressure to minimize the time spent in the courtroom. But at each step of the process, courtroom procedures impose burdens upon tenants—burdens broadly documented

elsewhere in the lives of the poor as well (Auyero 2012; Koppelman 2018; Mott 2022; Purser 2012). The ambiguous courtroom procedures and inconsistent application of rules increase the amount of time spent waiting at multiple points in the process. Unexpected recesses, delayed starts, and long wait times deepen the opportunity costs for poor tenants. To minimize the time they spend in the courtroom, tenants often fail to appear in court and waive substantive rights and resources when they do appear. To the degree that these ambiguities and inconsistencies discourage tenants from even appearing in court, they result in substantively worse outcomes for tenants. When tenants do not arrive ontime at roll call, they risk missing crucial information. The lack of resources for compliance structures tenants’ decision-making process around coming to court at all.

Together, the lack of legal representation alongside the high opportunity costs of appearing in court create a conundrum for tenants experiencing the eviction process. Tenants frequently waived the opportunity to have cases continued, speak to attorneys in the Resource Center, or speak with court mediators because they realized that seeking legal counsel could prolong their cases and exacerbate the costs of appearing in Court. While these resources often do benefit tenants, they are not cost-free because they can generate delays in the case. Legal representation is the most powerful example of this phenomenon. Although the Resource Center provides free legal advising, tenants have to go out of their way to gain access to it. They must go to the court’s second floor and wait in a long line for a brief conversation with an attorney. While these barriers appear to be less significant compared with the valuable counsel that could lead to a more favorable case outcome, many tenants see this as an obstacle to minimizing hassle. Taylor, an African American tenant in her forties, explained to us why she forewent the chance to speak with an attorney, expressing a common explanation among tenants. “See, I’m not tryin’ to get no legal aid. I’m just tryin’ to leave.” She doubted the conversation

would provide any significant change in the outcome of her case, but was certain that it would prolong her court appearance.

CONCLUSION

From the moment they enter the courtroom, tenants experience unwritten and inconsistent rules and procedures that are disorienting, frustrating, and confusing. They are pushed into shadow procedures where the rules are unknown, and they lack the legal counsel to help decode these processes. Our ethnographic data show how landlords garner advantages from the social capital accrued by their lawyers in the courtroom. Administrative records reveal an extraordinary degree of clustering around a handful of plaintiff attorneys. Given this high degree of burden imposed on them, tenants often unwittingly bargain away their legal rights without a complete understanding of the consequences. In an effort to accelerate the process, minimize their hassle, and return to work or family, they sometimes give up substantive resources and rights to make claims in Landlord-Tenant Court. Importantly, the disadvantages described throughout the article are compounded for tenants with disabilities, including those with physical disabilities, mental illness, or limited language proficiency. These processes disproportionately burden tenants, create inequalities, and exacerbate existing power asymmetries between landlords and tenants. Together, these inconsistent procedures, ambiguous rules, shadow procedures, and uneven social capital within an overburdened court system amount to systematic disadvantage for tenants within Landlord-Tenant Court.

While previous analyses of courtroom procedures focus on criminal court, our analysis draws readers into eviction court—a system that is omnipresent in the lives of the urban poor (Desmond 2016). The processes we describe are centrally conditioned by the burdens of an oversubscribed system without the resources to adjudicate the volume of cases (Bezdek 1992). Courtroom

procedures used to efficiently process cases and reinforce the system of property relations ultimately lead to systematic disadvantage for tenants. Informal rules buttress existing power asymmetries. Our work demonstrates the compounded disadvantages of entering the courtroom without legal counsel. Resources that could forestall an eviction or reinforce the rights of tenants are often overlooked in courtroom procedures that confuse, disorient, and dissuade tenants. The dense social networks enjoyed by plaintiffs in the courtroom, including the personal and professional collegiality and reciprocity these networks engender highlight an important mechanism by which power is unevenly distributed through the judicial process. Guided by a careful ethnographic window into Landlord-Tenant Court, we push beyond an understanding of the formal procedures required to manage a case through the court system to understand the role of informality in the legal process. Our analysis highlights the methodological advantages of simultaneously deploying ethnographic and administrative data to show how these informal processes reinforce existing power imbalances inherent in the system of private property relations between landlords and tenants.

Our focus on what happens within the eviction courtroom must also be understood within a larger legal and social context. As research well documents, tenants are quite disadvantaged relative to landlords even *before* they enter the courtroom (Desmond 2016; Dreier 1982; Garboden and Rosen 2019; Hartman and Robinson 2003; Purser 2016; Rosen and Garboden 2022). While we do not see evidence that the procedures we identify are meant to intentionally harm tenants, the court's disregard for the uneven playing field at which landlords and tenants enter the courtroom, and their further disregard for the ways in which procedures further disadvantage tenants, is notable. This disregard is a product of an overburdened system in which tenants cannot afford their rent and landlords over-rely on the court to adjudicate late and unpaid rent. This results

in a court that functions primarily to reinforce property relations and serve as a debt collector for landlords rather than a legal arbiter of housing disputes. These findings highlight the importance of policy changes that help tenants to afford their rent and keep them out of court in the first place.

Our findings reveal how a set of confusing and inconsistent procedures, shadow processes, and uneven social capital burden tenants in eviction court also have important policy implications at multiple levels: systemic, proactive, and procedural. At the systemic level, policymakers should work to keep tenants out of Landlord-Tenant Court altogether. Reducing eviction filings necessarily begins with policies that generate sustainable, affordable housing for families at the highest risk of eviction. Washington, DC, should invest more in its Housing Production Trust Fund, deepen funding for the DC Local Rent Supplement Program, and consider implementing a yearly rent increase cap to generate affordable housing. These kinds of interventions would help to address the root causes of affordability that underlie many nonpayment cases that reach the court.

For tenants who experience an eviction filing as a result of a missed payment, the city should proactively encourage interventions to keep these cases out of Landlord-Tenant Court. We have argued that the role of the court is often simply to encourage landlord and tenants to engage in settlement agreements or consent judgment agreements. The city could better tailor its existing Emergency Rental Assistance Program (ERAP) to provide income-eligible tenants with access to relief funds *before* an eviction judgment entered against them. Since landlords and tenants frequently use an eviction filing as a tool to access ERAP, efforts to make the program more accessible to tenants would result in a substantial decrease in cases filed against tenants each year and would lessen costs of processing cases. The DC Council's recent recommendation for the court to raise the fee to file will likely help to address the very high filing rate by deterring superfluous

eviction filing. Reducing the number of filings will lessen the burdens on an overextended courtroom.

There are also important reforms that could be made within the court itself. The court should make existing programming—like the Attorney Resource Center, which provides unrepresented parties with legal assistance—available to parties prior to their appearance in court. By creating a telephone helpline staffed by the same DC Bar Association attorneys who staff the Resource Center, tenants could better understand their rights and options prior to an appearance in court. Although this intervention would not generate new resources or tools, it would target existing ones to more proactively assist tenants before setting foot in the court. Likewise, making the court's existing mediation services available to landlords and tenants prior to arrival in courtroom would both help parties achieve a desired outcome and reduce the volume of cases on the docket.

Finally, DC should work to ensure that the courtroom procedures are more just and equitable for tenants. The centerpiece of this intervention is a right to counsel for tenants involved in eviction proceedings. Providing a right to counsel would ensure that tenants are less burdened by the hidden procedures described throughout this article. Other procedural changes would help, too (Golio et al. 2022). The disorienting experience of the courtroom suggests that simple efforts to demarcate courtrooms, improve signage, use plain language to explain the process, and provide assistance to elderly, disabled, and non-English-speaking tenants would vastly improve the experience of tenants in Landlord-Tenant Court. Limiting the number of cases called on the daily roll call by dividing the daily cases into multiple courtrooms would eliminate many of the distractions within a single courtroom and level the playing field for tenants. In addition, the development of decentralized court systems would lessen the opportunity cost to tenants traveling long distances (Nelson et al. 2021). Finally, efforts to improve the availability—and

early communication—of tenant resources in the courtroom through fully staffed tenant resource centers would provide expert guidance to tenants experiencing knowledge asymmetries. Resource centers should also form connections with non-legal local organizations such as tenant associations, which have been shown to play a key role in helping provide the resources that tenants need to navigate the courtroom (Michener 2022).

While our analysis offers an in-depth look into the complicated hidden procedures of Landlord-Tenant Court, the most important implication from our research is also the simplest one: a legal process that is fair, transparent, and allows for impartial adjudication can help to ensure just outcomes and generate trust in the legal system (Rawls 1971; Tyler 2003). When processes do not follow these principles of transparency, impartiality, and equal representation, the court systematically advantages landlords and reduces the likelihood of tenants experiencing favorable outcomes. Inconsistent procedures and confusing rules throughout Landlord-Tenant Court render tenants more vulnerable to eviction. Unaware of their rights or the resources available to them, tenants regularly forgo the best pathways available to them. Frustrated throughout the process, they enter and leave the court confused by its layout and procedures. Cornered into choosing between compliance with legal procedures and taking care of important responsibilities in their lives, tenants often sacrifice long-term stability to care for immediate needs. Caught up in the already draining and precarious eviction process, they are made only more vulnerable to eviction as a result of their experience in Landlord-Tenant Court.

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NOTES

1. In 2021, the DC City Council expressed a sense of the Council encouraging the DC Superior Court to raise the filing fee to \$100 (Fairness in Renting Congressional Review Temporary Amendment Act of 2021, D.C. Law 23- 255 § 4(g)).
2. Our administrative records include five years of administrative data from 2014 to 2018. In this article, we include a single year of data (from 2018) because this year enables comparability with the coded sample of 2018 records and the year of the ethnographic analysis.
3. At several points in the coding process, we amended the coding procedures used by our research assistants to include additional variables in the analysis. Our final sample of hand-coded records includes 10,435 records coded for plaintiff representation and 5,104 records coded for defendant representation.
4. Notably, the caseloads of these courts vary widely across locations. The number of evictions filed in Court depends on a number of factors, including local laws governing eviction, the cost of filing an eviction notice, and the amount of time landlords expect to wait between a filing and an eviction (Nelson et al., 2021).
5. The 10 reasons are non-payment of rent; the tenant has violated an obligation of tenancy and has failed to correct that violation after notice; the tenant, or a person occupying the premises with or in addition to the tenant, has performed an illegal act within the rental unit or the housing accommodation; landlord seeks in good faith to recover possession of the rental unit for the person's immediate and personal use and occupancy as a dwelling; landlord has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person; landlord seeks to complete alterations or renovations to a rental unit, which cannot safely or reasonably be accomplished while the rental unit is occupied; landlord seeks to demolish rental unit and replace it with new construction; landlord seeks to complete immediate, substantial rehabilitation of the housing

- accommodation; landlord seeks to discontinue the housing use and occupancy of the rental unit; or landlord seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative.
6. This practice was prohibited by emergency legislation passed by the City Council in 2021.
 7. <https://www.usmarshals.gov/district/dc-sc/general/evictions.htm>.
 8. According to the 2018 1-year estimates of the American Community Survey (ACS), there are 165,936 renter-occupied households in Washington, DC (<https://censusreporter.org/profiles/16000US1150000-washington-dc/>).
 9. To identify unique households from our administrative records, we match cases from the administrative records based on exact matches of a tenant's last name, first two letters of a tenant's first name, and the numerical portion of their residential address.
 10. Names of all tenants, landlords, and judges are changed to protect confidentiality.
 11. In many other states without the right to redeem, a default judgment means that the tenant will be evicted (Donovan and Marbella 2017; NPR 2016; PJC 2015; William E. Morris Center 2005).
 12. Other research shows that landlords nevertheless do feel that paying an attorney or representative to show up for them is a burden, a hassle and a waste of time. However, the larger, more professionalized landlords factor in these court visits as part of the cost of doing business, and integrate it into their business models (Garboden et al. 2018).
 13. <https://weacted.files.wordpress.com/2017/07/dc-adult-literacy.pdf>.
 14. When cases are overseen by a magistrate judge, parties must consent to having their cases heard by a magistrate judge using a consent magistrate form.
 15. In the District of Columbia, the warranty of habitability is an implied right, meaning that it covers all leases and does not have to be written into the lease. If landlords or property owners fail to meet a specific set of standards of habitability, this right gives tenants several legal options. In DC, standards of habitability are the same as DC Code, "including keeping the premises safe and secure and free of rodents and pests, keeping the structure and facilities of the building in good repair, and ensuring adequate heat, lighting, and ventilation." https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2009_10_27_OTA_DC_Tenant_Bill_of_Rights_FOR_SH_COMMENT.pdf.
 16. If these attorneys meet with tenants who they think have a viable defense, and whose low incomes qualify them for free legal representation, they may refer those tenants to the "attorney of the day" program in room 221, which is staffed by either Bread for the City or the Legal Aid Society. These organizations do represent tenants, although they have limited capacity.
 17. While we report these data from administrative records, this is likely an undercount of eviction filings handled by the most active landlords or property managers. Often, large landlords that oversee multiple, multi-family properties in the city file using the development name, rather than the name of the management company, on the eviction filing, resulting in an undercounting of the number of filings per company.
 18. Either party can request for a protective order—meaning that the tenant pays their rent to the court until a case is resolved. When requested, bell hearings are held by the court to determine the merit of the request and the amount of rent that should be paid to the protective order. Often, tenants request that their protective order rent be lower than their lease rent due to complaints about their apartment condition or repairs not being made. Ex parte proof hearings occur if the defendant has answered at roll call and then fails to appear when the case is called a second time the same day or fails to appear for a hearing that is scheduled for another day and a default is entered (<https://www.dccourts.gov/sites/default/files/matters-docs/Civil-Division-Case-Management-Plan-Landlord-and-Tenant-Branch-April2018.pdf>). "The court may only enter a judgment if the plaintiff presents ex parte proof of liability and damages and files an affidavit in compliance with the Servicemembers Civil Relief Act."
 19. Administrative records show that 85 percent of landlords had legal counsel when they filed the court summons (2018), as shown by the Uniform Bar number, although this may be an undercount since not all landlords report their legal counsel on this form.

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