

# OPENING THE DOOR ON CHICAGO EVICTIONS

Legal aid attorneys  
make the difference



Lauren, 27, and her husband Michael live a block north of Marquette Park with their kids ages 2, 7, 8, and 11. Lauren works nights at a nearby Amazon warehouse and Michael is a mechanic at a nearby truck garage.

Lauren says she and her family might still be on a relative's couch or staying with family if she had not sought assistance when her landlord filed to evict them last year. "I wouldn't have been able to find another apartment with an eviction on my record," she says.

In December 2017, a pipe burst in the ceiling of their apartment, causing cracks and dripping water into their kitchen. They went back and forth with the landlord. Lauren called the city building inspector. The landlord presented her with a termination notice the next day, then filed an eviction soon after that.

"At that point I started calling around looking for help," Lauren said. She found many private attorneys only represented landlords, while others wanted to charge more than she felt she could afford. Then, a city 311 operator referred her to a legal aid help line, where she learned about Lawyers' Committee for Better Housing.

LCBH worked with Lauren to help her recover \$1,000 and the right to stay in the apartment until the end of March by which time the family had found a new home in the same neighborhood so her children remained close to their school. Plus their case was sealed from the public record.

"Luckily I found that help," Lauren said. "I wish everybody in a similar situation could get help."

This is the third of three reports that are available along with eviction data by community area and aldermanic ward on the Chicago Evictions data portal at <http://eviction.lcbh.org>.



Lawyers' Committee  
for Better Housing

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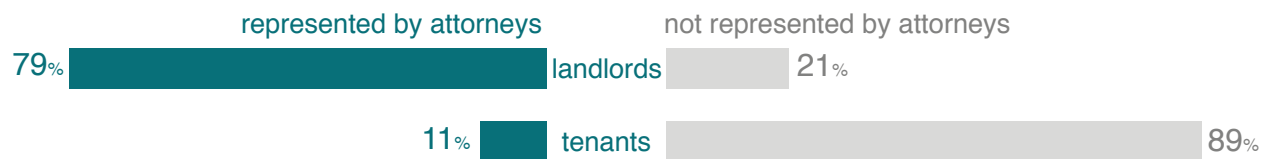
Photo by Erick Johnson, courtesy of  
*Chicago Crusader* newspaper

# WHAT THE DATA SHOW

## HAVING A LAWYER MATTERS

There was a vast imbalance in rates of representation between landlords and tenants. Between 2010 and 2017, Chicago saw an average of 23,000 eviction cases filed per year. In those cases, 79% of landlords had attorneys, while only 11% of tenants did.

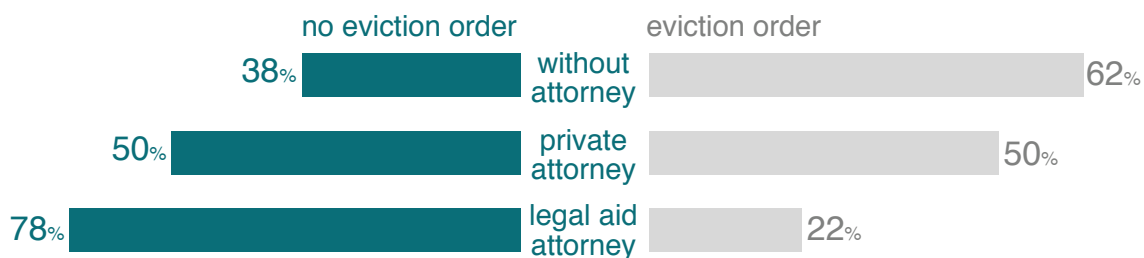
**Chart 1: Most Landlords Have Attorneys. Most Tenants Do Not.**



Without an attorney, the likelihood that an eviction order will be entered against a tenant is about 62%; with an attorney, it's about 45%. In other words, by having an attorney, tenants decreased their odds of getting an eviction order by about 25%.

The benefits of having an attorney are even greater when the tenant is represented by a civil legal aid provider, a non-profit organization that offers free legal help with non-criminal legal issues. 50% of cases where tenants were represented by private attorneys resulted in eviction orders. Legal aid representation resulted in eviction orders only 22% of the time, less than half the rate of their private attorney counterparts.

**Chart 2: Legal Aid Attorneys Make The Difference**



Analysis is based on Lawyers' Committee for Better Housing's (LCBH) review of Chicago residential eviction court records on cases filed during the calendar years of 2010-2017 with the Circuit Court of Cook County. The data, along with additional analysis and methods, can be accessed on the Chicago Evictions data portal at <http://eviction.lcbh.org>.

# DISCUSSION

## THE BENEFITS OF REPRESENTATION

Everyone deserves equal justice under law, but the reality is that millions of people lose their cases in civil court, not because they've done something wrong, but because they don't have the information or legal help they need. "The court system remains a system that was designed by lawyers with the expectation that there would be lawyers," says Martha Bergmark, executive director of Voices for Civil Legal Justice, a national organization that advocates for increasing access to legal representation regardless of ability to pay. "Most people don't have representation and yet it's still a system that very much contemplates that they will."<sup>1</sup>

Despite the severity of the impact that eviction proceedings can have on all aspects of a tenant's stability and well-being, the data show that only 11% of renters in eviction court had an attorney. Eviction orders can lead to a forced removal by the sheriff. They can also result in the termination of Housing Choice Vouchers or disqualify tenants from future federal housing assistance. A money judgment will have a negative impact on renters' credit scores, thereby increasing other expenses, as credit scores are often the basis for interest rates on credit cards, loans, and utility deposits.

Avoiding an eviction order is only one measure of the benefits of having an attorney. While some tenants without eviction orders were able to remain in their homes, many other cases were dismissed because renters moved or agreed to move. Attorneys assist tenants in asserting their rights as well as negotiating with landlords' attorneys on the amount of back rent owed and amount of time tenants have to move in order to find replacement housing. Tenants without lawyers – often without knowing their rights – sign agreements they either don't fully understand or feel pressured to accept in order to avoid what they believe will be an immediate eviction.

Tenants without attorneys are also often unaware that court records can be sealed, when this may apply, or how to request it. Public court records are used to create tenant blacklists, making it difficult for tenants with eviction court records to find new housing. Because the impact of an eviction filing is so detrimental, having a court record sealed can often be more important than the actual outcome of the case.

## WHY DON'T MORE RENTERS HAVE ATTORNEYS?

In civil cases, such as eviction, litigants do not have a right to be represented by counsel – landlords and tenants must obtain their own attorneys. Lack of access to attorneys is a significant barrier. Most tenants facing eviction cannot afford a private attorney and under-resourced free legal aid providers cannot meet the demand. The Justice Index ([justiceindex.org](http://justiceindex.org)) reports that Illinois has just 0.791 civil legal aid lawyers per 10,000 people under 200% of federal poverty line.<sup>2</sup>

Time is another barrier. Eviction cases are limited legal proceedings designed to provide a speedy resolution. Tenants are summoned to court for trial in as little as one week after receiving court papers. Tenants who know to ask may be allowed one additional week to seek an attorney. This timeframe provides scant opportunity for tenants who want an attorney to find, consult with, and retain appropriate counsel, or to apply and be approved for legal aid representation. In addition to the time barriers built into the eviction process, tenants with family or work obligations may not have time to seek out an attorney or meet with an attorney to prepare for trial.

Many tenants don't even consider seeking counsel. In *Time to Move*, LCBH found that "[T]he most common reasons cited by tenants for not receiving legal help included not having money and not believing legal assistance was necessary. Other reasons included that the tenant wanted to move, the tenant did not know they could get help, or the tenant thought such help would be futile."<sup>3</sup>

## PRIVATE AND LEGAL AID ATTORNEYS

Without an attorney, tenants avoided an eviction order 38% of the time; with private attorneys, tenants avoided eviction orders 50% of the time; and with legal aid attorneys, tenants avoided eviction orders 78% of the time. This key finding, that legal aid attorneys avoided eviction orders 50% more often than private attorneys, requires further exploration into case selection bias and variation in practice.

Selection bias may be one explanation for the difference in outcomes. Legal aid providers are under-resourced, and are forced to turn away many of the people requesting services. For example, in 2018, LCBH provided some level of legal service to less than 20% of those making inquiries. As a result, legal aid providers may preferentially accept as clients those tenants whose cases are most defensible, or who are best situated to take advantage of the opportunities for settlement that legal representation creates. Important factors for LCBH in evaluating cases include the degree of injustice occurring, the vulnerability of the client, likelihood of avoiding an eviction order, and the tenant's ability to pay rent.

In addition to selection bias, the economics of running a for-profit law office may contribute to the observed difference in outcomes. In order to keep their services affordable, private tenants' attorneys often limit their initial representation to a certain number of court appearances, with further representation contingent on additional payment. Legal aid representation is less time-bound, with most clients accepted for representation up to, and sometimes beyond, the conclusion of the eviction case. It is possible that this difference in initial commitment, and landlords' attorneys' awareness of that difference, may put legal aid attorneys in a better position to obtain favorable settlements for their clients. In addition, some legal aid offices have social workers on staff and relationships with outside social service agencies to assist renter clients to overcome barriers that may interfere with their ability to comply with move-out or repayment agreements.

LCBH's data show that legal aid providers represented only 20% of the tenants in eviction court who had attorneys, or 2.2% of all eviction cases. The data also seem to suggest that the number of cases handled by legal aid attorneys has declined by over half from 2010 to 2017. However, these results do not include any cases in which the court record was sealed, and anecdotal evidence suggests that the apparent decline in legal aid representation may in fact be a reflection of legal aid attorneys' increasing success in getting their clients' eviction files sealed. LCBH has seen substantial increases in the number of cases it has sealed in recent years, and other Chicago area legal aid providers have reported similar increases to us. Thus, while it is certainly true that legal aid attorneys represent only a small minority of tenants in eviction court, the limitations of the data set preclude any conclusion that the number of tenants represented by legal aid is declining in any significant way.

## "RIGHT TO COUNSEL" MOVEMENT

In criminal cases, defendants who cannot afford an attorney have a right to a public defender. In civil cases, there is no such right. The stark disparities in rates of representation between renters and landlords in eviction court, and disparities in outcomes, reveal an unfair system that runs the risk of undermining the legitimacy of the eviction court process.



“Individuals face really high stakes in the civil justice system,” noted Martha Bergmark, executive director of Voices for Civil Justice. “You can lose your children, you can lose your home, you can lose your livelihood without having legal help to get you through complicated legal proceedings.”<sup>4</sup>

There is an increasing consensus around the benefits of a right to counsel. Most notably, in 2017, New York became the first city in the country to launch a right to counsel for low-income tenants facing eviction. In 2018, voters in San Francisco approved Proposition F to provide legal representation to all tenants facing eviction regardless of income.

A 2016 cost-benefit analysis by Stout for New York found that recognition of a right to counsel would save the city money overall. Since the release of a similar study by Stout of Philadelphia in 2018, city leaders have begun debating an ordinance to create a citywide right to counsel there.<sup>5</sup>

While cautioning against drawing conclusions about its impact less than a year after its implementation, a recent public hearing on New York’s new right to counsel ordinance suggests that it has led to: 1) a more just process that has—so far—not overwhelmed the city’s housing courts; 2) judges spending less time explaining housing rights and court procedures to tenants; 3) reduced incidents of attorneys pressuring tenants to settle a case outside the courtroom; 4) faster settlements, since both sides have an attorney to work out the details; and 5) judges feeling like they can now take a more neutral role in cases, as they feel less pressured to advocate for tenants without attorneys.<sup>6</sup>

In Chicago, an Eviction Brief Advice Desk is being piloted by DLA Piper, LAF, and LCBH to assist tenants without attorneys. Volunteer lawyers educate tenants about the process and how to advocate for themselves, and often conduct informal hallway negotiations with landlords’ attorneys. Tenants with more complicated cases are referred to legal aid. “Although we were concerned initially that the judges might feel we were disrupting the courtroom, we’ve had a wonderful reception from the court,” said Anne Geraghty Helms, Counsel & Director of US Pro Bono Programs for DLA Piper, as is being similarly reported in New York. With increased resources, the advice desk could serve as a model for how Chicago could provide greater access to attorneys until “Right to Counsel” can be implemented.

# RECOMMENDATIONS

- 1. The Circuit Court of Cook County should establish a pilot program to collect more and better data about evictions to understand outcomes and impacts of eviction.**
- 2. Chicago should set up a Task Force on Eviction Prevention and Response.**
- 3. Illinois and Chicago should allocate adequate funds to implement a “Right to Counsel” for renters in eviction court.**
- 4. Illinois and Chicago should increase funding for legal aid tenant representation until Right to Counsel can be implemented.**

# ENDNOTES

1. Covert, Bryce “Poor People Don’t Stand A Chance in Court,” ThinkProgress, <https://thinkprogress.org/poor-people-dont-stand-a-chance-in-court-7e46bd4e5719/> May 11, 2016, Accessed 4/24/19. Also see <https://voicesforciviljustice.org>.
2. Illinois is 11th in the country. National Center for Access to Justice at Fordham Law School, “Number of Attorneys for People in Poverty,” <https://justiceindex.org/2016-findings/attorney-access/#site-navigation>, Accessed 4/24/19.
3. See Chadha, Lisa Parsons and LCBH, Time to Move: The Denial of Tenants’ Rights in Chicago’s Eviction Court, April 1996, <http://lcbh.org/resources/time-to-move>. Accessed 4/24/19.
4. Covert, Bryce, *ibid*.
5. See New York City Bar Foundation, <https://www.nycbar.org/media-listing/media/detail/new-study-finds-right-to-counsel-in-eviction-cases-would-save-money-for-nyc-1> Accessed April 11, 2019. Stout cost benefit analysis for New York City. Study conducted for Philadelphia Bar Association was released in November 2018, <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>. Right to Counsel: <https://info.stout.com/evictions>. Accessed 4/11/19.
6. Clark, Dan M. “Increasing Tenants’ Access to Counsel Has Raised Court Efficiency, Fairness, Judges Say,” New York Law Journal, September 24, 2018. <https://www.law.com/newyorklawjournal/2018/09/24/increasing-tenants-access-to-counsel-has-raised-court-efficiency-fairness-judges-say> Accessed 4/24/19.

## About Lawyers' Committee for Better Housing

Lawyers' Committee for Better Housing (LCBH) is the only legal aid agency in the Chicago area that advocates solely for renters. LCBH represents low- and moderate-income renters. LCBH prevents wrongful eviction, and combats sub-standard living conditions so renters have a safe and decent place to live. LCBH provides free, comprehensive legal representation so that renters have a trusted advocate in court. LCBH programs holistically address both the short-term housing crisis and its underlying causes by combining legal services with education, outreach, supportive services, and policy initiatives, so families can move from a path to homelessness to one of safe and stable housing.

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