



POLICY REPORT
MARCH 2020

Evicted in Buffalo: the High Costs of Involuntary Mobility



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Executive Summary: Findings and Recommendations

FINDINGS

BUFFALO HAS A MASSIVE PROBLEM OF INVOLUNTARY MOBILITY.

- In 2017, landlords filed 8,530 eviction cases and obtained 4,383 eviction warrants in a city with 65,227 renting households.
- Buffalo's eviction filing rate is far higher than that in cities such as Milwaukee, Cleveland, Cincinnati, and Philadelphia.
- According to national research, court evictions represent roughly one-quarter to one-half of involuntary moves.
- Of tenants interviewed in Buffalo's Housing Court, 37 percent had already moved once within the last two years.

EVICCTIONS AND INVOLUNTARY MOVES HAVE PERVASIVE NEGATIVE IMPACTS.

Employment. According to national research, those evicted are between 11 and 22 percent more likely to lose their job.

Education. In Buffalo, 16 percent of students, or more than 1,900 children, have experienced homelessness. Students experiencing homelessness are half as likely to be proficient in English Language Arts assessments.

Health. Involuntary moves often interrupt health care and health coverage and cause damaging stress. National research shows that residential mobility is associated with increased behavioral problems, earlier initiation of drug use, earlier onset of depression, and increased risk of teenage pregnancy.

Housing Quality. Evicted tenants tend to move into worse housing and worse neighborhoods than they left, even though they are often paying the same or more in rent. According to national research, they are 25 percent more likely to experience a long-term housing problem such as substandard housing. Their new neighborhoods have higher poverty and crime rates, and their new housing is more likely to have environmental health problems such as lead paint.

Homelessness. In Erie County, an estimated 5,824 people experienced homelessness in 2017. Of tenants interviewed in Housing Court, 56 percent said they had no place to go.

In 2017, landlords filed 8,530 eviction cases and obtained **4,383 eviction warrants** in a city with 65,227 renting households.

In Erie County, an estimated 5,824 people experienced homelessness in 2017. Of tenants interviewed in Housing Court, **56 percent said they had no place to go.**

Costs to Property Owners. Property owners face many costs when evicting due to nonpayment of rent: lost rental income, eviction costs (if the tenant does not leave voluntarily), and the costs of advertising and securing new tenants, among others.

Neighborhood Conditions. High rates of involuntary mobility contribute to neighborhood blight and disinvestment, resulting in lower property values for nearby owners and lower property tax income for municipalities and school districts.

EVICCTIONS CAUSE DISPROPORTIONATE HARM TO WOMEN, CHILDREN, PEOPLE OF COLOR, PEOPLE WITH DISABILITIES, AND OTHER VULNERABLE GROUPS.

- Of tenants interviewed in Housing Court, 72 percent were women, 67 percent African-American, 15 percent white, 13 percent Latinx, 1 percent Asian-American, and 4 percent identified as a different race or ethnicity. Twenty-two percent had one or more disability, and another five percent had someone in their family with a disability. Seven percent did not speak English as their first language. Evictions are concentrated in the most economically and racially segregated parts of the East and West Sides.

THE VAST MAJORITY OF EVICTION CASES ARE FOR NONPAYMENT OF RENT.

- Of the 80 eviction cases observed in Housing Court, 87.5 percent were non-payment cases.
- In a sample of 104 cases from 2014-2018, the median rent owed was \$1,200 and the median rent ranged from \$550 in 2014 to \$625 in 2018.

BUFFALO'S TENANTS FACE A SEVERE AFFORDABILITY GAP BETWEEN THEIR INCOMES AND RENTS.

- More than half of Buffalo households (50.6 percent) cannot afford their rent – i.e., pay more than 30 percent of their income toward their rent.
- Twenty-three percent of the city's households have severe housing cost burdens, paying more than 50 percent of their income on housing. Among black households, over 30 percent face severe burdens; among Latinx households, over 37 percent do.
- For tenants with incomes at or below 50 percent of the area median income, Buffalo-Niagara has a deficit of 14,821 units that are affordable and available. For those with extremely low incomes, there is a deficit of 31,146 units.

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More than half of Buffalo households (50.6 percent) **cannot afford their rent** – i.e., pay more than 30 percent of their income toward their rent.

- Real wages fell for City of Buffalo workers between 1979 and 2014, especially for low-wage workers and workers of color.
- Incomes are more volatile, as job tenure has decreased and involuntary part-time and seasonal employment have increased.
- Of tenants interviewed who had trouble paying rent, 66 percent identified loss of income, 29 percent indicated unexpected expenses, and 6 percent said they had refused to pay because of repair problems.
- For those who had lost income, 41 percent had lost their job, 15 percent had lost public benefits, and 11 percent had an injury or illness.
- Median rent in the city of Buffalo rose modestly from \$586 in 2005 to \$725 in 2017, but in certain neighborhoods, rents are rising more sharply. Of tenants interviewed, 35 percent had seen their rent increase in the last year. Of those facing increases, the median increase was \$50 per month.

THE ESSENCE OF HOUSING COURT IS THE FAST AND ORDERLY PROCESSING OF A LARGE VOLUME OF CASES.

Defaults are common. Of 80 cases observed, two landlords and 46 tenants defaulted by being absent.

Most tenants are represented by lawyers. Attorneys from Neighborhood Legal Services (NLS) and Volunteer Lawyers Project (VLP) represent any tenant with an income under 200 percent of the federal poverty line, which means that most tenants have a lawyer.

Relatively few tenants mount a defense to the nonpayment claim, and most cases end in a settlement rather than a hearing. Of the 32 cases where both parties were present, only one to five proceeded to a hearing, and only one resulted in an eviction; the rest were settled with a stipulation or adjourned.

The most common settlement is a mutual termination in which tenant will move out but will be given extra time to move out. In our sampling of 152 NLS non-payment cases from 2014 to 2018, 64 percent of tenants agreed to move out, and 36 percent made payment plans.

Emergency assistance is hard to access. Some tenants are able to pay their rent with emergency assistance from Erie County or a private charity, but many are not eligible or are unable to access it in time to save their tenancy.

Payment plans are usually successful. In a sampling of 29 private NLS cases with payment plans, only 6 ended with eviction warrants being issued.

Real wages fell for City of Buffalo workers between 1979 and 2014, especially for low-wage workers and workers of color.

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MOST TENANTS HAVE REPAIR PROBLEMS, BUT THEY ARE UNABLE TO HAVE THEM ADDRESSED IN COURT OR THROUGH CITY OR COUNTY HOUSING INSPECTIONS.

- Of the tenants interviewed, 59 percent reported problems with maintenance.
- Most tenants do not mount a habitability defense to their nonpayment cases because they owe too much rent money; many also lack proper documentation of the repair problems.
- Habitability defenses are difficult to make in Buffalo's Housing Court.
- The Court takes a narrow view of what habitability means and of how much rent abatement is justified.
- The Court feels that tenants with severe habitability problems are better off moving.
- More than half of tenants are not comfortable calling City housing inspectors or County health sanitarians about repair problems.
- Buffalo does not currently require certificates of occupancy for one and two unit rental properties, which means that they do not get regular, proactive inspections.
- New York State lacks an easy way for tenants to sue landlords for repair problems or to obtain rent abatements.

THE NEW YORK STATE HOUSING STABILITY AND TENANT PROTECTION ACT OF 2019 MADE DRAMATIC CHANGES TO THE LAW.

The new law slows the eviction process down substantially. This should have many impacts, including:

- Giving tenants more time to raise the rent money from work, family, friends, and emergency assistance programs;
- Giving tenants and their attorneys more time to gather evidence and mount defenses based on repairs and other issues;
- Making landlords less eager to file evictions, more willing to settle cases, and more willing to grant more time in move-out agreements.

However, given the gap between incomes and rents in Buffalo, and the shortage of decent affordable housing, we cannot expect the eviction problem to diminish substantially without further reforms at the local and the State level.

59 percent of tenants reported problems with **maintenance**.

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Recommendations

HELPING TENANTS PAY RENT AND ACCESS RESOURCES

Home Stability Support Legislation. New York State should pass the Home Stability Support bill, which will provide a bridge between the shelter allowance and 85 to 100 percent of the HUD fair market rent for the region. It will serve families eligible for public assistance who are homeless, being evicted or facing homelessness due to family violence or repair problems.

Supplemental Shelter Allowance. Erie County should join 11 other counties in the State by creating a supplemental shelter allowance that reflects the actual costs of renting an apartment.

Reducing BMHA Filings. The Buffalo Municipal Housing Authority (BMHA) should create a program based on that of the Syracuse Housing Authority to reduce eviction filings by having case managers contact tenants who fall behind on their rent.

Broader “Ability to Pay” Criteria for Emergency Assistance. In considering an application for emergency assistance, the Erie County Department of Social Services should consider the applicant’s reasonable probability of restoring income – for example, by regaining employment – rather than basing its determination of ability to pay rent on the applicant’s income as of the day of application.

Resource Information. The City of Buffalo, Erie County, and/or the State of New York should pass legislation requiring that eviction notices served on tenants provide information about emergency assistance. BMHA should voluntarily provide this information on its notices.

MAKING IT EASIER TO GET REPAIRS ORDERED IN HOUSING COURT

Emergency Fund Targeted to Repair Cases. Local governments and/or foundations should consider funding an emergency loan or grant fund for tenants facing eviction but ineligible for County Emergency Assistance, placing a priority on tenants in affordable housing with repair problems – thus enabling them to mount habitability defenses and get court-ordered repairs.

Tenant Paralegal. Local governments and/or foundations should consider funding for Neighborhood Legal Services to hire a tenant paralegal to help tenants facing eviction notices with tasks such as documenting repair problems, getting copies of inspection orders, making copies of rent receipts, applying for emergency assistance, and accessing resources.



*Marine Drive Apartments, a property of the Buffalo Municipal Housing Authority.
Source: Jason Paris*

Habitability Cases. In considering habitability cases, Housing Court should:

- Make it a priority to keep tenants in existing housing and get it repaired, rather than encouraging them to move;
- Order owners to pay for temporary accommodations for tenants while repairs are made, if it would be unhealthy for them to stay;
- Where repair problems have existed for previous months, order retro-active rent abatements and apply them to current and prospective rent owed;
- Order rent abatements for all repair and habitability problems, not just those threatening health and safety.

Making Information Available. The Erie County Health Department should make inspection records promptly and electronically available to tenants making habitability defenses to eviction cases, rather than requiring a freedom of information request and a substantial delay.

Housing Receiver. Housing Court's receiver program should be available in habitability cases in landlord/tenant court. Local governments or foundations should support additional staffing for housing receivership and a capital reserve fund that a housing receiver could use to make repairs immediately and repay itself out of the rents, rather than waiting for rent money to finance each repair. The City could also explore using a housing receiver to transition properties from tax foreclosure into tenant purchase, where the owner has died or abandoned the property but the tenant remains.

Safe Houses. Local governments and/or foundations should provide funding for safe houses where tenants can stay while repairs are being made to their homes, in cases where there is a danger to health, with costs being assessed to the landlord.

Tenant Repair Checklist. Housing organizations should create a tenant repair checklist (see example at Appendix 1) to help tenants when they are moving in, moving out, asking a landlord to make repairs, or documenting repair problems for a court action.

Tenant Remedies Act. New York State should pass legislation, modeled on Minnesota's, enabling tenants to bring fast and simple actions to force landlords to make repairs, in cases where landlords have failed to comply with inspection orders or written requests from tenants and in emergency cases.



INCREASING PROPERTY OWNER ACCOUNTABILITY

Illegal Units. Many rental units in Buffalo are not registered with the City, as required by law. Where a landlord attempts to evict a tenant from an unregistered unit, the Court should rule that the lease is illegal and void, and that the landlord may not evict until the unit is registered.

Proactive Inspections. As recommended in *Renewing Our Pledge: a Path to Ending Lead Poisoning of Buffalo's Most Vulnerable Citizens*, the City should phase in certificates of occupancy for all rental housing.

Reactive Inspections. In any eviction case where a tenant has reported poor conditions, the Court should order an inspection – regardless of the outcome of the eviction case.

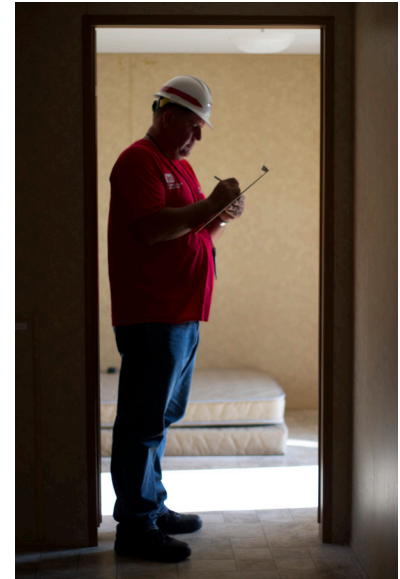
Just Cause Evictions. New York State should pass Bill 2892-A, which would ban an eviction based on no cause or based on an unconscionable rent increase.

Clean Hands Eviction. The City of Buffalo, Erie County, and/or the State of New York should pass a law that property owners with outstanding housing code violations may not file eviction actions. Until such legislation is passed, Housing Court should use its equitable powers to institute such a policy itself.

Problem and Out-of-County Landlords.

- The City of Buffalo should emulate Minneapolis and create a Problem Properties Unit and a tiered system of rental licensing in order to better target accountability and enforcement measures to problem properties.
- Landlords who repeatedly violate housing or health codes should lose the ability to operate rental properties. This could be done by denying rental registration and/or certificates of occupancy.
- City inspectors should collaborate with the State Attorney General and have the State bring cases against landlords with particularly egregious records.
- The City of Buffalo should place more limits on the ability of out-of-county owners to buy investment properties at the City's tax foreclosure auction.

City-Ordered Repairs. Where owners fail to complete repairs within a reasonable time, the City should hire contractors to make the repairs and reimburse itself through a tax lien on the property.



Rental Escrow Account Program. The City of Buffalo should adopt a program like the Rental Escrow Account Program in Los Angeles, in which tenants receive a rent reduction and may pay rent to a city-run escrow account when an owner fails to make city-ordered repairs in a timely fashion.

STRENGTHENING HOUSING COURT

Establishing the Housing Court Advisory Council. Buffalo's City Court should form a Housing Court Advisory Council to advise Housing Court and issue annual reports on its progress, as required by the law establishing Housing Court.

Restore Housing Court Staffing. The New York State Unified Court System should restore funding to Buffalo's Housing Court for the positions of executive director and court attorney/referee, which were lost to budget cuts. These positions will be essential if the Court is to handle more habitability cases and fulfill its potential as a problem-solving court.

WORKING TOWARD LARGE-SCALE SOLUTIONS.

Large-scale solutions involve policies that improve wages for the working poor and public assistance benefits for the disabled and unemployed, and policies that create and preserve affordable housing. For more detailed analysis and recommendations, see PPG's reports: "Poverty in Western New York: Causes, Impacts, Solutions" and "Affordable Housing Strategies for the City of Buffalo."



Introduction

In 2016, sociologist Matthew Desmond won a Pulitzer Prize for *Evicted: Poverty and Profit in the American City*. Desmond called the nation’s attention to the growing toll that evictions are taking on families, children, and communities. The home is the center of life, Desmond writes, and when people are forced to move from their homes, the consequences are dire.¹ *Evicted* exposes the “shameful and unnecessary” suffering that flawed public policies are causing.²

Through his book, scholarly articles, and Eviction Lab project, Desmond and his fellow scholars have done path-breaking work in quantifying and explaining evictions. Here in Buffalo, People United for Sustainable Housing Buffalo (PUSH Buffalo) has been on the front lines of organizing, advocacy, and neighborhood redevelopment for Buffalo’s tenants. Many of PUSH’s members have been harmed by involuntary mobility, and PUSH staff members such as Aminah Johnson have spent long hours advocating for tenants in Housing Court and helping them find and keep safe, decent, and affordable housing. We undertook this study for PUSH Buffalo to document the scope, nature, and costs of evictions in Buffalo and to suggest improvements to policies and programs in order to keep more families stably housed.



Aminah Johnson: Tenant Advocate

PUSH Buffalo, which does community organizing and green affordable housing development, has also done tenant advocacy for many years. Tenant Advocate Aminah Johnson offers many services, including documenting repair problems, working with housing inspectors, accompanying tenants to Housing Court, mediating disputes, and holding education sessions for tenants.

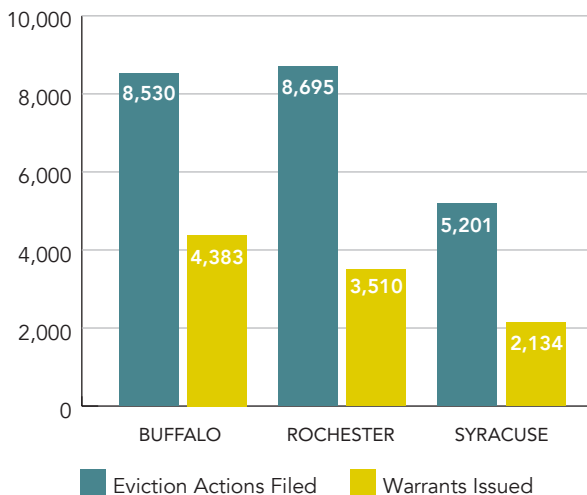
The High Number of Involuntary Moves in Buffalo

Involuntary mobility is one of the most severe problems facing Buffalo residents and neighborhoods today. The problem is particularly acute among renters with low incomes and renters of color. One of the worst kinds of forced moves is a court eviction.

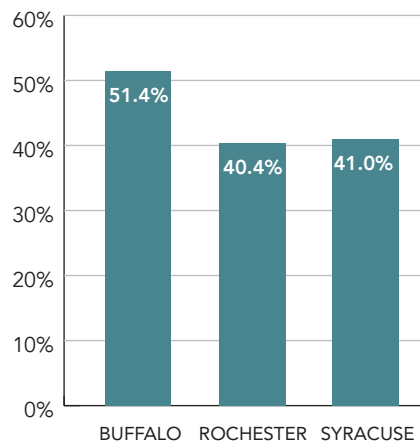
The Eviction Lab measures eviction filing rates around the country, based on the number of eviction filings compared to renting households. Their most recent data is for 2016. In that year, the percent of renting households that faced eviction filings in Cincinnati was 8.8 percent; in Cleveland 8.2 percent; in Milwaukee 8.6 percent; and in Philadelphia 7.5 percent.³ In Buffalo, by contrast, in 2016 there were 9,409 filings and 64,669 renter households,⁴ which would yield a filing rate of 14.6 percent. In 2017, there were 8,530 eviction filings and 65,227 renting households, which would yield a rate of 13.1 percent.⁵

Buffalo’s eviction rate is dramatically higher than in comparable cities such as Cincinnati, Cleveland, Milwaukee, and Philadelphia, but is similar to rates in Rochester and Syracuse.

EVICTIONS FILED AND WARRANTS ISSUED IN UPSTATE NY CITIES (2017)



PERCENT OF EVICTIONS FILED IN WHICH WARRANTS WERE ISSUED IN UPSTATE NY CITIES (2017)



The Buffalo data, unlike the Eviction Lab data for the other cities, has not been “cleaned” for duplications and anomalies, so the actual rates would be slightly lower. Nonetheless, it is safe to say that:

- roughly 13 percent of renting households faced court evictions in 2017; and
- this rate is dramatically higher than in comparable cities such as Cincinnati, Cleveland, Milwaukee, and Philadelphia, but similar to rates in Rochester and Syracuse, suggesting that cities in upstate New York share a significant problem with evictions.

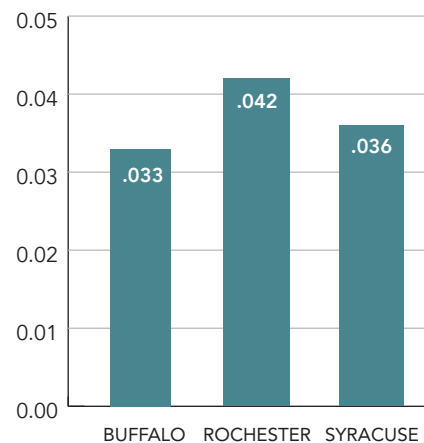
The 8,530 cases in Buffalo led to 4,383 eviction warrants being issued by the court.⁶ If each warrant was for a different household, that would mean that 6.7 percent of renting households in Buffalo received eviction warrants in 2017. Interestingly, whereas Rochester, Syracuse, and Albany also saw high numbers of filings, their filings resulted in substantially fewer warrants. This discrepancy is a topic for further research. The issuance or non-issuance of a warrant does not reveal the ultimate result of a given case. Many tenants will move out – often based on a mutual termination agreement – without a warrant being issued. Most eviction filings result in a move, although some tenants reach payment plans with their landlords and remain in the home, and a small number mount successful legal defenses.

Court evictions are only a portion of involuntary moves. In one study of Milwaukee renters, Desmond found that 13 percent of the city’s renters experienced at least one forced move over the course of two years,⁷ and that formal evictions accounted for only 24 percent of involuntary moves.⁸ The other 76 percent of forced moves were made up of “informal evictions” (48 percent), landlord foreclosures (23 percent), and condemnations (5 percent).⁹ In another study of renters making forced moves, Desmond found 42 percent due to court evictions, 28 percent due to informal evictions, 22 percent due to foreclosure of the rental property, and 7 percent from condemnation.¹⁰ We cannot know the exact number of forced moves in Buffalo in 2017, but we do know that it is alarmingly high.

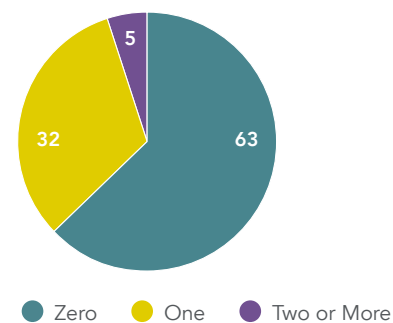
These involuntary moves are part of a broader problem of high mobility among low-income renters. Desmond’s data suggests that, for the poorest renters, one fourth of all moves are involuntary.¹¹ But even “voluntary” moves may involve tenants who do not really want to move, but feel that they must: because they are seeking affordable rent, better living conditions, a safer neighborhood, freedom from discrimination, harassment, family violence, or another threat to their wellbeing.

According to Census data, 18 percent of the City’s renters moved in the last year from another home within Erie County.¹² Mobility was high in some of the City’s hottest housing markets, but also in some of its most impoverished neighborhoods, where eviction rates are high. Of the 100 tenants we interviewed in Housing Court, 32 had moved once in the past two years, and five had moved twice or more. Twenty-three said they had moved by choice, whereas 14 said it was involuntary (in three cases due to family violence). In the Buffalo Public Schools, of approximately 34,000 students, 8,480 had address changes during the 2017-18 year.¹³

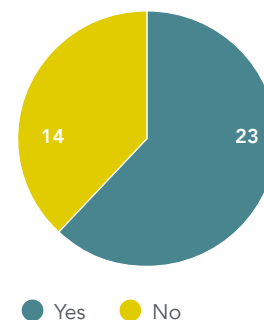
EVICTIONS FILED PER CAPITA IN UPSTATE NY CITIES (2017)



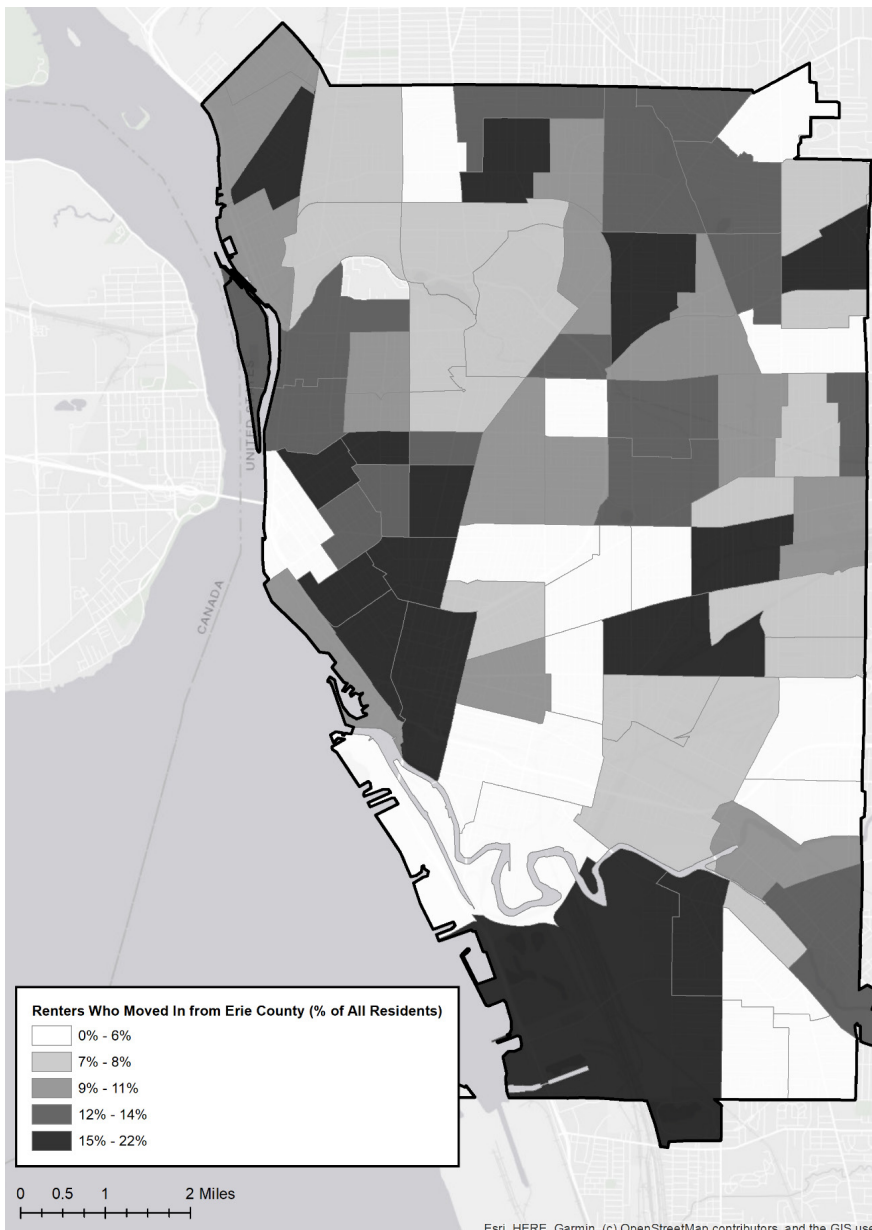
NUMBER OF TIMES INTERVIEWEE HAD MOVED IN LAST 2 YEARS



DID INTERVIEWEE MOVE BY CHOICE?



	In Owner-Occupied Housing	In Renter-Occupied Housing	Total
Population 1-year or older (universe)	105,854	140,719	246,573
Moved into residence within past 12 months from elsewhere in Erie County	4,536	25,313	29,849
As a percentage of universe	4.3%	18.0%	12.1%
Breakdown by housing tenure	15.2%	84.8%	100.0%



Impacts

Involuntary mobility damages families and communities. During the year after eviction, families experience 20 percent more material hardship than non-evicted families.¹⁴ Some components of that hardship are detailed below.

Employment. Forced moves often cause employees to miss work or perform poorly at work, which can lead to firing or job loss. In Desmond's work in Milwaukee, he found that about one in five working renters lost their home over a two-year span, and roughly one in five lost a job. Those who lost a home were between 11 and 22 percent more likely to lose their job.¹⁵ Even if they find new work, displaced workers who start new jobs earn roughly 17 percent less than if they had been continuously employed.¹⁶ Losing otherwise capable workers because of their housing problems is expensive for businesses, too. Unnecessary job churn and unemployment also harm communities – adding to social and public assistance costs and destabilizing neighborhoods.

Education. Forced moves have negative impacts on schooling. Mobility in general (including voluntary mobility) is linked to lower reading and math scores for students.¹⁷ The impact is worse if the student changes schools as well as houses; in elementary school, changing schools is equivalent to a 3-4 month disadvantage in learning.¹⁸ Children who move three or more times are much more likely to drop out of school.¹⁹

Homelessness is particularly damaging to children's educational development. A 2017 New York State report on children in grades 3 to 8 reported that, in Buffalo, 16 percent of students, or more than 1,900 children, had experienced homelessness at some point during the year. In January 2019, the Buffalo Public Schools indicated that it had roughly 852 students currently homeless, that approximately 1,800 would report homelessness over the course of the year, and that the number likely reflected under-reporting by the students.²⁰

Statewide, the typical student who was homeless was half as likely to be proficient in English Language Arts assessments.²¹ These educational impacts ripple out and affect whole schools, as it is harder to teach and learn in an environment where many students are dealing with involuntary mobility – missing school, switching schools, and dealing with disrupted lives.

Health. Forced moves worsen the health of adults and children for many reasons. The move itself causes stress, and it makes it harder to maintain continuous health care coverage and treatment. Involuntary moves also tend to result in worse quality housing, with more exposure to lead, mold, asthma triggers, pollution, crime, and injuries.²² Residential mobility in

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For elementary school students, changing schools equates to a 3-4 month disadvantage in learning.

general (including voluntary moves) is associated with increased behavioral problems, earlier initiation of drug use, earlier onset of depression, and increased risk of teenage pregnancy.²³ During the year after an eviction, mothers report depression 20 percent more than their peers.²⁴ Evicted tenants also suffer from higher suicide rates, and suicides based on evictions and foreclosures doubled between 2005 and 2010 as housing costs spiked.²⁵

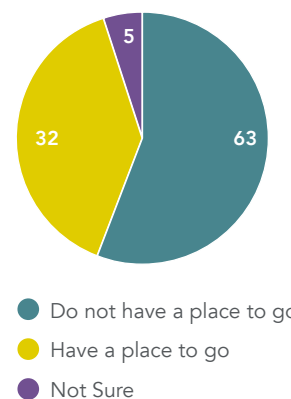
Housing Quality. When tenants are forced to move, their options for new housing are limited by many factors: the need to hurry; their negative rental history; and the challenge of raising money for a security deposit, first month’s rent, and moving costs. Discrimination against people of color, families with children, people with disabilities, and other vulnerable groups further limits their choices. As a result, tenants, especially low-income tenants, tend to move into worse housing and worse neighborhoods than the ones they left, even though they are often paying the same or more in rent. Renters whose previous move was involuntary are 25 percent more likely to experience a long-term housing problem such as substandard housing.²⁶ A forced move correlates with “more than a one-third of a standard deviation increase in neighborhood poverty and crime rates, relative to voluntary moves,” and the downgrade is particularly severe for African-Americans.²⁷

Homelessness. Nationwide, roughly half of people experiencing homelessness attribute it to eviction or other rental problems.²⁸ In Erie County, that proportion seems to be lower, but still large (see chart below). When we asked 100 tenants in Housing Court, “If you have to move, where do you think you’ll go,” 56 percent said they had no place to go, and 5 percent were not sure. The main barriers identified to finding a new place were affordability and lack of time. Three months after their court experience, we were able to reconnect with 12 of our interviewees to check on their progress. Most of the interviewees *still* hadn’t found an apartment and were living with family or friends.

In Erie County, an estimated 5,455 people experienced homelessness in 2015, 5,953 in 2016, and 5,824 in 2017.²⁹ Of those who suffered homelessness in 2017, 1,197 were children, nearly two-thirds of whom were members of female single parent households, and 229 were unaccompanied.³⁰ 54 percent of all homeless people were male, and 95 percent of male adults were single.³¹ While homelessness happens throughout Erie County, it is heavily concentrated on the East and West sides of Buffalo.³²

African-Americans are overrepresented in the homeless population, making up only 13 percent of Erie County residents but 53 percent of people experiencing homelessness.³³ Even when adjusted for poverty, the rate of homelessness is much higher among African-Americans. 7.5 percent of black people living below the poverty line became homeless in 2017, compared to 3.1 percent of whites.³⁴

IF YOU HAVE TO MOVE, WHERE DO YOU THINK YOU’LL GO?



FACING HOMELESSNESS AFTER A STROKE

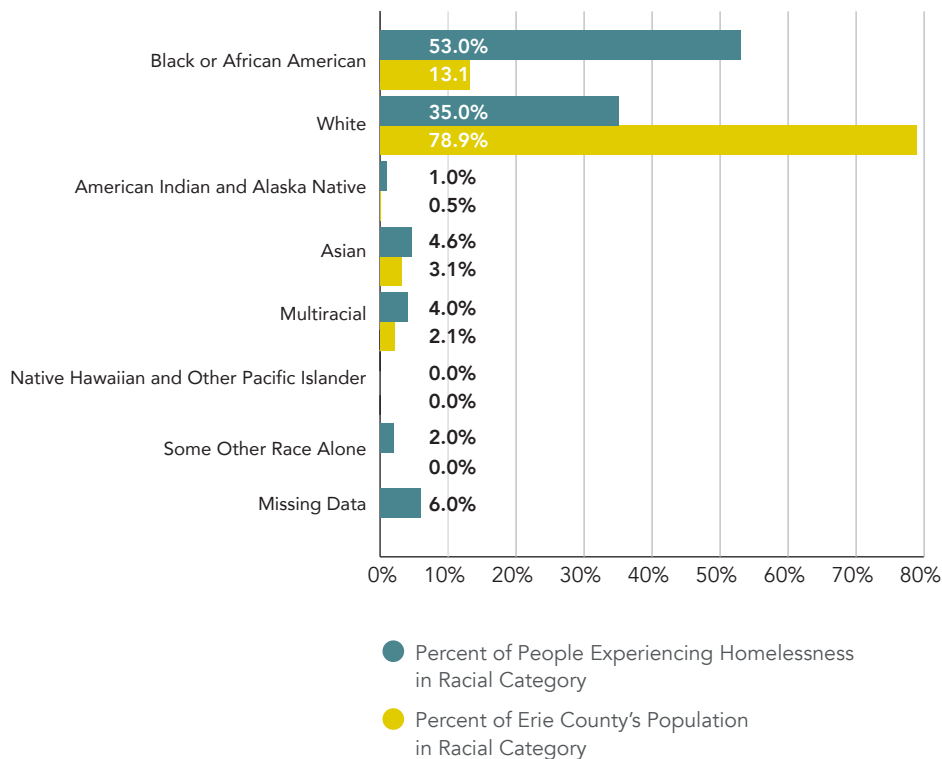
“I just had a stroke and I was barely making rent as it was. I tried to pay him the back rent once I got out of the hospital, but he refused, telling me he cannot be missing the rent every time somebody has a heart attack or something. If this don’t work out I can’t afford anyplace else this big with all the stuff I have, I’m going to lose all my belongings and be completely homeless for a while.”

Tenant interviewed in Housing Court

Property Owners. Property owners face many costs from evictions and other forms of tenant mobility: lost rental income, eviction costs (if the tenant does not leave voluntarily), and the costs of advertising and securing new tenants, among others. When owners lose income and face higher expenses, they must raise rents and/or cut back on maintenance, repair, and renovation, thus harming the broader community as well.

Neighborhood Conditions. Most neighborhoods put a high value on having long-term residents, and for good reason. When neighbors have time to get to know one another and build mutually supportive relationships, everyone benefits. High rates of involuntary mobility are damaging to neighborhood fabric and cohesion; they diminish the social capital available to all residents. High rates of mobility and vacancy contribute to neighborhood blight and disinvestment, resulting in lower property values for nearby owners and lower property tax income for municipalities and school districts.³⁵

RACIAL BREAKDOWN OF ERIE COUNTY'S POPULATION VERSUS HOMELESS POPULATION

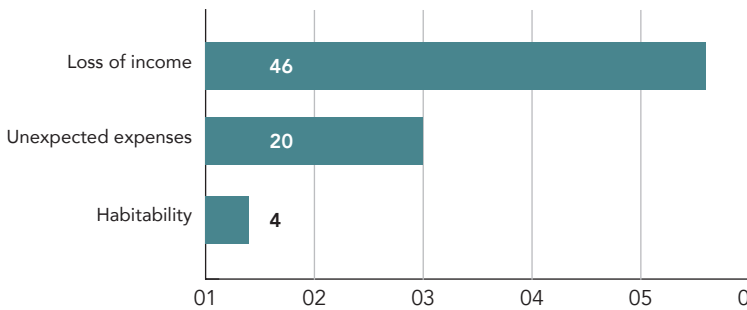


Causes of Homelessness in Erie County	
Survey Data from Homeless Alliance of WNY	
Household disputes (not DV)	16.76%
Eviction by primary tenant	13.93%
Loss of job/income (includes public benefits)	10.55%
Release from institution	9.87%
Domestic violence	7.89%
Court eviction by landlord	7.84%
Ask to leave by landlord	7.38%
Relocation from out of the area	6.69%
Mental health	6.30%
Substance abuse	5.99%
Problems with building	2.42%
Doubled-up/over-crowded	2.27%
Health/safety violation	2.08%
Problem with landlord	1.98%
Medical condition	1.64%
Fire or natural disaster	1.25%

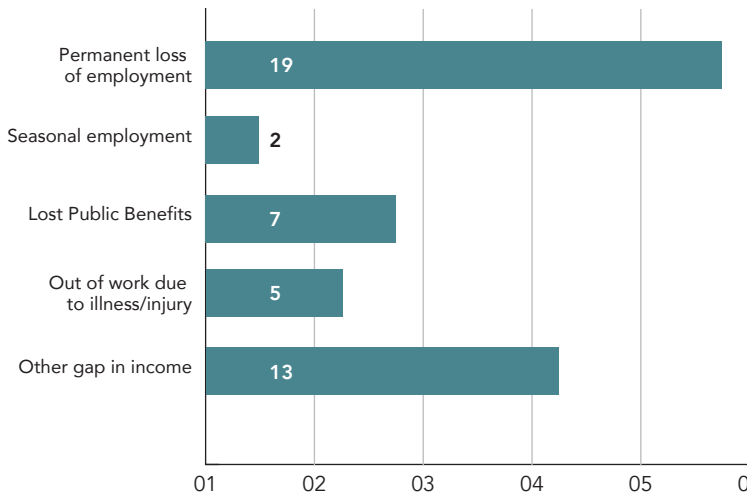
Who Gets Evicted?

Eviction has become stunningly common among low-income households. The vast majority of evictions are for non-payment of rent, and the underlying dynamics are simple. Across the nation, rents have been rising more than incomes for low-wage workers. Of renting families in poverty, roughly 25 percent spend over 70 percent of their income on rent.³⁶ (Housing is considered affordable if it costs 30 percent of one’s income or less).

TENANT’S STATED REASON FOR INABILITY TO PAY RENT

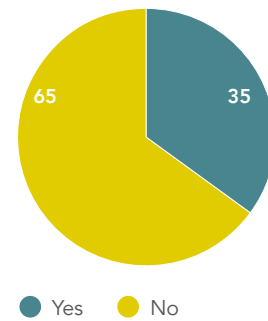


LOSS OF INCOME RESPONSES SPECIFIED



In Buffalo, of the 80 eviction cases we observed in court, 87.5 percent were non-payment cases and 12.5 percent were holdover cases (i.e., the tenant stayed after being given a notice to move out because the lease had ended or the landlord felt that the tenant had violated the lease). Of the 100 tenants we interviewed, 73 told us that they were in court for non-payment, 16 said holdover, and 11 did not know or did not respond. Similarly, 74 percent of respondents answered “yes” when asked if they had had trouble paying the rent.

DID TENANT’S BASE RENT INCREASE WITHIN THE LAST YEAR?



Rents are rising, but **incomes aren’t**.

LOST JOBS, HIGHER EXPENSES

“I’ve lived in Buffalo my whole life and my wife and I never had a problem making rent, even when things started costing more. My wife lost her job though so now I might have to swallow my pride and ask family if they can let us stay someplace for a while.”

Tenant interviewed in Housing Court

When asked if there was a particular reason that made it hard to pay, 66 percent identified loss of income, 29 percent indicated unexpected expenses, and 6 percent said they had refused to pay because of repair problems. Of all the tenants, 35 percent had seen their rent increase in the last year. For those facing increases, the median increase was \$50 per month. For those who had lost income, 41 percent had lost their job, 15 percent had lost public benefits, and 11 percent had an injury or illness.

Landlords often choose not to evict tenants who fall behind on the rent. Research has shown that there are additional factors that motivate landlords to file evictions for non-payment. Landlords are more likely to evict if the nonpayment stemmed from a job loss, perhaps because they anticipate that the tenant will not find a job fast enough to make good on the rent. They are more likely to evict families with children and larger families, perhaps concluding that children “can cause added stress on property, disturb neighbors, and attract unwanted state scrutiny by child welfare agents or law enforcement officers.”³⁷ Researchers have not found higher eviction rates in gentrifying neighborhoods, but they have found that landlords are more likely to file eviction actions in neighborhoods with high crime and high eviction rates. This may happen because tenants in worse neighborhoods do not try as hard to stay, or because landlords in those neighborhoods have developed a culture and routine of eviction.³⁸ Tenants who have already suffered “poverty shocks” such as eviction, incarceration, or teenage pregnancy, and tenants with challenges such as joblessness, addiction, or family violence victimization, are also more likely to get evicted.³⁹

In studying Milwaukee, Desmond did not find that landlords were more likely to evict if the tenant was African-American, and he hypothesizes that prejudice is more likely to occur when renting an apartment than when choosing whether to evict. He did find, however, that Latinx tenants faced higher evictions if their landlord was non-Latinx or if they lived in neighborhoods that were more than two-thirds white.⁴⁰ In Buffalo, Neighborhood Legal Services (NLS) attorneys also report that they see more discrimination in renting than in evicting. However, as NLS deputy director Grace Andriette puts it, “There may be more subtle forms of discrimination – for example a middle-class white college kid may get more time to pay late rent than a young black man.”

Given the nature of poverty, discrimination, and segregation in America, people of color, women, people with disabilities, and other vulnerable groups experience disproportionate numbers of evictions, even when there is no active discrimination in the decision to evict. Desmond cites studies of various cities showing that roughly 80 percent of those being evicted are people of color, and in his study of Milwaukee, women were 61 percent of

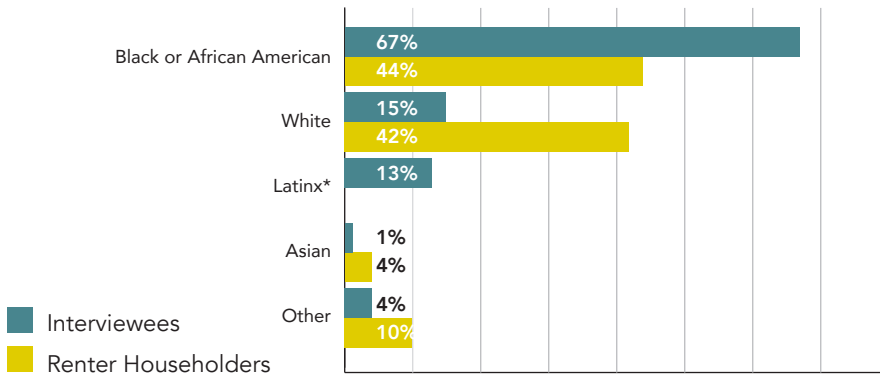
WRONGLY ARRESTED AND EVICTED

“I took over for my roommate who didn’t have a written lease, but he lived there for 2 years and moved out. When I moved in I had a written lease though. I got arrested because someone called the police on my apartment thinking I was the old tenant. It almost got to trial. I got indicted and all that, but then he got pulled over somewhere, so they realized I wasn’t him and let me go. There was a note saying I was being evicted. Never been late on the rent once but they kick me out ‘cause the police showed up one damn time. I even got all the rent saved up I owe him and he wouldn’t take it.”

Tenant interviewed in Housing Court

those evicted.⁴¹ Desmond also found that, among Milwaukee renters, one in five black women have been evicted – compared to one in twelve Latinx women and one in fifteen white women.⁴² He compares the phenomenon of mass eviction of black women to the phenomenon of mass incarceration of black men.

RACE DEMOGRAPHICS OF INTERVIEWEES AND BUFFALO’S RENTER HOUSEHOLDER POPULATION



*Hispanic and Latinx ethnicity is recorded separately from race in the U.S. Census and therefore is not included in the graph. According to 2013-2017 ACS data, 12% of renter householders in the City of Buffalo identify as Hispanic or Latino.

Of the 100 tenants being evicted that we interviewed for this study, 67 percent were African-American, 15 percent were white, 13 percent Latinx, 1 percent Asian-American, and 4 percent other. For comparison, of City of Buffalo renter head-of-household, 44 percent are African-American, 42 percent are white, 4 percent are Asian-American, and 12 percent are Latinx.⁴³

Twenty-two percent of tenants had one or more disability, and another five had someone in their family with a disability. Seven percent did not speak English as their first language.

A DISABLED TENANT LOSES A JOB BECAUSE OF BEING IN COURT

“I have a mental illness, so I have trouble sometimes remembering things, so I write a lot down and keep all my receipts and I have a receipt saying I paid this rent. I don’t know why the landlord says I didn’t pay. I’m so confused. This is my second time taking off work for this and they told me if I miss any more hours I would lose my job so I just got that call a few minutes ago. I don’t know what to do about money now.”

Tenant interviewed in Housing Court

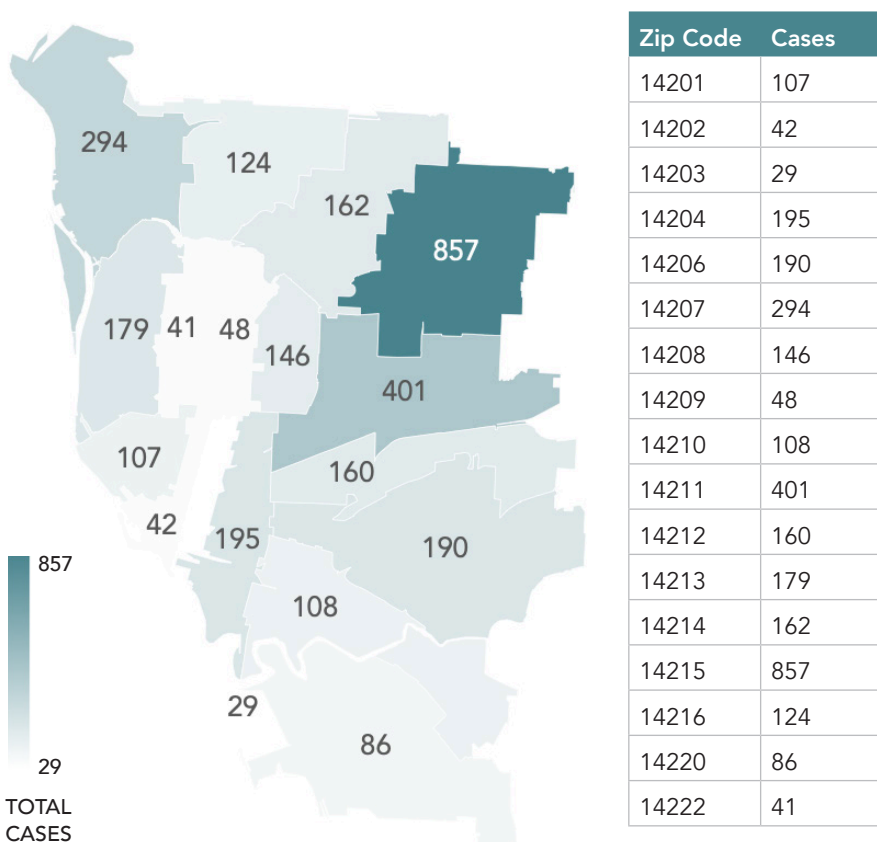
VICTIMIZED THREE TIMES OVER: LOSING A JOB AND AN APARTMENT DUE TO FAMILY VIOLENCE

One tenant we interviewed could not pay rent after she lost her job. Her violent ex-boyfriend came to her workplace and not only hit her, but cursed at her boss and threatened her co-workers. She was then fired.

The prevalence of evictions in Buffalo corresponds closely to Buffalo’s patterns of segregation by race and income. The 3,175 eviction cases handled by lawyers from Neighborhood Legal Services and Volunteer Lawyers Project in 2017 included 857 from zip code 14215, 401 from 14211, 190 from 14206, 160 from 14212, and 108 from 14210, 294 from 14207, 179 from 14213, and 107 from 14201.⁴⁴ The 100 tenants we interviewed were widely distributed among 18 different zip codes, but three zip codes accounted for more than half of them: 14215 (35 percent), 14211 (20 percent), and 14208 (9 percent).

There are many reasons that people of color suffer disproportionately from evictions. The first is obvious: they suffer disproportionately from poverty. Also important is the tremendous disparity in homeownership and wealth. Even after accounting for income, people of color are much less likely to own a home, due to historic patterns of housing discrimination and wealth inequality. In Buffalo, where 41 percent of homes are owner-occupied, the homeownership rate is 53 percent for whites, 32 percent for African-Americans, 31 percent for Asian-Americans, and 21 percent for Latinx residents.⁴⁵

EVICTION CASES REPRESENTED BY NLS OR VLP IN 2017 BY ZIP CODE

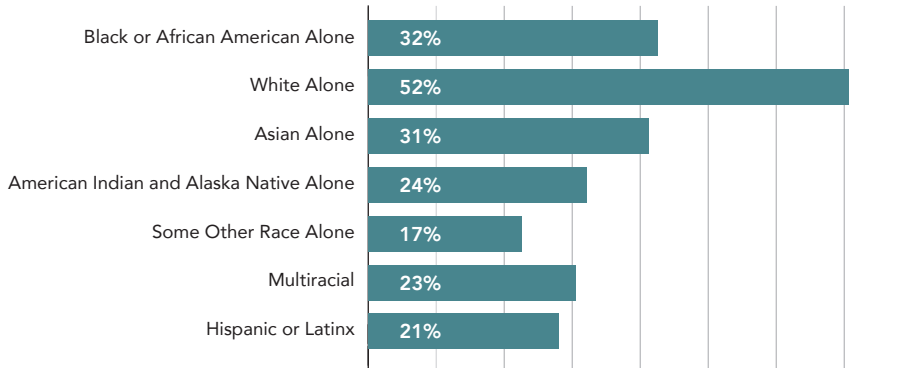


UNEQUAL TREATMENT

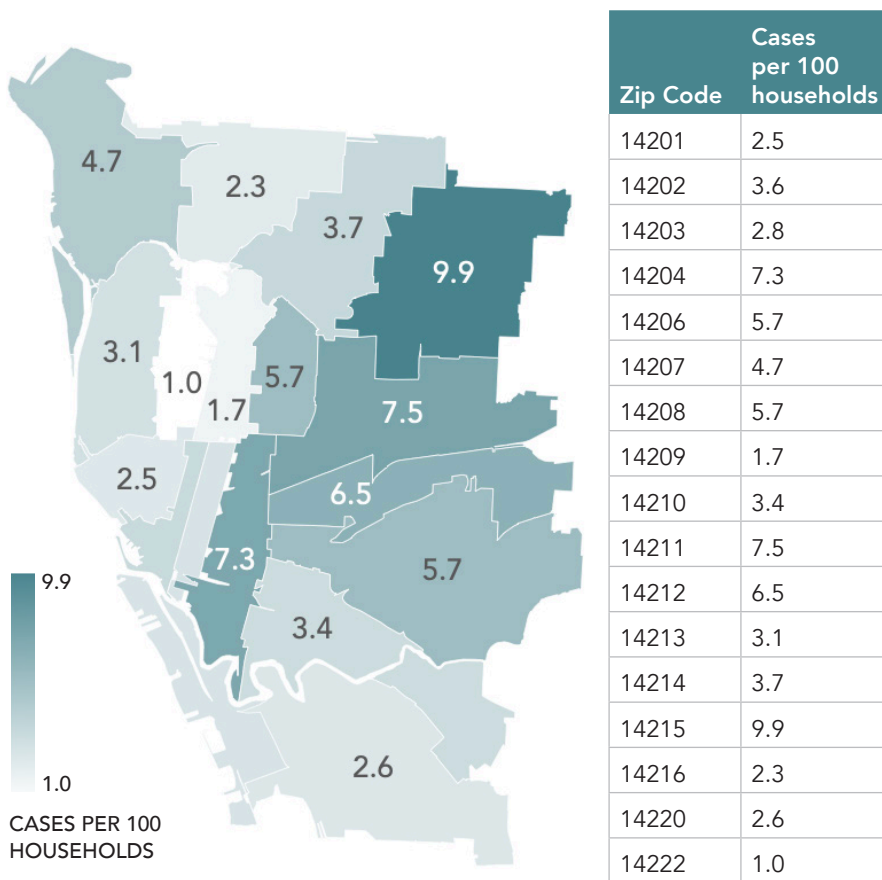
“We live in a duplex together. We live on a street with a bunch of other university students. Everyone throws loud parties outside, they leave trash they drink in the street they play loud music until 4am. We don’t mind it. But we had a few parties with everyone inside the house and nobody outside and nobody being loud, and they called the police on us. I’m not saying it was racist but we’re the only black people on the street and nobody else ever had the police called on them. Nobody got arrested and we didn’t even get a ticket, but the landlord is using that as a reason to kick us out. Wouldn’t accept the rent. We had been late before on the rent a few times, but we were caught up and we were caught up when the landlord stopped taking the rent. He tacked on late fees to make it seem like we weren’t paid up.”

Tenant interviewed in Housing Court

HOMEOWNERSHIP RATE BY RACE AND ETHNICITY OF HOUSEHOLDER IN THE CITY OF BUFFALO, AMERICAN COMMUNITY SURVEY 2013-2017



EVICTION CASES PER 100 RENTER HOUSEHOLDS REPRESENTED BY NLS OR VLP IN 2017 BY ZIP CODE



People of color are more likely to lack relatives and friends with wealth who can help them deal with financial emergencies. Finally, discrimination and inequality in other sectors, such as employment and criminal justice, have ripple effects. If people lose their jobs or are unable to get hired due to their race, they may have trouble paying the rent. If people are wrongly arrested or targeted for police action due their race, that may trigger eviction proceedings.

The defendants in eviction cases are mostly women. In 2017, 80 percent of NLS-represented eviction cases were for female clients. In our interviews the majority of interviewees were women. There are many reasons for this gender imbalance. Many men are absent from impoverished neighborhoods because they have died prematurely or have been incarcerated. The men who are present may have criminal records, be unemployed, or have bad credit histories that prevent them from being able to sign leases. As a result, they are more likely to live as unauthorized tenants or move frequently from place to place.⁴⁶ Women are also more likely to be living with children, and, as we have seen, landlords discriminate against families with children in making eviction decisions.

The vast majority of evictions in Buffalo's housing court are for non-payment. In our sampling of 104 NLS nonpayment cases between 2014 and 2018, the median rent owed was \$1,200 (including a median late fee of \$50).⁴⁷ The median monthly rent of these tenants ranged from \$550 in 2014 to \$625 in 2018.

Subsidized and Public Housing

Public and subsidized housing are critical resources for tenants. Unfortunately, in the United States, only about one in four low-income households who qualify for federal housing assistance receive it.⁴⁸

Public housing is owned and operated by the government. Tenants in public housing pay 30 percent of their income toward their rent. The Buffalo Municipal Housing Authority (BMHA) houses 3,375 households in 20 developments and 5,034 units, making it the city's largest landlord.⁴⁹ Most funding for public housing comes from the federal department of Housing and Urban Development (HUD), but it is chronically underfunded and, hence, under-maintained. Due to long histories of racism and class prejudice, public housing in Buffalo, as in most places, is heavily concentrated in high-poverty, high-minority neighborhoods.⁵⁰

As public housing became increasingly unpopular, the federal government shifted toward subsidizing private developments and providing housing vouchers. Buffalo is home to many **federally-subsidized, private-owned developments**. These, too, suffer from issues of quality, safety, and segregation, but, again, because rent is capped at 30 percent of income, they tend to have long wait lists.

EXPENSES RISE, BUT INCOME DOESN'T

"My bills go up, the cost of food goes up but I make the same amount of money. I don't know how anybody is supposed to make do when things keep getting more expensive and nobody is making any more money."

Tenant interviewed in Housing Court

DEMOGRAPHICS OF BMHA HOUSEHOLDS

INCOME

76 percent extremely low (30 percent or less of the area median income);

16 percent very low (30.1 to 50 percent of AMI);

6 percent low (50.1 to 80 percent of AMI).

RACE/ETHNICITY

74 percent African-American;

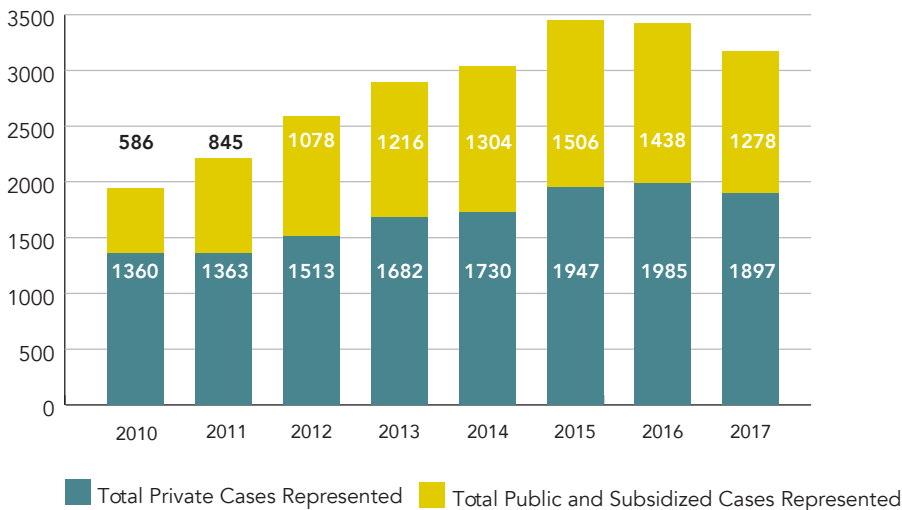
25 percent white;

11 percent Hispanic or Latinx (ethnicity is counted separately from race).

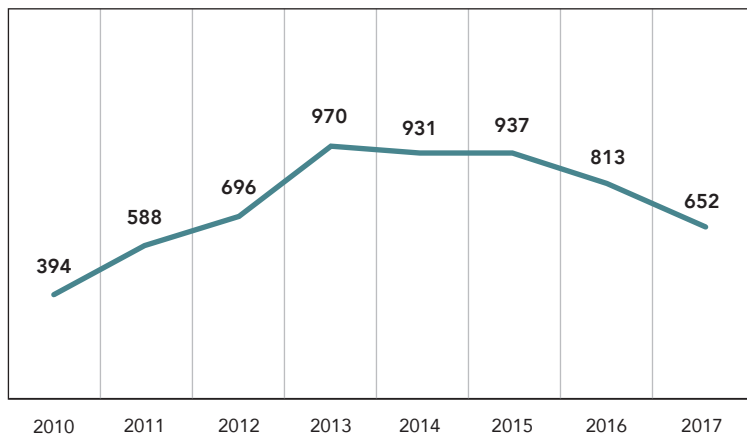
Source: Mullin & Lonergan Associates, "Analysis of Impediments to Fair Housing Choice: City of Buffalo" (February 2014).

Housing vouchers also entitle a tenant to pay 30 percent of their income toward rent in any private rental. The City of Buffalo has had for many years a law banning “source of income” discrimination, which means that landlords may not refuse to take voucher holders; similar laws have been enacted recently in Erie County and New York State. BMHA has roughly 1,300 vouchers, which are administered by a nonprofit agency, the Rental Assistance Corporation.⁵¹ Belmont Housing administers the voucher program for a consortium of suburban public housing agencies. Both voucher agencies closed their waiting lists years ago; RAC currently has over 4,000 families on its list. Families often wait 5 to 10 years to receive a voucher.

NUMBER OF EVICTION CASES REPRESENTED BY NLS AND VLP BY TYPE IN CITY OF BUFFALO, 2010-2017



BMHA EVICTION CASES REPRESENTED BY NLS 2010-2017



In 1960, only about one fourth of American renters spent more than 30 percent of their income on rent. By 2018, nearly half of renters did.

Bryce Covert, "Give Us Shelter." The Nation, June 18/25, 2018.

Residents of public and subsidized housing and voucher holders have some protection against eviction for non-payment because their rent is capped at 30 percent of their income. But the tenants in these programs have very low incomes and face multiple disadvantages, including segregation and discrimination. Voucher holders are particularly segregated in Buffalo. Of the 50 largest metro areas in the nation, Buffalo-Niagara has the highest share of voucher holders living in high poverty neighborhoods (over 60 percent) – despite the fact that only 35 percent of the voucher-affordable units are located in high poverty neighborhoods.⁵²

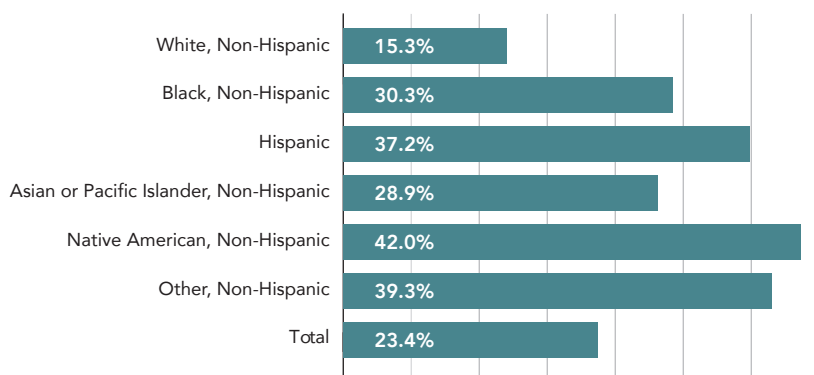
Tenants in public and subsidized housing and tenants with vouchers tend to have very low incomes, volatile incomes, and a complete lack of savings to deal with unexpected expenses. Thus, despite their capped rents, tenants in public and subsidized housing are at high risk for eviction. In 2017, Neighborhood Legal Services represented 1,278 tenants in public and subsidized housing in Buffalo’s Housing Court. Roughly half of those cases (652) were public housing cases.

Buffalo’s Affordability Gap

As our eviction data suggests, the biggest factor in evictions is the gap between incomes and rents, exacerbated by income volatility. More than half of Buffalo renter households (50.6 percent) cannot afford their housing costs— according to the federal definition by which affordability means paying less than 30 percent of income toward gross rent, which includes utilities.⁵³ Twenty-three percent of the city’s households have **severe** housing cost burdens, paying more than 50 percent of their income on housing. Among black households, over 30 percent face severe burdens; among Hispanic households, over 37 percent do.⁵⁴

The household income for Buffalo’s renters is very low. The median is \$23,718 per year.⁵⁵ Ten percent of renting households have an income of less than \$5,000 per year.⁵⁶ Over one-third (35 percent) of renting house

PERCENT HOUSEHOLDS BY RACE AND ETHNICITY IN CITY OF BUFFALO WITH SEVERE COST BURDEN 2009-2013

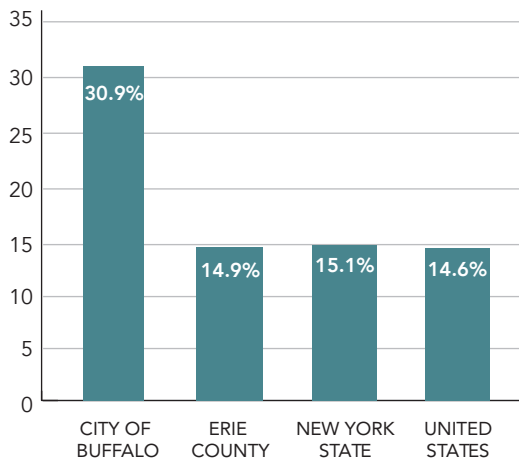


MONEY: THE ROOT OF THE PROBLEM

“Money is at the root of this particular problem. Unaffordable rents lead to housing instability. If you have a stable income for two months and then you lose your job, the landlord doesn’t have to wait around for you to pay. The landlord can ask you for your rent and then file an eviction. There’s no safety net for people who are perpetually forced to live on the financial edge.”

Grace Andriette, Deputy Director, Neighborhood Legal Services

POVERTY RATE BY GEOGRAPHY,
AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, 2013-2017



holds have an income of less than \$15,000 per year.⁵⁷ If a family’s income is \$15,000 per year, affordable housing costs are \$375 per month or less, but rent that low is rare or non-existent on the private market. Roughly 80 percent of renting households have housing costs of over \$500 per month.⁵⁸

In short, there is a large pool of families living in poverty and a small pool of decent, safe, affordable housing. For tenants with incomes at or below 50 percent of the area median income, Buffalo-Niagara has a deficit of 14,821 units that are affordable and available. For those with extremely low incomes, there is a deficit of 31,146 units.⁵⁹ As NLS attorney, Katelyn Niedermier summarizes the situation, “One of the biggest reasons that people are repeatedly brought to eviction court is the lack of safe, affordable housing. There are too many slumlords and decrepit properties rotating from one family to another, perhaps up to three times each year. This means the same impoverished families are cycling through of all of these decrepit properties – to what end?”

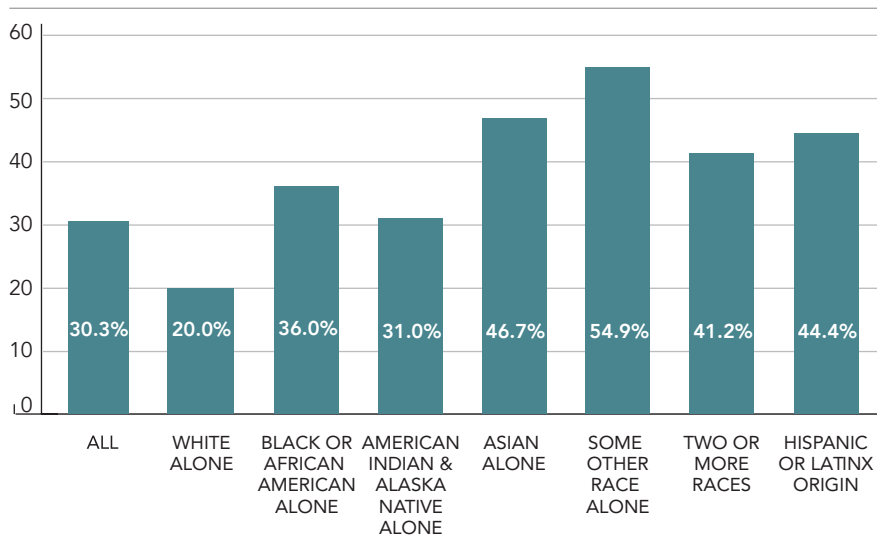
Unfortunately, Buffalo’s extreme, concentrated poverty has not been getting better. The City’s poverty rate hovered near 30 percent from 2008 to 2017 – roughly twice the rate in Erie County, New York State, or the United States, and roughly four times the rate in suburban Erie County.

Buffalo’s stubbornly high poverty rate stems partly from years of falling incomes. Between 1979 and 2014, real (inflation-adjusted) wages for workers in the city of Buffalo fell markedly. For workers in the 10th percentile, they fell 15 percent; in the 20th percentile, 12 percent; in the 50th percentile, 10 percent. Only workers in the 90th percentile saw their wages go up.⁶⁰

Between 1979 and 2014, real (inflation-adjusted) wages for workers in the city of Buffalo **fell markedly.**

Race was an important factor. White workers in the city saw their median hourly wage increase slightly from 2000 to 2014, while for people of color it fell from \$17.10 to \$15.80.⁶¹ The poverty rate in the city between 2010 and 2014 was 20 percent for whites, 36 percent for blacks, 44.4 percent for Latinx, and 46.7 percent for Asian or Pacific Islanders.⁶²

POVERTY RATE BY RACE AND ETHNICITY IN THE CITY OF BUFFALO, AMERICAN COMMUNITY SURVEY 2014-2018



Incomes have also become more volatile and intermittent, as long-term, stable employment has decreased – in Buffalo as around the nation.⁶³ As NLS attorney John Hocieniec explains it, “It’s the problem with the working poor whose income is always fluctuating. I lose my job at the end of the month, well the next day my rent’s due... That’s where we get the problems. The biggest problem that we see are with the seasonal employees—people who work as school bus drivers, school bus aides, who work for the board of education. They’re the people who the system doesn’t work for.” Finding a new job that pays a living wage is particularly hard in a region with inadequate public transit. Whereas 41 percent of Buffalo renting households have no vehicle available,⁶⁴ 58 percent of the region’s jobs are beyond the reach of public transit.⁶⁵

Poverty is also deepened by inadequate levels of public assistance. This has a particularly strong impact on people with disabilities. Nationally, of people from 18 to 64 years of age, 26.7 percent of those with a disability were living in poverty in 2014-2018, compared to 11.7 percent of those with no disability.⁶⁶ For those with a permanent disability that makes them unable to work, the federal program is Supplemental Security Income (SSI). In 2019, the maximum annual SSI payment for a single person was \$9,259, while the federal poverty line was \$12,490. This issue is of particular importance to Buffalo, where 15.3 percent of residents age 18-64 have a disability, compared to a national average of 10.4 percent.⁶⁷

FAMILY VIOLENCE VICTIM GOES OVER A WELFARE CLIFF

“I have a broken vertebra from a guy who used to beat me, so I had to find work that wasn’t too hard on my back. Luckily, I found something that paid more than my old job, but then I lost some of my benefits from making too much money. I don’t get how I can make more money for myself and then have less money overall. It’s like they want me to stay broke.”

Tenant interviewed in Housing Court

Similarly inadequate is the aid provided by Temporary Assistance to Needy Families (TANF), the basic welfare program for families. Federal and state governments have curtailed eligibility drastically, and federal spending on TANF has been frozen since 1997, losing over one third of its value due to inflation.⁶⁸ In New York State, the percentage of poor families with children who receive TANF dropped from 56 percent in 2001 to 42 percent in 2017.⁶⁹

It is common to lose public assistance unexpectedly, either because one’s income has risen or for a failure to comply with paperwork or other eligibility requirements.⁷⁰ Of the tenants we interviewed, seven indicated that they had trouble paying rent due to a loss of public benefits. When tenants in public housing have their grants reduced due to sanctions, their rent is not adjusted downward.

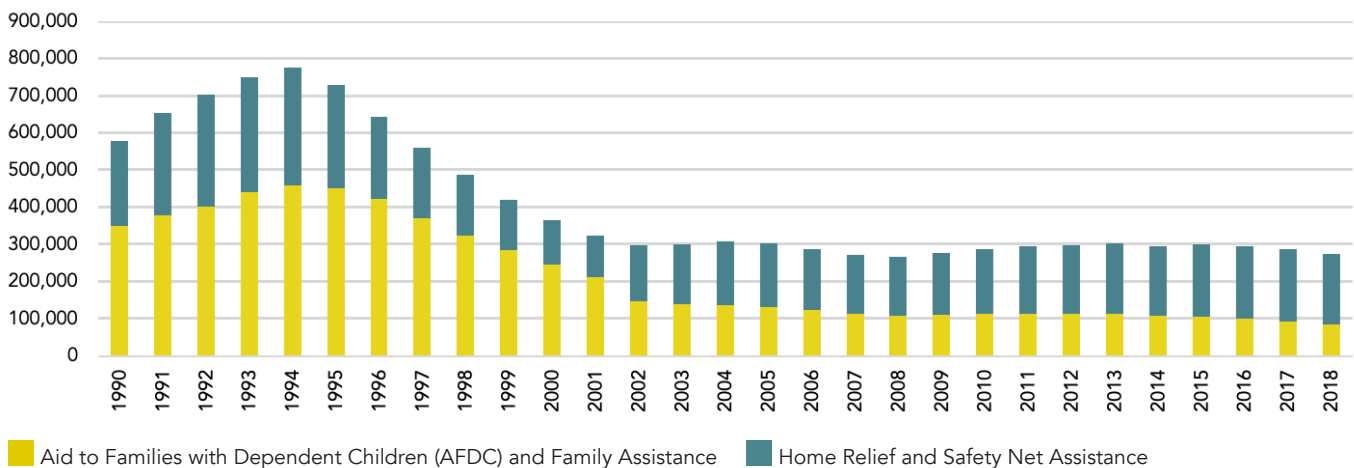
Families receiving public assistance in New York State get a shelter allowance. When the shelter allowance was created in 1975, it was designed to cover the rent, but it has not been adjusted for inflation and rising rents. Today, of the 171,000 families receiving shelter allowances, two-thirds have rents higher than their allowance.⁷¹ In Erie County in 2016, for example, the shelter allowance for a parent with two children was \$301, whereas the HUD fair market rent for a two-bedroom apartment was \$755.⁷² Social Service districts are allowed to create their own supplements to the shelter allowance, but of the 58 districts, only 11 plus New York City have done so (Erie County has not). There is a bill – the Home Stability Support Act – in the State Legislature to remedy this gap state-wide, but it did not pass in 2019.⁷³

INADEQUATE SHELTER ALLOWANCES

“I can’t think of the last time someone got an apartment within the shelter allowance.”

*Neighborhood Legal Services
Attorney Penny Selmonsky*

NEW YORK STATE ANNUAL MONTHLY AVERAGE PUBLIC ASSISTANCE CASES BY CATEGORY 1990-2018

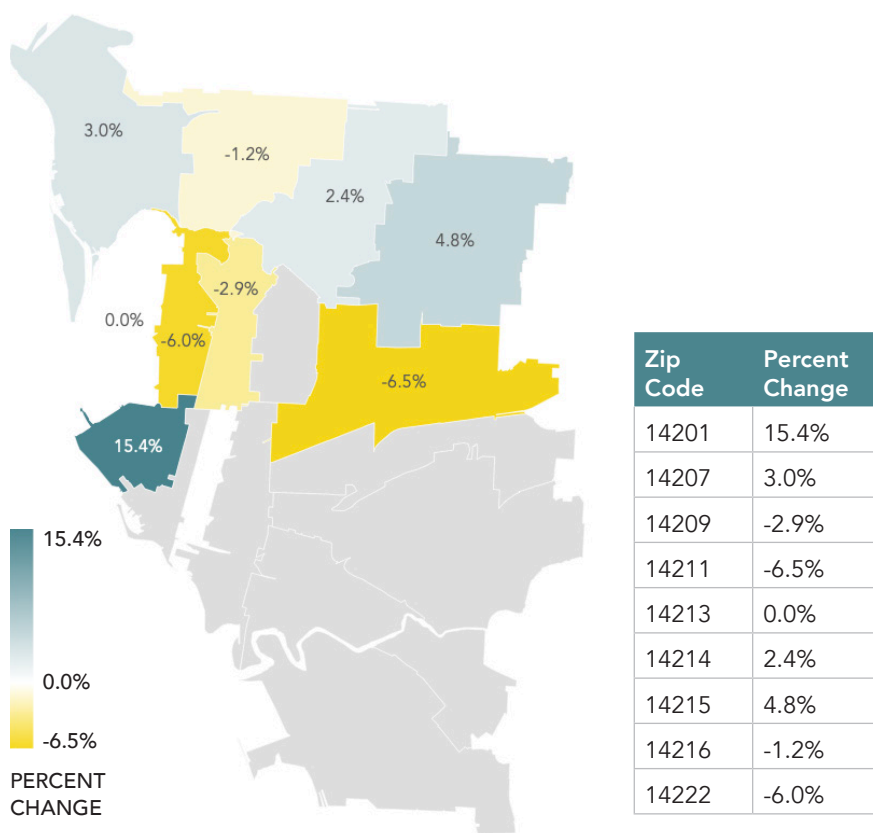


Source: New York State Office of Temporary Disability

Even as poverty has risen, so have rents, particularly in certain neighborhoods. Of the tenants we interviewed, 35 percent had seen their base rent increase in the last year; for those tenants, the median increase was \$50 per month. According to the Census American Community Survey one-year estimates, median rent in the city of Buffalo rose from \$586 in 2005 to \$725 in 2017. Review of data from Craigslist, the most popular online platform for rental listings, shows that the median rent in the city rose by \$49 (5 percent) from May 2018 to May 2019.⁷⁴ In some neighborhoods, the increases have been much steeper. According to HUD’s Small Area Fair Market Rent Analysis, between 2012 and 2019 one downtown neighborhood saw rents increase 81 percent. Similarly, in zip code 14201, Craigslist rents rose 15.4 percent from May 2018 to May 2019.

35 percent of interviewees had seen their base rent increase in the last year. **The median increase was \$50 per month.**

PERCENT CHANGE IN MEDIAN RENT FOR CRAIGSLIST TWO-BEDROOM APARTMENT LISTINGS BETWEEN MAY 2018 AND MAY 2019 DATA COLLECTION

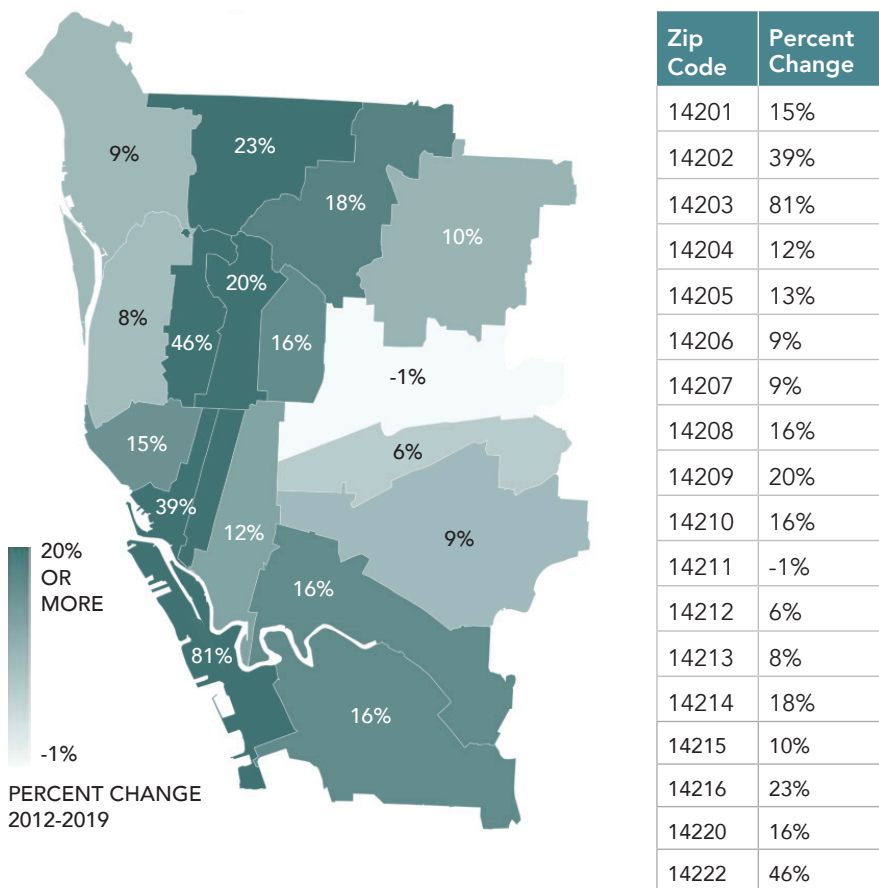


Unfortunately, rents in high-poverty neighborhoods are not as low as one might think. One reason is that, due to segregation, troubled rental and credit history, and other factors, low-income renters are a somewhat captive audience with fewer choices about where to rent. In a vicious cycle, landlords may compensate for the higher risk of nonpayment and vacancy by raising rents. A related reason is that landlords actually derive

more profit from rent in high-poverty neighborhoods than in affluent ones. Nationally, landlords extract profits of roughly \$100 per unit per month in poor neighborhoods, compared to \$3 in middle-income areas, and \$50 in wealthy areas. In fast-appreciating neighborhoods, landlords can make money through rising property values; in neighborhoods with stagnant or falling values, they can profit only through rents.⁷⁵

Furthermore, high utility bills make Buffalo’s housing much less affordable than it may appear when looking only at rents and sales prices. Roughly three fourths of Buffalo’s renters pay their own utility bills. Given cold winters, poorly insulated and poorly repaired housing stock, and high electricity prices, these bills form a major burden. In Erie County, energy costs represent 76.6 percent of household income for those who are at or below 50 percent of the federal poverty level.⁷⁶

PERCENT CHANGE HUD SMALL AREA FAIR MARKET RENT 2012-2019



LEASES
Of the 100 tenants we interviewed, 45 had a written one-year lease, 12 had a written month-to-month lease, and 43 had no written lease

Energy costs represent 77 percent of household income for those who are at or below 50 percent of the poverty line.

The Eviction Process

Evictions are governed by state laws. In New York, most of the key provisions are found in the Real Property Law and the Real Property Actions and Proceedings Law. The two types of eviction are non-payment proceedings, where the landlord alleges that the tenant has failed to pay all the rent due, and holdover proceedings, where the landlord alleges that the tenant has violated a lease term or stayed past the lease term without permission.

The laws governing notices of termination and evictions changed dramatically with the Housing Stability and Tenant Protection Act of 2019. Below we outline key provisions of eviction law as it now stands, including the new provisions.

NOTICES

- When landlords wish not to renew a tenancy or to raise the rent by 5 percent or more, they must give written notice:
 - 30 days if the tenant has been there less than one year and does not have a lease term of at least one year;
 - 60 days if the tenant has been there more than one year but less than two, or has a lease term of at least one year but less than two;
 - 90 days if the tenant has occupied a unit more than two years or has a lease term of at least two years.⁷⁷
- If landlords do not receive rent within five days of its due date, they must send a written notice by certified mail; failure to send such a notice is an affirmative defense to an eviction action.⁷⁸
- If the tenant has not paid the rent in full, the owner must give the tenant a written “pay or quit notice.” The tenant then has 14 days to pay the rent before the owner can start a court action.⁷⁹ (Formerly, the notice could be oral, and the time to pay was only three days.)
- Similarly, if landlords are alleging a lease violation, they must give notice of termination in person or in writing.⁸⁰ The notice must be clear and unequivocal (it can’t be, for example, “unless you stop parking in my spot you have to leave next month”).⁸¹

FEES AND CHARGES

- Background/credit check fees are limited to actual costs or \$20, whichever is less. Landlords must give the tenant and copy of the background/credit check and a copy of the receipt or invoice from it, and they must waive the fee if the tenant provides a copy of a check conducted in the last thirty days.⁸²

RETALIATION LAW STRENGTHENED

The Housing Stability and Tenant Protection Act of 2019 strengthened the retaliation provisions of the Real Property Law. Under the new law, a landlord may not evict a tenant or make an unreasonable rent increase to retaliate for a good faith complaint by a tenant about repairs or other tenant rights issues. If the landlord acts within one year (formerly, it was six months) of the tenant’s complaint, then there is a rebuttable presumption of retaliation. RPL 223-b.

REFUSAL TO RENT BASED ON EVICTION

The Housing Stability and Tenant Protection Act of 2019 added a new law that a landlord may not refuse to rent because the tenant was involved in a past or pending eviction case. RPL 227-f.

- Late fees cannot start until five days after rent is due, and they cannot exceed \$50 or five percent of monthly rent, whichever is less.⁸³
- In an eviction action, the landlord may seek only rent, not fees, charges, or penalties (formerly the landlord could seek fees, charges, and penalties if so provided in the lease).⁸⁴

PETITION AND NOTICE OF PETITION

The owner prepares a petition and notice of petition and serves them on the tenant, by personally delivering them to the tenant or a person of suitable age and discretion living at the premises, or, if that is not possible, by putting one copy under the door and one copy on a conspicuous part of the property and then mailing it by registered or certified and first class mail within one day.⁸⁵

Which type of service the landlord chooses has important impacts. If the service was personal, the owner may obtain a money judgment along with a move-out order from the court. If the service was by posting and mailing, and the tenant does not appear in court, the court generally will not award a money judgement.⁸⁶

The owner then files the notice of petition, the petition, and proof of service with the court within three days.⁸⁷ In a nonpayment case, the owner's petition must clearly state the amounts due and the periods for which they are due.

The court date on the notice of petition must be no less than 10 days and no more than 17 days after the tenant is served with the court papers.⁸⁸ (Formerly it was no less than five and no more than 12 days.)

REDEMPTION

The tenant can redeem the tenancy and avoid eviction by paying the full amount due at any time before the hearing.⁸⁹ Unless the tenant withheld the rent in bad faith, he or she may redeem and vacate the judgment by presenting the money to the court at any time before the warrant is executed.⁹⁰

COURT

In court, the tenant has the right to make an oral or written answer. If any triable issues of fact are raised, they shall be tried by the court unless a party demands a trial by jury.⁹¹

If there is a triable issue of fact, either party may receive an automatic adjournment of at least 14 days. Any further requests for adjournment are at the court's sole discretion.⁹² (Formerly, any adjournment was at the court's discretion.)

The tenant can redeem the tenancy by paying the full rent amount due before the hearing, during the hearing, or even after the hearing – any time before the marshals come to remove the tenant.

If there is a triable issue of fact, either party may receive an automatic adjournment of at least 14 days.

If the parties settle the case, the court will enter the settlement (or “stipulation and agreement”) into the record. The settlement may or may not include a judgment. If there is a judgment, it may include money damages.

If the court orders a judgment giving the owner possession, then the owner must get a warrant of eviction from the court and ask a sheriff or other law enforcement officer to serve it. The officer will post the notice on the door, giving the tenants 14 days to move out (formerly it was 3 days). If the tenants do not move out, the officer will return and move them out on a business day between sunrise and sunset.⁹³ The landlord may not intentionally damage or destroy the tenant’s possessions; the landlord may put them in storage.

WARRANTS AND STAYS

Under the new laws, if the eviction is based on a breach of the lease, there is an automatic 30-day stay of eviction to give the tenant a chance to cure the breach. The court may also issue a stay of eviction for up to one year where the tenant, after making due and reasonable effort, cannot find suitable housing similar to that currently occupied in the same village, town, city (or school district, if the tenant has schoolchildren) or the eviction would otherwise cause extreme hardship. In determining hardship, the court will consider serious ill health, significant exacerbation of an ongoing condition, a child’s enrollment in a local school, and any other extenuating life circumstances affecting the ability of the tenant to relocate and maintain quality of life.⁹⁴

After a warrant is issued, a tenant may fill out an affidavit in support of order to show cause and ask the court to stay the eviction and reopen the case. A common reason would be if the tenant was not served the court papers and so did not know about the case.

Housing Court

Buffalo first established a Housing Court in 1971 as a division of its City Court.⁹⁵ In subsequent years, the state of New York assumed authority over municipal courts, and local officials saw a need for an expanded Housing Court.⁹⁶ Therefore, in 1978 a state law was passed regulating the housing part of Buffalo’s City Court (the “housing part” is commonly known as “Housing Court”). The purpose was to “improve the quality of housing in the City of Buffalo by enabling stricter, more effective enforcement of housing standards.”⁹⁷ The new law consolidated jurisdiction of actions related to building maintenance, formerly dispersed among several civil and criminal courts, into the Housing Court, with broadened jurisdiction and remedial power.

Under the new laws, if the eviction is based on a breach of the lease, **there is an automatic 30-day stay of eviction to give the tenant a chance to cure the breach.** The court may also issue a stay of eviction for up to one year where the tenant, after making due and reasonable effort, cannot find suitable housing.

The Housing Court is “exclusively devoted to actions and proceedings involving the enforcement of all housing codes.”⁹⁸ The Housing Court must hear all eviction cases where the landlord’s failure to make repairs or follow housing codes is an issue.⁹⁹ In addition, the law gives the administrative judge of Buffalo’s City Court the discretion to send *all* evictions to the Housing Court at any time he or she feels it is “capable of handling all such summary proceedings.”¹⁰⁰ Currently, the Housing Court hears all evictions.

Actions before the Housing Court are to be “tried before the housing part judge, who shall be assigned to the housing part by the administrative judge of the city court.”¹⁰¹ Rules of evidence are applicable in actions and proceedings before the Housing Court.

The law also requires an advisory council for the Housing Court with two members from each of the following groups: real estate industry, tenants’ organizations, civic groups, bar associations, the Buffalo housing committee, and four members of the public at large to be appointed by the administrative judge, plus one member appointed by the mayor and one by the city official in charge of housing programs. The advisory council is to meet four times a year; to visit the Housing Court from time to time to review the manner in which it is functioning, and to make recommendations to the administrative judge. A report on the work of the court “shall be prepared annually and submitted by January 31 each year.”¹⁰² Apparently, this law has never been implemented, and there has never been an advisory council or an annual report.

City court judges are elected to ten-year terms. From 2003 to 2010, the judge assigned to Housing Court was Henry Nowak. During his tenure, the Court received funding from the State Division of Criminal Justice Services and the John R. Oishei Foundation and hired an executive director and a program coordinator to manage its programs and coordinate its liaisons and volunteers.¹⁰³ The Court created a receivership program and a group of Housing Court Liaisons to assist with case management, research, and communication with neighborhood activists.¹⁰⁴ The position of executive director has since been eliminated due to loss of funding. In 2007, the Court also received funding to hire a Court Attorney/Referee to assist in handling the eviction cases; this position was also eliminated due to a loss of state funding.¹⁰⁵

Since 2011, the Court has been overseen by Judge Patrick Carney, assisted by Court Attorneys Joseph Deren, Jr. and John Gorman. Mr. Deren, the head City Court clerk, works three days a week at Housing Court, and Mr. Gorman, a Supreme Court clerk, has been assigned to work two days a week at Housing Court.

Judge Carney handles all the code violation cases brought by City Housing Inspectors and County Health Inspectors. In addition, he handles evictions

The law requires the Housing Court to have an advisory council. The council’s job is to review the Court’s functioning and make recommendations for improvement.

if one of the parties asks to have the case seen by the Judge rather than by the Court Attorney. Housing attorneys for tenants report that they do not often ask for the Judge, but may do so if they are looking for a more individualized treatment of their case. Judge Carney explains that the Court Attorneys send him any evictions that they cannot resolve – typically ten to twenty per week out of the hundreds that they do. In addition, he handles orders to show cause (cases where the tenant is trying to reopen a case, typically after failing to appear and receiving a default judgment, or after receiving an unfavorable ruling from a Court Attorney).

Local housing attorneys report that the Housing Court model has proven successful, and that it is much better than having evictions heard by a rotating cast of judges. Rather than varying widely with different judges, outcomes are predictable and consistent. The emphasis on mutual terminations instead of court-ordered evictions is particularly welcome. As NLS deputy director Grace Andriette puts it, “It’s the difference between a client who has gotten their valuables, their medicine, their worldly possessions packed and moved somewhere, and the client who gets woken up one Tuesday morning at nine o’clock, is escorted out of the house, leaves their meds behind, leaves their important documents behind, leaves their valuables behind, and then the landlord trashes them or packs them up.... It could turn into a medical emergency if you were ushered out so fast that you don’t have your meds on you. So, it’s not a good thing, but knowing a date means often that you’re not caught by surprise.” A mutual termination is the best outcome for the majority of tenants – who owe more rent than they can pay and whose greatest needs are more time to move out and a predictable move-out date.

In 2017 there were 8,530 landlord/tenant filings in Buffalo. If we assume 250 working days per year, that means an average of roughly 34 cases per day. Although in many cases the tenant or landlord defaults by not coming to court, that still leaves many cases to process.

For tenants, the day in court can be arduous. The petition and notice of petition instruct them to be in court at 9 a.m. Going to court on a weekday often means lost income, extra expenses, and potential job loss or other disruptions. Of the 100 tenants we interviewed, 28 were missing work, 2 were missing job interviews, and 17 were paying for child care. Parking is expensive, and bus service can be hard to access (41 percent of Buffalo’s renting households do not have access to a car).

Tenants proceed to the City Court building, pass through the metal detectors and security, and go to the seventh floor, which includes both Housing Court and Small Claims Court. Once there they wait in a large hallway, sitting on a bench by the wall, until 9am when they wait in a line to let the court know they are present.



Buffalo City Court Building
Source: Wikipedia

GOING TO COURT WITH FOUR CHILDREN

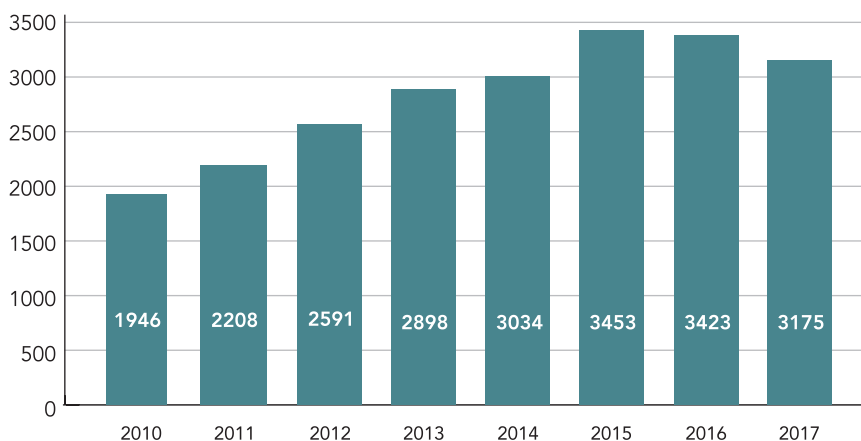
One tenant that we interviewed had to bring her four children to court with her because she did not have money, family or friends available for childcare. To make things worse, she was injured, and the property was infested with rats.

INTAKE

Each morning there are attorneys present from Neighborhood Legal Services and/or the Volunteer Lawyers Project (VLP handles Mondays, Wednesdays, and Fridays; NLS takes Tuesdays and Thursdays). To be eligible for NLS or VLP, generally the tenant’s income must be below 200% of the federal poverty line. Most tenants are income-eligible. The total number of housing cases handled by NLS and VLP rose from 1,946 in 2010 to 3,175 in 2017.

The attorney will review the intake and discuss the case with the tenant. Typically, the attorney will then meet with the landlord or the landlord’s attorney and attempt to reach a settlement, which they will then present to the Court Attorney and put on the record.

NUMBER OF EVICTION CASES REPRESENTED BY NLS AND VLP BY YEAR IN CITY OF BUFFALO (INCLUDES ALL PUBLIC AND PRIVATE CASES) 2010-2017



If no settlement is reached, the parties appear in court before the Court Attorney. Most often, he urges them to settle, and they do. If they do not settle, a hearing will take place – usually immediately. Tenants with low chances of winning their case might ask for a hearing, anyway, if they think that the Court Attorney will pressure the landlord to offer a better deal – perhaps after seeing photos of repair problems or reading text messages about harassment. Housing attorneys report that if a landlord needs an adjournment to gather evidence, the Court will allow it, but that usually tenants are expected to have all their evidence ready that day.

We observed 80 court cases between July 3 and July 13, 2018. In those 80 cases, 2 landlords and 46 tenants defaulted by being absent. Of the remaining 32 cases with tenants, 18 represented themselves, and 14 had attorneys from NLS or VLP. Seventy cases were for nonpayment and 10 for holding over. Of the 32 cases where both parties were present, only one to

DEFAULT CASES

Tenants defaulted by not appearing in 46 of the 80 cases we heard called at Court. This is a relatively small sample, and the number seems high, so it may not be fully representative, but certainly defaults are common. When a tenant defaults, the court issues an automatic warrant of eviction, and the tenant can be removed from the home after 14 days. Tenants default on their cases for many reasons, including:

- the tenant has already moved out, but the landlord wants certainty and an end to any legal liabilities, and so completes the court process;
- the tenant owes rent, cannot pay it, and is planning to move out, and so does not see the value in going to court; or
- the tenant never received the court papers (NLS reports that this appears to be rare, as they rarely hear from tenants after eviction dates).

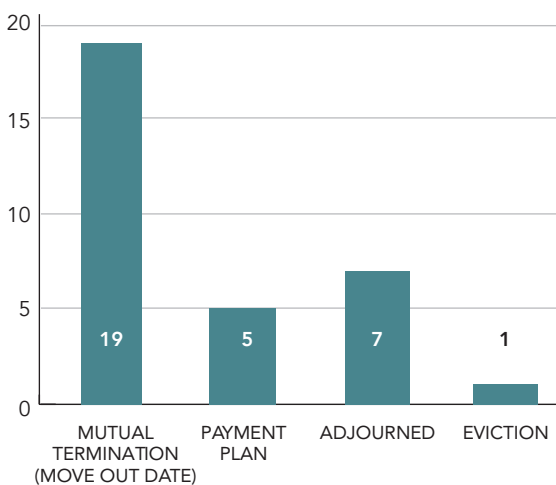
five proceeded to a hearing (it was not always clear from the initial appearance whether the case would result in a hearing), and one resulted in an eviction; the rest were settled with a stipulation or adjourned.

The most common settlement is a mutual termination in which tenant will move out but will be given extra time. In a sampling of 96 NLS non-payment cases from 2014 to 2018, the median duration of time between court date and move-out date was 14.5 days. This will change due to the Housing Stability and Tenant Protection Act of 2019, which created longer timelines and more generous policies regarding adjournments and stays; under the new law, tenants should be able to bargain for more time to move out than previously.

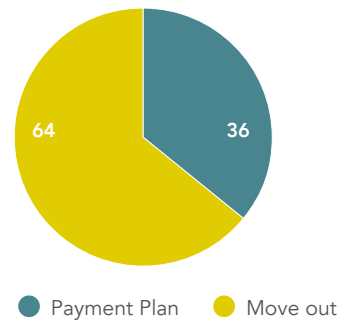
The second most common settlement is that the tenant will stay and repay the back rent based on a payment plan. In our sampling of 152 NLS non-payment cases from 2014 to 2018, 64 percent agreed to move out, and 36 percent made payment plans. To measure the success of the payment plans, we reviewed the court files for 29 cases in which NLS helped to negotiate a payment plan. In 23 of those cases (79 percent), no eviction warrant was issued, which suggests the payment plan worked roughly four out of five times, resulting in the owner receiving the rent and the tenant staying in the apartment.

In the 32 cases we observed where the landlord and tenant were present, one ended in eviction (a tenant with no lawyer in a hold over case; the warrant was stayed for a week and a half), 19 in mutual termination, five in a payment plan; seven cases were adjourned.

DISPOSITION OF CASES IN WHICH LANDLORD AND TENANT WERE REPRESENTED



OUTCOME OF SAMPLING OF 2014-2018 NLS NON-PAYMENT CASES



STIPULATIONS FOR MUTUAL TERMINATION

Housing Court provides a stipulation form for a Mutual Termination of the Tenancy (see Appendix 2). The form gives nine potential terms for the parties to check off, including payments and a vacate date. Under “Breach of Agreement,” potential terms include:

- An immediate warrant if the tenant fails to vacate and/or make payments;
- A stay of execution of the warrant until a given date;
- A reservation of rights to pursue other financial claims such as unpaid rent, security deposit, and premises damage.

The form stipulation emphasizes that it is a “means of avoiding a contested eviction proceeding,” and that it “would not be appropriate” to report it as an eviction unless the tenant breaches the terms and a warrant issues. It notes, however, that the information that an eviction has been filed is generally available to the public, however the case is resolved. The distinction between a mutual termination and an eviction can be particularly important for tenants with Housing Choice Vouchers, who may be made ineligible for further housing assistance if evicted.

A typical tenant will be at Court until approximately 11am, although more complicated cases are often saved until the end of the morning for full hearings, and court sometimes runs as late as 1pm. The experience can be scary and confusing for tenants. Of those we interviewed, 22 percent said that some aspect of the court process confused them.

One factor that adds to the confusion is the fact that, although most get representation by lawyers at the courthouse, very few call NLS ahead of time and have a chance to prepare their defenses with the lawyer and hear about the process in advance. Attorneys must deal with the cases expeditiously at the courthouse. Absent additional resources, if NLS and VLP lawyers spent more time with clients, they would have to serve fewer clients.

22% of tenants said that some aspect of the court process confused them.

BARRIERS TO PAYING THE RENT OWED

Tenants have the right to redeem by paying the rent in full, but most tenants who receive petitions for eviction court are not able to do so. The main reason, of course, is poverty, but there are some additional factors as well.

Landlord refuses to take payment. Some landlords will avoid the tenant or openly refuse payment because they want the tenant out. The tenant will have the right to bring the money to court, but the landlord may hope that the tenant does not come to court, knowing that a large number of tenants default.

In the past, one problem was that a landlord could refuse to take a third-party payment, such as an emergency assistance payment from the County – despite the fact that City of Buffalo law prohibited housing discrimination based on source of income. The new state law banning source of income discrimination should resolve this problem.

Limits on Emergency Assistance. Tenants with eviction notices may qualify for Emergency Assistance from the Erie County Department of Social Services. To qualify, a person must be facing eviction, be income-eligible, and have only a *temporary* need for assistance. That is, the tenant must be able to show that after these arrears are paid, they will be able to afford their housing costs going forward.

To apply, tenants must go in person to DSS at 460 Main Street.¹⁰⁶ However, a tenant can only get DSS emergency assistance once every five years (once per year if on SSI); this is perhaps the biggest reason that otherwise eligible tenants do not receive aid. DSS will pay up to 6 months' back rent (4 months' rent if on SSI). Usually this help is in the form of a loan that tenants must repay. If tenants have received a loan from DSS before, they are not eligible for additional assistance until they repay their first loan. For a household of four, the income limit for arrears assistance is \$32,188 or \$51,500, depending on which program the assistance is granted through (Emergency Aid to Families and Emergency Safety Net, respectively). Tenants on SSI do not need to meet an income limit to receive assistance. In 2017, DSS assisted 4,068 households with arrears assistance to stop an eviction.¹⁰⁷

A major barrier to the use of DSS emergency assistance is the time and difficulty in obtaining it. Residents must go to DSS first thing in the morning and stay there until they are done – potentially missing work or being unable to pick up a child at the bus stop. Sometimes DSS gets busy and asks applicants to come back the next day. If a tenant has an “immediate need” (i.e., they have an eviction case in court the next day), DSS must grant assistance on the same day they apply or give them a denial in writing. However, some tenants may not know this policy and may not

LANDLORD REFUSES TO MAKE REPAIRS AND THEN REFUSES PAYMENT

“I had to change jobs because I wasn't getting enough hours and then had to wait for my paycheck to come. It wasn't enough, so I got a second job and had to wait for *that* paycheck to come. I ended up being late on the rent. To make things worse, the basement flooded around the same time, and I lost a bunch of my belongings. The landlord wouldn't even pay to fix the broken pipe until I paid the rent, so I had to pay for that and come up with the rent, so I was even further behind after that. I have the money now, but now he won't take it.”

Tenant interviewed in Housing Court

EVICTED OVER HABITABILITY ISSUES

“I been using the rent money to fix the ceilings and get rid of the mold. I kept telling my landlord, and they won't fix it. Then they want to kick somebody out. Don't make no sense.”

Tenant interviewed in Housing Court

know to ask DSS workers to address their need that same day.

One problem in the past was that DSS would not pay for late fees and charges, but this problem should be solved by the Housing Stability and Tenant Protection Act of 2019, which limits eviction actions to rent, disallowing eviction for failure to pay fees and charges.

Several non-profit organizations also provide emergency assistance, such as Catholic Charities, Restoration Society, Mariah Love, Buffalo Urban League, and Community Action Organization. These organizations provide small grants of assistance to qualifying tenants facing eviction. Eligibility factors depend on the specific organization. For example, at Catholic Charities, tenants must show that they have income and must have documentation of the reason they fell behind on rent. At Mariah Love, tenants must be behind on rent due to a medical issue. These organizations often run out of funding before the year is out.

Most tenants do not know which organizations offer arrears help and when it is available. Because the need is so great and the funding is limited, organizations often do not advertise when they have funding. If they did, it would be gone very quickly. This means that tenants are often left guessing which organizations might have funding. Taking the time to visit organizations can be counterproductive if the organizations are unable to help. According to an estimate from a former Catholic Charities employee, the organization receives roughly 3,000 requests for rental assistance each year. Of those, the organization can provide rental assistance for roughly 100-200 tenants.

Repair Problems in Eviction Cases

Of the tenants we interviewed, 59 percent reported problems with maintenance. Roughly halfway through our interviews, we added a question to find out how tenants felt about housing inspection. In the remaining 39 interviews, we asked “Would you feel comfortable calling the housing inspector? Why or why not?” Of those asked, 27 responded. Of that group, 13 felt comfortable calling the inspector, and 14 did not.

Of the 13 who felt comfortable calling:

- 5 hadn’t needed to call yet but were willing to do so.
- 1 had not called because they needed to work when the inspector was available.
- 3 said they called, but the inspectors had not come.
- 2 said they called, and Erie County inspected.
- 1 said they called and were facing retaliation from the landlord.
- 1 said they called, but the landlord had connections to get the tickets waived.

PROBLEMS WITH WORKERS

“Electric meters are broken I’m paying for upstairs neighbor’s electric. Every time I called inspectors they never came. The owner sends people high on drugs to do upgrades to the home and fix things, and they act erratically. I refused to let them into my house anymore after one brought in alcohol and was drunk while trying to work in my house. I have my grandchildren around. I can’t have that. Now I’m getting evicted for not letting them in.”

Tenant interviewed in Housing Court

Of the 14 who did not feel comfortable calling:

- 5 did not trust the people or process.
- 3 feared retaliation.
- 2 did not know it was an option.
- 1 had not lived there long enough.
- 1 did not think the problems were severe enough.
- 1 said the landlord was their grandmother.

As Judge Carney puts it, “people are afraid to call county health inspectors.”

Repair problems are prevalent in the housing where Buffalo’s lower-income renters reside. Many owners of rental housing in Buffalo are small-time landlords with limited capital. Many of the City’s neighborhoods are still facing stagnant property values, giving owners little incentive to invest and also making it difficult for them to get affordable financing. Furthermore, due to race and income segregation and a stratified housing market, lower-income renters lack leverage to obtain repairs or demand higher quality for the price they are paying.

Years of depopulation, segregation, and disinvestment have left Buffalo with one of the most deteriorated housing inventories in the nation.¹⁰⁸ It is among the nation’s oldest, with 93 percent of units built before 1980; and it is dominated to an unusual extent by small, painted wood-frame buildings: single-family homes, duplexes, and triples.¹⁰⁹ Compared to other cities, there are few apartment buildings and few buildings made with brick, stone, or stucco. This, combined with Buffalo’s high poverty rate and vulnerable population, gives it some of the highest lead exposure rates in the nation, substantially higher than those in Flint, Michigan.¹¹⁰ Poor housing conditions such as dampness, dust, draftiness, and pest infestation also exacerbate asthma, which disproportionately affects people of color in high poverty neighborhoods.¹¹¹

The City’s 311 line receives over 1,000 complaints about interior conditions in residential properties each year, with the highest rates of complaints coming from the East Side, led by zip codes 14208 and 14211.¹¹² When a tenant calls 3-1-1 about an interior housing complaint, the complaint is forwarded to the City’s housing inspectors.

HABITABILITY PROBLEMS LEAD TO INABILITY TO PAY RENT

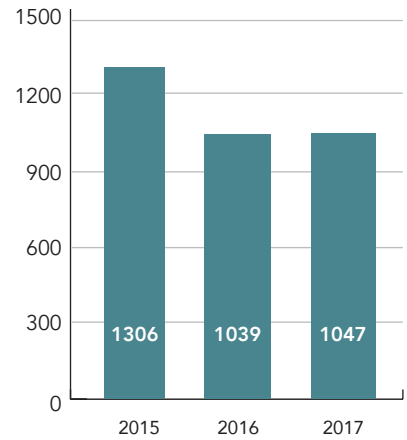
“My power kept going out, and the landlord knew and didn’t do anything. At one point it went out for 3 days during a storm and I lost hundreds of dollars’ worth of groceries. Then a few weeks later the damn fridge went out completely and I lost more groceries. I got behind ‘cause I used up all my savings trying to keep food to eat in the damn house.”

Tenant interviewed in Housing Court

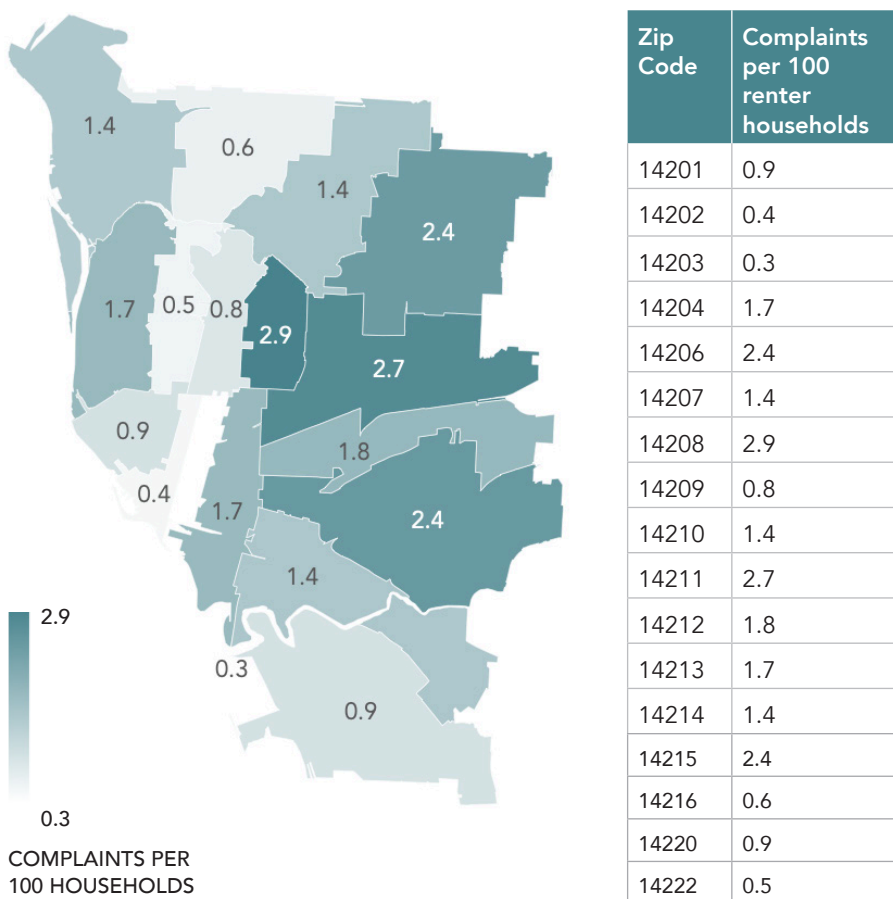
As can be seen in the map below, complaint calls to Erie County Sanitation Inspectors regarding habitability problems in rental housing are also heavily concentrated in the segregated neighborhoods on the East and West Sides.

The City and County face numerous barriers in their efforts to keep residential properties up to code. One obstacle is a regulatory regime with some gaps in it. The most common rental type in Buffalo is the duplex, but duplexes are not covered by the Certificate of Occupancy requirement, which means they do not get regular, proactive inspections (Certificates of Occupancy must be renewed, with re-inspections, every three years). Another barrier is the common use of limited liability corporations, LLCs, to evade scrutiny and liability. An exploitative landlord may operate through a large number of LLCs – one for each property. Each LLC has only one property, typically not worth a great deal, as an asset – thus shielding the owner from effective collection of judgments.

INTERIOR COMPLAINT CALLS TO CITY OF BUFFALO 3-3-1 LINE BY YEAR



INTERIOR COMPLAINTS PER 100 RENTER HOUSEHOLDS BY ZIP CODE IN 2017



Another barrier is a substantial number of owners from outside the region. According to City records, roughly 13 percent of Buffalo’s 64,355 rental units have out-of-county owners, with a high concentration of New York City owners.¹¹³ It can be difficult to serve these owners with papers, collect judgments from them, or simply communicate with them. NLS attorneys report that out-of-county landlords are a much bigger problem than local ones. Often they do not hire local management companies or hire low-quality ones. The City has long had difficulty collecting Housing Court judgments against out-of-county owners. In 2018, state law was amended to allow the City to convert those judgments into tax liens and then foreclose on the building if the tax liens are not paid.

Ownership of City of Buffalo Rental Units (Approximate Figures)

Location of Owner	Number of Units	Percent of Total Units
City of Buffalo	46,855	73%
Not in City, but in Erie County	9,300	14%
Outside of Erie County	8,200	13%
Total	64,355	100%

Judge Carney also notes that it takes a long time for the City’s housing inspectors to bring a case to court, due to staff shortages and procedural requirements. He says that there are 60 inspectors but only one secretary. The case must go through the Law Department for noticing, and, if the defendant is a corporation, through the NYS Attorney General or someone at the state level. He also notes that process serving is a large deficiency. As Judge Carney summarizes it, the owners know that “the inspector’s going to write them a warning letter, six months later they’re going to be in Housing Court, four months after that it has to be fixed.”

Under New York State law, every written or oral rental lease is deemed to include a warrant of habitability: (i) that the premises (including common areas) are “fit for human habitation”; (ii) that they are fit for the “uses reasonably intended by the parties”; and (iii) that the occupants “shall not be subjected to any conditions which would be dangerous, hazardous, or detrimental to their life, health or safety.”¹¹⁴ When a landlord breaches this duty, a tenant is entitled to a reduction in rent. The measure of the damages is the difference between the fair market value of the premises as warranted and the value of the premises during the breach.¹¹⁵

For example, in one case a court found that where a dwelling had broken window glass, leaky bathroom faucets, broken tile floors, inoperable air vent, leaky radiator, and rodent and roach infestation, an abatement of 35 percent of the rent was justified.¹¹⁶ Other examples of habitability breaches considered by courts in New York State include

JUDGE CARNEY ON LANDLORDS AND TENANTS

“I don’t know a landlord, a property owner, a development company that has an actual maintenance schedule for their buildings. None of them. They’re not fixing anything until they see the Housing Court judge.”

“Certain landlords, that’s exactly what they want. They want to keep their property substandard.”

“We have a lot of unscrupulous, bad landlords. We have an equal number of opportunistic tenants.”

JUDGE CARNEY ON CODE CASES VERSUS EVICTION CASES

Judge Carney feels that code enforcement is a more powerful tool than eviction cases with habitability defenses. As he puts it, “Then I’m not just bound by landlord-tenant statutes; now I have a defendant in a court case. The best thing for these people to do is to call a Health Inspector. The problem is, nobody calls the Health Inspector until they get the eviction notice.”

- bed bugs (45 percent abatement of rent),¹¹⁷
- excessive noise from a neighboring apartment (50 percent abatement),¹¹⁸
- several entries by landlord without permission (15 percent abatement),¹¹⁹
- water leaks,¹²⁰
- odors from a dumpster,¹²¹
- odors from cat urine.¹²²

A defective appliance may be a breach, if it creates a dangerous condition, and if air-conditioning is a bargained-for service, its absence in the summer may be a breach.¹²³ If a tenant notifies the landlord of a repair problem, and the landlord fails to fix it, the tenant may fix it and recoup the reasonable cost of the repair.¹²⁴

In addition to the warrant of habitability, there are numerous other sources for the landlord's duty to keep the premises in good repair, including the NYS Multiple Residence Law and Property Maintenance Code, Erie County's Sanitation Code, and the City of Buffalo's Code. More detail about them is available in Appendix 3. A code violation is not an automatic breach of habitability, as it may be too minor, like a broken window blind, but a substantial violation of code is prima facie evidence that the premises are not habitable.¹²⁵

Buffalo's Housing Court has broad powers to get repairs done. It can order that rent be reduced until repairs are done. It can hold landlords in contempt of court if they violate orders to make repairs by a certain time. The Court can appoint a receiver to collect rents and bring the property up to code. Currently the Matt Urban Center serves as the sole receiver for Housing Court and administers roughly 30 residential properties at any given time. The Court has used this option in many cases brought by City or County inspectors; Judge Carney, however, has not used the receiver for habitability cases in landlord/tenant court. One barrier the Matt Urban Center faces is that it lacks a capital fund for repairs; in other words, it can only make repairs once it collects enough rent on property to pay for them.

As noted above, 59 percent of the tenants we interviewed in Housing Court stated that their unit had maintenance issues, but only four indicated that they had refused to pay rent due to the repair problems. Tenants with repair problems can use them as a basis to defend against a non-payment claim. They can ask the Court to stop the eviction, order the landlord to make the repairs, and reduce their rent by the loss of fair market value they suffered. With the rent reduced until they make repairs, landlords have a very strong incentive to comply quickly with the Court's order. Very few tenants, however, successfully defend evictions in that way. According to local housing attorneys, the major barrier is that most tenants do not have the rent money.

POSTING THE RENT

If a tenant wishes to make a habitability defense, do they need to have all the rent claimed, in order to post it with the court? Technically no, but practically speaking yes. Before the Court opens a hearing on a habitability defense, the judge or court attorney will typically question the tenant about the defenses and the rent owed. If it appears that the tenant is going to come up short, even with a rent abatement, the Court will urge the tenant to settle for a mutual termination.

In our sample of 30 cases from 2018, the median rent owed was \$1,235 and the median rent was \$625. In other words, the tenants typically owed about two months' rent. Let us imagine a case in which a tenant with repair problems could show that the problems had reduced the value of the unit by 40 percent. The Court could order that the landlord make all the repairs and that rent be abated by \$250 per month until the repairs were completed. Let us suppose, however, that the tenant has only \$200 in hand. According to tenant attorneys, the Court is likely to tell the tenant something like the following: "Even if I abated the rent by \$250, you still don't have enough money, and I would have to order you evicted. So it is in your best interests to agree to a mutual termination."

But let us suppose that the repair problems had existed for 6 months. If the tenant's rent is \$625, a 40 percent abatement would be \$250 per month. If the court ordered the rent abated for 6 months, the abatement would total \$1,500. If the tenant owed \$1,235 in rent, that debt should be erased, and the landlord should owe the tenant \$265, which the court could order deducted from the next month's rent. It does not appear, however, that Buffalo's Housing Court often addresses cases in this manner – perhaps because many tenants lack good documentation of repair problems and when they started or perhaps because the Court is reluctant to order retroactive rent abatements.

Lack of documentation is clearly a barrier. Most tenants arrive in court without any photographs, inspection orders, copies of written requests for repairs, or other evidence of the repair problems. Judge Carney notes that he would like a system of coordination between the Court and the housing and health inspectors, so that if someone raises a habitability defense, the Court could ask the inspectors to examine the property. The fact that tenants can now receive an automatic adjournment of at least 14 days to prepare for a hearing should make it easier for them to gather documentation of repair problems. The City of Buffalo and Erie County can also make the process smoother by making inspection reports easily and immediately available, rather than requiring a lengthy freedom-of-information request process.

Housing Court seems to take a relatively narrow view of what constitutes a habitability problem and how much rent should be abated. Perhaps the Court is emphasizing the part of the definition regarding "fit for human habitation." But the law also includes being fit for the "uses reasonably intended by the parties" as well as any condition detrimental to a tenant's life or health – including things like noise and odor as well as code violations.

JUDGE CARNEY ON DOCUMENTATION

"That's the problem; nobody ever has documentation... If you want a be-all, end-all catch phrase it would be *document everything*. Physical documentation of everything you want to tell a court is of the utmost importance. And communicate. Tell your landlord. Know who your landlord is. Know who your property manager is. Get an email address for them. Get a phone number that accepts text messages."

Judge Carney on Habitability Cases

You would be surprised how few habitability cases we get. There are issues with repairs but they don't rise to what the statute says is habitability. We try to deal with that, for example, by taking a hundred dollars off the rent, by taking a hundred and fifty dollars, off the rent, by taking two hundred dollars off the rent, and that – those are the agreements that you see being fashioned in there. The problem is, they make the agreement, the landlord says “I'll fix the apartment”, and the agreement is, you pay August's rent, by August 31. The landlord fixes the problem, and then come August 31 the tenant doesn't have the rent. So then, that eviction goes through.

If you can show me a Prima Facie in habitability, you are entitled to a habitability hearing, by law. You are absolutely entitled to a habitability hearing. If you lose it, you're gone.

If you lose, you're out. Tomorrow. Or 72 hours, or when the marshals can get there. [Editor's Note: under the old law, warrants were executed after a minimum of 72 hours. Under the new law, warrants are executed after a minimum of 14 days.] People do not want to make that bet. And by the way, what do you win? If you win the habitability hearing, and I force the landlord to fix the apartment, you're still in a month-to-month tenancy with a guy who now hates you.

Before you do something, think it through. There's a habitability hearing, there's a heat issue here, the county inspector has confirmed it, the landlord has to fix the heat. You're there now for the mandatory six months, because he can't evict you because it would be retaliatory, so you're now there for the six months, and you're essentially miserable. [Editor's Note: under the old law, the presumption of retaliation lasted six months; under the new law, it lasts for one year].

I tell tenants “If you win, start planning on moving.” You know, give yourself time. What's the biggest detriment to tenants moving? First month's rent, security deposit. They simply don't have it. It's hard for people to move. They don't want to move. They want to desperately cling to where they are, because at least they're somewhere. They have a starting point.

Now we've done about 45 minutes so far on these issues, I don't have 45 minutes to review, to pinpoint every case. So one of the things we – the court system struggles with, especially a court like this, is time. There's only one housing court judge.

Housing Court also appears to take the view that where habitability problems are severe, tenants are better off moving out quickly rather than exposing themselves to health risks. When asked what he does when a tenant comes to court with a habitability problem, Judge Carney answered, “I try to get them out of that apartment.” There are several downsides to this approach. First, it shifts the burden of the landlord’s violations to the tenants – making them move instead of making the landlord fix the problem. Second, it furthers involuntary mobility, with all the costs to tenants and communities outlined above. Third, it misses a window of opportunity: the landlord is in court, and repair issues have been identified. If the case is terminated, there is no mechanism to ensure that those issues get resolved. The landlord may simply re-rent the apartment to another unlucky tenant, who will then face those same health risks. There is no system to refer the cases to City or County inspectors, and, even if there were, the inspectors lack the broad and strong power of the Court to enforce repair orders (they would have to wait for a failure to comply and then initiate a new court case).

One solution to the problem of severe, unhealthy conditions is for the Court to order the landlord to pay for the tenant to stay in a motel until the repairs are completed, as has been done in other housing courts such as that in Minneapolis. Another solution is for the City, County, or private funders to fund the creation of safe houses where tenants could stay while repairs were made, with the costs being assessed to the landlord.

Part of the problem may be the understaffing of Housing Court and the pressure on the Court Attorneys to dispose of cases as quickly as possible. Both Court Attorneys serve in Small Claims Court in the afternoon, and so there are sharp limits on the amount of time they can devote to housing cases. A mutual termination is the fastest disposition, and it offers something to both sides, thus mitigating the conflict and stress.

Current funding levels are insufficient for the Court itself, as well as Neighborhood Legal Services and Volunteer Lawyers Project. Buffalo is lucky compared to most places in the nation, in that nearly every income-eligible tenant can get legal representation at Housing Court. The caseload, however, is large, leaving little time to spend with each tenant. Very few tenants call NLS in advance and complete intakes that would allow a lawyer to research the repair issues and prepare a written answer before court. Even if tenants called in advance, NLS attorneys state that it would be difficult for them to obtain the kind of reports needed for a good habitability case within a few days or a week (this may change, however, with the new law allowing for automatic 14-day adjournments at a tenant’s request). If the policies, practices, and culture of evictions is to change in Buffalo, such that more repairs cases can be brought, it will require additional resources for the Court and the attorneys who appear in it.

One solution to the problem of severe, unhealthy conditions is for **the Court to order the landlord to pay for the tenant to stay in a motel until the repairs are completed.**

After the tenant is evicted, the landlord may simply re-rent the apartment to another unlucky tenant, **who will then face those same health risks.**

Recommendations

HELPING TENANTS PAY RENT AND ACCESS RESOURCES

Home Stability Support Legislation. New York State should pass the Home Stability Support bill, which will provide a bridge between the shelter allowance and 85 to 100 percent of the HUD fair market rent for the region. It will serve families eligible for public assistance who are homeless, being evicted or facing homelessness due to family violence or repair problems. Advocates estimate that it would serve roughly 80,000 families initially, including roughly 7,000 families on public assistance facing eviction.¹²⁶

Supplemental Shelter Allowance. Erie County should join 11 other counties in the State by creating a supplemental shelter allowance that reflects the actual costs of renting an apartment.

Reducing BMHA Filings. The Buffalo Municipal Housing Authority (BMHA) should create a program based on that of the Syracuse Housing Authority to reduce eviction filings by having case managers contact tenants who fall behind on their rent. Under a pilot program in which the Syracuse Housing Authority collaborated with the Volunteer Lawyers Project and hired two new case managers, eviction filings dropped from 834 in 2017 to 203 in 2018. The program paid for itself, as the Housing Authority saved \$116,119 in eviction filing fees and lost rent, while preventing at least 30 families from having to move. A large subsidized housing development, Clinton Plaza, ran a similar pilot and prevented 69 evictions, with a cost savings to the landlord of \$29,752.¹²⁷

Broader “Ability to Pay” Criteria for Emergency Assistance. In considering an application for emergency assistance, the Erie County Department of Social Services should consider the applicant’s reasonable probability of restoring income – for example, by regaining employment – rather than basing its determination of ability to pay rent on the applicant’s income as of the day of application.

Resource Information. The City of Buffalo, Erie County, and/or the State of New York should pass legislation requiring that eviction notices served on tenants provide information about emergency assistance. BMHA should voluntarily provide this information on its notices.

After hiring two case managers to work with the tenants, the Syracuse Housing Authority saw a **76 percent decrease** in eviction filings.

MAKING IT EASIER TO GET REPAIRS ORDERED IN HOUSING COURT

Emergency Fund Targeted to Repair Cases. Local governments and/or foundations should consider funding an emergency loan or grant fund for tenants facing eviction but ineligible for County Emergency Assistance, placing a priority on tenants in affordable housing with repair problems – thus enabling them to mount habitability defenses and get court-ordered repairs. There are two compelling reasons to offer more emergency aid to tenants facing eviction. First, keeping tenants in their existing housing is the most efficient way to maintain housing affordability and minimize the many impacts of involuntary mobility on tenants, landlords, schools, and neighborhoods. Second, emergency aid can enable more tenants to mount habitability defenses and get safer, higher quality housing for themselves and future tenants. Factors that might be applied in prioritizing tenants for assistance include:

- Long-term affordability. Is the tenant’s financial situation expected to rebound or improve, such that the rent will be affordable in the future?
- Amount owed. The less owed, the better, in terms of maximizing the fund use (and as an indicator of long-term affordability).
- Repair severity. The worse the repair problems, the more important to get them remedied quickly.
- Problem landlords. Landlords with bad track records at multiple properties should be prioritized.

Ideally, a local non-profit would seek foundation funding to have an emergency assistance worker stationed at Housing Court and working closely with NLS and VLP attorneys and the Housing Court, who could refer clients matching the criteria listed above. The newly expanded timeline for eviction cases will make it easier to arrange for emergency assistance than in the past.

Tenant Paralegal. Local governments and/or foundations should consider funding for Neighborhood Legal Services to hire a tenant paralegal to help tenants facing eviction notices with tasks such as documenting repair problems, getting copies of inspection orders, making copies of rent receipts, applying for emergency assistance, and accessing resources. This would increase tenants’ ability to make habitability defenses: keeping them in their homes and restoring deteriorated and dangerous housing.

Habitability Cases. In considering habitability cases, Housing Court should:

- Make it a priority to keep tenants in existing housing and get it repaired, rather than encouraging them to move;
- Order owners to pay for temporary accommodations for tenants while repairs are made, if it would be unhealthy for them to stay;

Keeping tenants in their existing housing is the most efficient way to maintain housing affordability and minimize the many impacts of involuntary mobility on tenants, landlords, schools, and neighborhoods.

- Where repair problems have existed for previous months, order retroactive rent abatements and apply them to current and prospective rent owed;
- Order rent abatements for all repair and habitability problems, not just those threatening health and safety.

Making Information Available. The Erie County Health Department should make inspection records promptly and electronically available to tenants making habitability defenses to eviction cases, rather than requiring a freedom of information request and a substantial delay. The City of Buffalo now makes inspections information available through its open data portal; the County should do the same.

Housing Receiver. Housing Court's receiver program should be available in habitability cases in landlord/tenant court. Local governments or foundations should support additional staffing for housing receivership and a capital reserve fund that a housing receiver could use to make repairs immediately and repay itself from the rents, rather than waiting for rent money to finance each repair. The City could also explore using a housing receiver to transition properties from tax foreclosure into tenant purchase, where the owner has died or abandoned the property but the tenant remains.

Safe Houses. Local governments and/or foundations should provide funding for safe houses where tenants can stay while repairs are being made to their homes, in cases where there is a danger to health, with the costs to be assessed to the landlords.

Tenant Repair Checklist. Tenants often do not realize all the habitability problems and code violations in their units. If they realize them, they may not document them or communicate them effectively. Local providers should create a tenant repair checklist (see example at Appendix 1) to help tenants when they are moving in, moving out, asking a landlord to make repairs, or documenting repair problems for a court action. It can be incorporated into different forms for the tenants to use in these different situations.

Tenant Remedies Act. New York State tenants lack a simple way to sue a landlord to force repairs. While tenants in New York City, Nassau, Suffolk, Rockland, and Westchester Counties have access to a rent escrow action that serves some of this purpose, tenants in the rest of the state have nothing comparable. In Minnesota, by contrast, tenants can use a rent escrow action or a tenant remedy action to seek repairs. A tenant can start a rent escrow action after an inspectors' deadline has passed or after a tenant has given written notice of the problem and 14 days have passed. Simple forms allow tenants to bring the cases even without a lawyer, but income-eligible tenants can usually get a legal services lawyer to assist

them. In all three types of cases, the tenant may ask for remedies such as:

- Order the landlord to make repairs;
- Let the tenant make repairs and deduct the cost from the rent;
- Appoint a receiver to make the repairs and collect the rents;
- Reduce rent until repairs are made;
- Order the landlord to pay for a motel while repairs are made;
- Make the landlord pay for moving expenses to a new apartment;
- Abate past rent for the time the repair problems existed; authorize the tenant to deduct that abatement from future months' rent;
- Attorney's fees;
- Reimbursement for other expenses caused by the problem such as paying to stay someplace else.

If it is an emergency the tenant can bring an Emergency Tenant Remedy Action. An emergency means a lack of running water, hot water, heat, electricity, functioning bathroom, or other basic services (such as a missing door or lock or missing windows.) The tenant must give the landlord a 24 hour notice, either written or verbal, before filing. After filing, the tenant will get a hearing fast, usually within 3 – 5 business days. Typically, the court will order the repairs and set a second court date to consider rent abatements, money damages, etc.

INCREASING PROPERTY OWNER ACCOUNTABILITY

Illegal Units. Many rental units in Buffalo are not registered with the City, as required by law. Where a landlord attempts to evict a tenant from an unregistered unit, the Court should rule that the lease is illegal and void, and that the landlord may not evict until the unit is registered.

Proactive Inspections. In most cases of repair problems, tenants will not call housing or health inspectors, because they are not aware of their rights, are afraid of retaliation, or need to prioritize other day-to-day struggles. Proactive inspections, therefore, are critical to keeping Buffalo's housing stock safe and healthy. Currently, a huge portion of Buffalo's housing stock does not receive regular inspections because duplexes and single-family rentals do not require a certificate of occupancy, and owner-occupied duplexes are exempt from rental registration. As recommended in *Renewing Our Pledge: a Path to Ending Lead Poisoning of Buffalo's Most Vulnerable Citizens*, the City should phase in certificates of occupancy for all rental housing and require rental registration of owner-occupied duplexes.

Reactive Inspections. In any landlord tenant case where there's a credible report of poor housing conditions, the court should order an inspector to see the home, regardless of the outcome of the case. This way, the repair problem is addressed for any new tenants who decide to rent the home.

Just Cause Evictions. New York State should pass Bill 2892-A, which would ban an eviction based on no cause or based on an unconscionable rent increase. A number of states (including New Jersey and New Hampshire), cities, and counties have passed “just cause” eviction laws that limit a landlord’s ability to evict a tenant or dramatically raise the rent without an adequate reason. New York State considered but did not pass a “good cause” law in 2019. Bill 2892-A would ban an eviction based on an “unconscionable” rent increase, creating a presumption that an increase is unconscionable if it is more than 1.5 times the increase in the Consumer Price Index in the region for that year.

Clean Hands Eviction. The premise of clean hands eviction is that use of the court system to evict tenants is a public benefit that should not be offered to owners who are failing in their public duties to keep their properties in good repair. In Cleveland, the Housing Court uses its own inherent powers to implement a clean hands rule. The Court does a routine review of its eviction docket, and tells any owner with an outstanding warrant for code violations that he must appear and enter a plea in the criminal case before invoking the court’s jurisdiction for an eviction action.¹²⁸ Using similar logic, the state of Maryland is considering barring landlords with lead paint violations from filing evictions. The City of Buffalo, Erie County, and/or the State of New York should pass a law that property owners with outstanding housing code violations in any of their properties may not file eviction actions. Until such legislation is passed, Housing Court should use its equitable powers to institute such a policy itself.

Problem and Out-of-County Landlords.

- The City of Buffalo should emulate Minneapolis and create a Problem Properties Unit and a tiered system of rental licensing in order to better target accountability and enforcement measures to problem properties. The Minneapolis Housing Inspections Services division has a Problem Properties Unit to identify the city’s worst properties and develop action plans to improve them. The unit includes staff from various city departments, and it also tracks and manages boarded and condemned housing.¹²⁹ Minneapolis also uses rental license tiering to prioritize inspections and maintain safe housing. Properties are placed on eight, five, or one-year inspection cycles, based on fifteen criteria. The higher the tier, the higher the licensing fees – in order to reflect the higher costs these properties impose on city services. In addition to creating more fairness, this system incentivizes good property stewardship to qualify for lower fees.¹³⁰
- Landlords who repeatedly violate housing or health codes should lose the ability to operate rental properties. This could be done by denying rental registration and/or certificates of occupancy.

- City inspectors should team up with the State Attorney General and have the State bring cases against landlords with particularly egregious records.
- The City of Buffalo should place more limits on the ability of out-of-county owners to buy investment properties at the City's tax foreclosure auction.

City-Ordered Repairs. Where owners fail to complete repairs within a reasonable time, the City should hire contractors to make the repairs and reimburse itself through a tax lien on the property.

Rental Escrow Account Program. The City of Buffalo should adopt a program like the Rental Escrow Account Program (REAP) in Los Angeles, in which tenants receive a rent reduction and may pay rent to a city-run escrow account when an owner fails to make city-ordered repairs in a timely fashion. When the Housing Department in Los Angeles cites health or housing code violations in a rental property, and the landlord does not correct them, the Department may place the property in REAP and reduce the rent. The landlord has the right to a hearing to contest the decision. The Department sends a notice to the tenant reducing the rent and giving the tenant the option of paying rent to the city's escrow account instead of to the landlord. A city outreach worker provides education and assistance.¹³¹

STRENGTHENING HOUSING COURT

Establishing the Housing Court Advisory Council. Buffalo's City Court should form a Housing Court Advisory Council to advise Housing Court and issue annual reports on its progress, as required by the law establishing Housing Court. In addition to meeting the legal requirement, this Council is an important way for the community to learn about Housing Court and for the Court to learn about community needs and trends.

Restore Housing Court Staffing. The New York State Unified Court System should restore funding to Buffalo's Housing Court for the positions of executive director and court attorney/referee, which were lost to budget cuts. These positions will be essential if the Court is to handle more habitability cases and live up to its potential as a problem-solving court.

WORKING TOWARD LARGE-SCALE SOLUTIONS.

Large-scale solutions involve policies that improve wages for the working poor and public assistance benefits for the disabled and unemployed, and policies that create and preserve affordable housing. For more detailed analysis and recommendations, see PPG's reports:

[Poverty in Western New York: Causes, Impacts, Solutions](#) and [Affordable Housing Strategies for the City of Buffalo](#).

Appendix 1: Tenant Checklist, page 1¹³²

TENANT’S REPAIR LIST – Request for Repairs

Dear _____ Date: _____

Please make the following repairs within the next 14 days.

√	PROBLEM	WHEN IT STARTED	DESCRIPTION
INFESTATIONS			
	Mice		
	Cockroaches		
	Bed bugs		
	Other		
ELECTRICAL			
	No/ broken smoke detector		
	Exposed Wiring		
	Short Circuits		
	No cover plates on outlets		
	Other		
PLUMBING			
	No hot water		
	Clogged pipes/toilet		
	Bad water pressure		
	Dripping faucets		
	Leaks		
	Other		
WINDOWS			
	Missing/torn screens		
	Missing/torn storm windows		
	Broken/cracked glass		
	Missing/ broken locks		
	Other		
DOORS			
	No deadbolt locks		
	Broken locks		
	Missing/broken door knobs		
	Other		

Appendix 1: Tenant Checklist, page 2

√	PROBLEM	WHEN IT STARTED	DESCRIPTION
WALLS / CEILINGS/ FLOORS			
	Chipped / flaking paint		
	Holes or cracks in walls		
	Leaky roof or ceiling		
	Holes in carpet		
	Missing/broken tiles or linoleum		
	Other		
FURNACE			
	Not enough heat		
	Gas leaks		
	Other		
APPLIANCES			
	Broken stove/oven		
	Broken refrigerator		
	Other		
SECURITY / PRIVACY			
	Illegal entries by landlord		
	Disturbance by other tenants		
	Break-ins, vandalism		
	Other		
OTHER AREAS			
	Bare patches in yard		
	Trash from previous tenant		
	Problem with garage		
	Leaky basement		
	Pay utility bills		
	Other		

Tenant's Name: _____

Tenant's Address: _____

Tenant's Signature: _____

Appendix 2: Mutual Termination Agreement Form

**STATE OF NEW YORK : COUNTY OF ERIE
CITY COURT: CITY OF BUFFALO**

Petitioner,

v.

Respondents.

STIPULATION

L & T Index No. _____

Hearing Officer: _____

IT IS HEREBY... knowingly and voluntarily... STIPULATED AND AGREED as follows:

“MUTUAL TERMINATION OF THE TENANCY.”

1. This is **NOT AN EVICTION** ... It is a **“MUTUAL TERMINATION OF THE TENANCY.”**
★ See explanation on reverse side of this form
2. **PAYMENTS:** The Respondent herein agrees to make the following payments:

RESPONDENT CONSENTS TO JUDGEMENT: _____

3. **VACATE:** Respondent herein agrees to vacate the premises by: _____ by 11:59 PM

BREACH OF AGREEMENT

4. If the Respondent **FAILS TO VACATE** or **FAILS TO make PAYMENTS** as set forth above an **IMMEDIATE WARRANT OF EVICTION** without further notice to Respondent will issue to petitioner.
5. **ISSUANCE OF WARRANT:** a warrant of eviction shall **ISSUE ON** _____
6. **STAY OF EXECUTION OF THE WARRANT OF EVICTION** until: _____
7. **RESERVATION OF RIGHTS:** the parties to this action reserve all other legal rights including **SMALL CLAIMS ACTION** for any financial claims relative to the Landlord and Tenant relationship including but not limited to rent delinquency, security deposit and premises damage.
8. **OTHER** _____
9. **FINAL WALKTHROUGH UPON 24 HOUR NOTICE**

I have read the front and back of this form and execute this agreement voluntarily.

SO STIPULATED

Dated: _____

_____ Petitioner	_____ Petitioner's Attorney
_____ Respondent	_____ Respondent's Attorney

Appendix 3: Laws and Regulations Regarding Maintenance and Repair

The state Multiple Residence Law, which applies to buildings with three or more units, requires that “the owner shall keep all and every part of a dwelling and the lot on which it is situated in good repair, clean and free from vermin, rodents, dirt, filth, garbage or other thing or matter dangerous to life or health.” MRL 174. This law also includes specific habitability provisions regarding things such as minimum heat, MRL 173, and the duty to clean all carpets and rugs in the common areas at least once a year. MDL 81(3). It creates a category of “rent impairing violations” and says that if an owner does not correct such a violation within six months of an official notice, the owner may not recover rent until it is corrected. MRL 305-A. 19 CRR-NY 1262.2.

New York State has also adopted the International Property Maintenance Code, which it modifies in various ways through a Uniform Code Supplement. 19 CRR-NY 1226.1.

Erie County’s Sanitation Code has a section on “Housing Hygiene and Property Maintenance” (Article IX), which forbids the renting of a dwelling unless it is “clean, sanitary, fit for human occupancy” and in compliance with all applicable laws. The Code has specific provisions regarding garbage, insects, rodents, fixtures and facilities, standing water, kitchens, bathrooms, smoke alarms, light and ventilation, electrical facilities, heating (including temperature of at least 68 degrees between September 15 and May 31), windows, doors, plumbing, lead paint, etc.

The City of Buffalo’s Code has numerous provisions regarding housing upkeep and habitability. Multiple dwellings with three units or more that are built, enlarged, extended, or altered must obtain a Certificate of Occupancy from the City, including a final inspection to make sure that the building complies with all applicable ordinances, rules, and regulations and accords with the plans and specifications submitted for the building permit. 129-3. Certificates must be renewed every five years. 129-9(A). There is an exemption for enlargements or extensions of one- and two-family dwellings if the floor area does not increase by more than 25 percent.

In addition, all rental dwellings (except owner occupied duplexes) must obtain a rental registration certificate if they do not have a certificate of occupancy. 264-3. If the City inspects a rental unit and finds a housing code violation, it will issue a notice of violation, with a reasonable time, not to exceed 60 days, to correct. 264-15(A). the “housing code” is defined to include all state and local laws, codes, ordinances, rules and regulations regarding housing standards. 264-2. Extensions of up to 60 days may be granted, in writing, upon sufficient cause. If upon re-inspection the violation has not been fixed, the City shall deny or revoke the certificate. 264-6.

If the unit is vacant, no further occupancy is allowed until a new certificate is issued. 264-7(A). If it is occupied, the City shall issue a notice to vacate, which may provide a reasonable period to cure. 264-7(B). If there is an immediate hazard, that period cannot exceed 30 days. 264-7(C). Rental registration must be renewed every year.

The Code also has a Property Maintenance section (341) with provisions regarding yards, water drainage, fences, infestation, garbage, etc. It requires that exterior and interior surfaces be maintained in a clean, safe, and sanitary manner, free of graffiti or substantial deterioration (general dilapidation or specific instances of disrepair, including substantial conditions of peeling, chipping, cracking, rusting, warping, etc. 341-7.

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Graphic Design by Ellen Stay.

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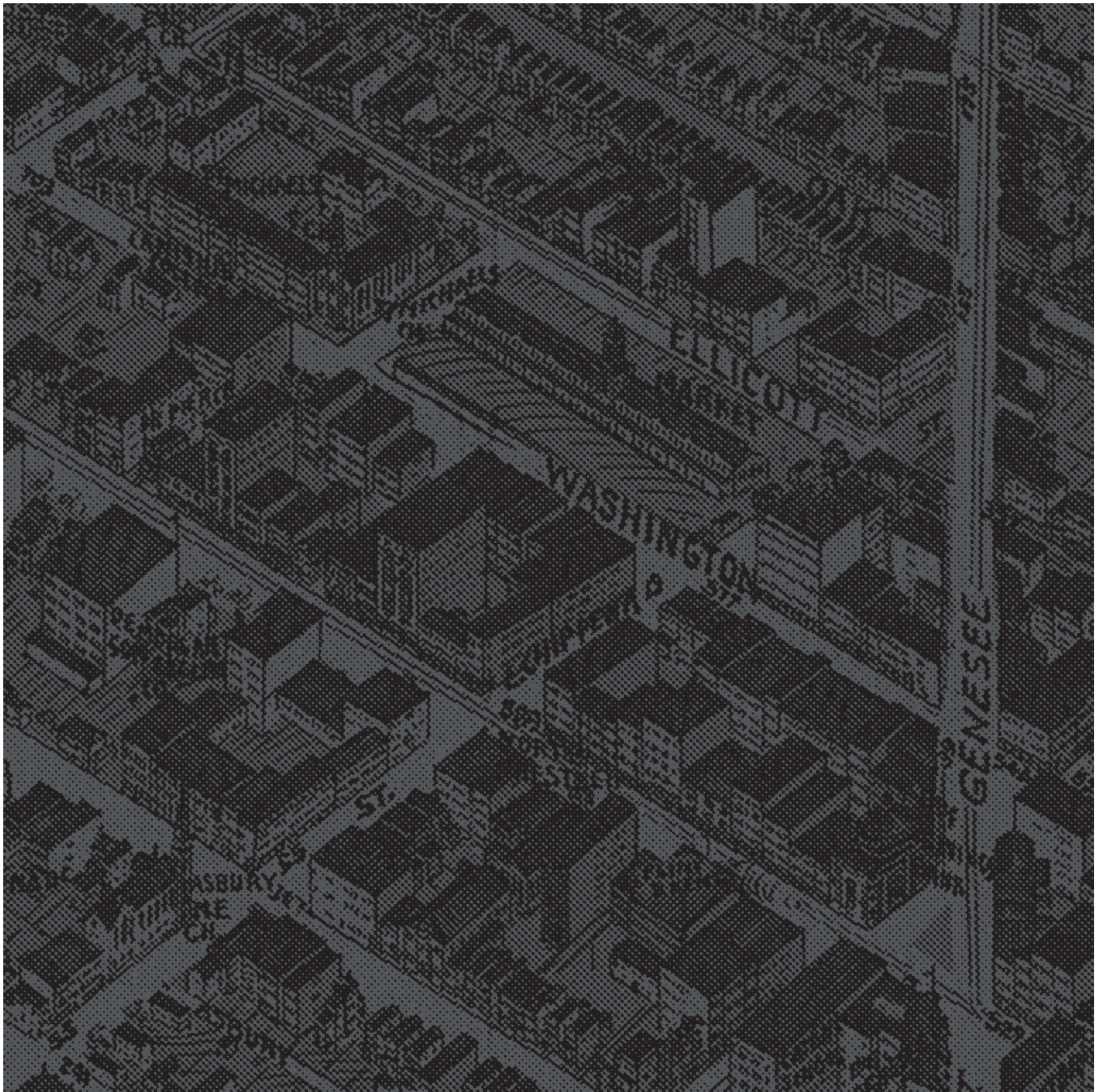
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