



JOINT OVERSIGHT HEARING OF THE COMMITTEE ON HOUSING AND BUILDINGS
AND THE COMMITTEE ON JUSTICE SYSTEM RELATING TO IMPLEMENTATION
AND EXPANSION OF THE RIGHT TO COUNSEL IN HOUSING COURT

FEBRUARY 24, 2020

My name is Mitchell Posilkin and I am the General Counsel for the Rent Stabilization Association, a trade organization comprised of 25,000 members who own or manage approximately one million apartments in the City of New York.

While RSA supports the right to counsel in housing court, it would be premature to consider any further expansion of the program until the five-year phase-in of the existing law is completed in 2022. At that point in time, after the law has been fully implemented, all interested parties will be able to provide the City Council with a proper evaluation of the implementation of the program.

While much has been said about how the right to counsel has benefited tenants in housing court, there are other elements to this discussion which tend to get overlooked. One thing is clear: any objective analysis of the right to counsel issue must consider the larger context in which non-payment proceedings arise in housing court. Here is some of that context:

- 1- Non-payment proceedings, which constitute 90% of housing court cases, now take, at a minimum, 2-3 months longer than was previously the case because of the time it takes to assign counsel. For apartment building owners, especially smaller property owners, delays in receiving their rents jeopardize their ability to pay their property taxes, mortgages and other financial obligations which are ongoing. Neither the City nor banks nor fuel companies nor insurance companies nor utilities care in the least that one or more tenants in a building are not paying their rent or that the matter is pending in Housing Court. Whether intentional or not, the current system simply takes far too long to determine eligibility and to assign counsel to eligible tenants. While extended delays may benefit tenants, it is certainly a major problem for owners. OCA and the legal services providers must enable counsel to be assigned at a much earlier date so that tenants and their attorneys can meet before the first court date, instead of after the first court date which is the current practice. Further, OCA must be given the funds that are needed to bring the antiquated and overcrowded housing courts into the 21st century and so that sufficient spaces are available for all litigants- both owners and tenants- to consult with their counsel. Regardless of where one stands on the spectrum of landlord-tenant issues, we can all agree that the physical conditions of the housing courts are unacceptable and that improving those conditions is both essential and long overdue.
- 2- The trend in the reduction of non-payment cases began in 2012, five years before the enactment of the right to counsel law in 2017. In 2012, 217,914 cases were filed; by 2018,

that number had declined to 191,893. In 2012, 132,860 cases were calendared, by 2018, the number of cases calendared had declined to 102,789. The numbers are even more dramatic when you take into account that 18% of non-payment filings and 25% of calendared cases are attributable to cases brought by NYCHA alone.

- 3- The decline in the number of evictions also began prior to the right to counsel law. In 2012, there were 28,743 evictions; by 2018, that number had declined to 18,152. There is no question that right to counsel will result in fewer evictions or that evictions will take longer. However, evictions will still occur because, regardless of whether a tenant has counsel, the owner is entitled to receive, and the tenant is required to pay, the rents that are due and owing.
- 4- One of the reasons evictions have declined is because of the increased availability of public monies to keep at-risk tenants in their homes. The so-called “one-shot deal” is now commonplace, with the cost of that program exceeding \$250 million annually. In addition, funds are also available through the City/FHEPS program to cover the monthly shortfall in shelter rents under the City’s public assistance formulas. Further, over 120,000 households receive Section 8 benefits and another 75,000 households receive SCRIE or DRIE benefits. If the Legislature had passed legislation to expand the SCRIE and DRIE model to all low-income households, even more tenants would be protected. According to the RGB, evictions have declined specifically because of these various benefits, rising employment levels and declining unemployment.
- 5- Despite the decline in the number of evictions and the hundreds of millions of dollars being spent on right to counsel and the various rent subsidy programs, the number of homeless continues to climb. The City’s expenses to address this problem exceed **\$3 billion**. The RGB’s 2019 report indicates that, at the same time that evictions were declining, homelessness had increased for ten consecutive years, including the first year of the right to counsel program; the number of homeless now approaches 70,000 people. For those who continue to blame apartment building owners for the City’s increasing population of homeless, it is time for you to look elsewhere.

The right to counsel has become an integral part of housing court and lower-income tenants are now represented more than ever before. That being said, the fundamental answer for these tenants is to obtain the rental subsidies that they need to avoid housing court in the first place. Just like tenants, owners do not want to be in housing court, suing the tenants who live in their buildings and who are sometimes their neighbors. They don’t want to have to spend money to hire attorneys to get the rents to which they are entitled under their leases. Avoiding court should be the goal to which our system aspires. The Council’s goal should be to create a system of rent subsidies whereby owners and tenants can avoid the nightmare of housing court.

In conclusion, before considering any expansion of the right to counsel program, the Council should wait until the current program is fully implemented in 2022 so that it can better understand and appreciate the numerous factors which contribute to the successes and failures of the program.