



**TESTIMONY OF THE LEGAL AID SOCIETY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON HOUSING AND BUILDINGS AND COMMITTEE ON JUSTICE SYSTEM
ON INTRO 1104-2018 AND INTRO 1529-2019**

February 24, 2020

Thank you Chairpersons Cornegy and Lancman, members of the Committee on Housing and Buildings and Committee on the Justice System for the opportunity to testify today on behalf of The Legal Aid Society (the Society), the nation's oldest and largest not-for-profit legal services organization. The Society is at the forefront of advocating for low-income individuals and families in civil, criminal and juvenile rights matters, while also fighting for legal reform. With a staff of more than 2,200 lawyers, social workers, investigators, paralegals and support and administrative staff — and a network of borough, neighborhood, and courthouse offices in 26 locations — the Society provides comprehensive legal services to clients who cannot afford to pay for private counsel in all five boroughs of New York City.

The Society exists for one simple yet powerful reason: to ensure that no New Yorker is denied their right to equal justice because of poverty.

The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation and advocacy to vulnerable families and individuals so that they are able to obtain and maintain the basic necessities of life, and to access the benefits to which they and their families are entitled. The Society's Civil Practice focuses on enhancing individual, family and community stability by serving our clients in resolving a full range of legal problems in the areas of housing, public benefits, foreclosure prevention, immigration, domestic violence and family law, health law, employment, elder law, tax law, community economic development, health law and consumer law.

The Society's Civil Practice maintains an annual caseload of some 50,500 individual cases and legal matters benefitting over 125,00 persons. Additionally, the Society's Civil Law Reform Practice benefits more than 1.7 million low-income families and individuals in New York City through its legislative advocacy and affirmative litigation. Many of the rulings the Society has won have had a State-wide and national impact. The Society is counsel

on hundreds of cases concerning the rights of tenants in regulated and unregulated apartments across the city, and strongly supported the State legislature's passage of landmark tenant protection reforms in June 2019.

NYC'S RIGHT TO COUNSEL IN HOUSING COURT

The Society has been representing low-income New Yorkers in Housing Court since the creation of the system in 1973, and standing with tenants even before when landlord-tenant disputes overwhelmed the Civil Courts. In addition to defending our individual clients in eviction cases and fighting for repairs on their behalf, the Society has also long been involved in efforts to reform Housing Court to ensure that it fairly and justly serves the poorest and most vulnerable. Part of that effort has been to work to expand access to free legal services and representation in Housing Court. The Society is a proud member of the Right to Counsel NYC Coalition whose organizing and leadership were instrumental in the 2017 passage of our City's first-in-the-nation law providing the Right to Counsel in Housing Court (RTC).

Since its inception, RTC has been an effective tool towards leveling the playing field for tenants fighting to keep their homes and address landlord abuses such as rent overcharges and failure to honor the warranty of habitability. The current RTC law contemplates that the right to counsel for tenants in Housing Court and New York City Housing Authority (NYCHA) administrative proceedings will be available to all low-income New Yorkers by July 31, 2022. We are currently at the half-way point in the five-year phase-in period leading to full implementation of RTC. Over 100,000 tenants (41,000+ households) received legal assistance through the Office of Civil Justice (OCJ) tenant legal services programs in FY 2019, the first full fiscal year following the August 2017 passage of RTC.¹ This represents a 25% increase from FY 2018.² Among those represented were at least 12,000 tenants who faced eviction from an apartment they have occupied for over 10 years,³ 18,000 rent regulated households⁴ and 2,497 NYCHA households.⁵ Access to representation has helped tenants defend their homes and stave off eviction in 84 percent of housing court eviction cases and 97 percent of NYCHA

¹ Office of Civil Justice Human Resources Administration, Universal Access to Legal Services, A Report on Year Two of Implementation in New York City at 2.

² Id. at 4.

³ Id at 18

⁴ Id at 21

⁵ Id. at 22(A 96% percent increase from FY 2018 to FY 2019)

administrative termination of tenancy proceedings, continuing the trend of decreased citywide eviction filings, eviction warrants and eviction executions since 2013.⁶

RTC has also been effective in empowering tenants to assert themselves and proactively address issues affecting their tenancy. Armed with representation, tenants increasingly are empowered to believe there is a benefit to appearing in Court, and accordingly less judgments are issued against tenants by default due to their failure (or fear) to appear. Additionally, the number of actions seeking to address conditions affecting habitability nearly doubled in FY 2019 from the previous year.⁷ The preservation of habitability of the housing stock as well as preserving affordability is vital in fighting displacement and stabilizing our communities.

In one of the most positive developments, recently, there has been a dramatic shift in the tenant and landlord relationship with the passage of the historic Housing Stability and Tenant Protection Act of 2019 (HSTPA). Coupled with RTC, the HSTPA has the potential to dramatically strengthen tenants' rights, reduce evictions and homelessness across the City, prevent the loss of affordable rent-regulated apartments, and the displacement of long-time residents. The HSTPA provides powerful legal protections for tenants, and through RTC, low-income tenants now have the means by which to secure counsel to enforce those protections. The Office of Civil Justice's 2019 Annual Report on RTC shows that residential evictions have continued to decline through 2018 as the percentage of tenants and occupants in Housing Court who have counsel continues to increase.⁸ Today, the DeBlasio Administration announced that residential evictions by marshals declined more than 40 percent since 2013, with approximately 17,000 evictions in 2019 compared to nearly 29,000 evictions in 2013. In 2019 alone, evictions decreased 15 percent.

⁶ Community Service Society, NYC Right to Counsel: First year results and potential for expansion by Oksana Mironova, March 25, 2019 <https://www.cssny.org/news/entry/nyc-right-to-counsel>

⁷ Id at 11

⁸ See New York City Human Resources Administration's Office of Civil Justice, *Universal Access to Legal Services: A Report on Year Two of Implementation in New York City*. (Fall 2019) (available at: https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2019.pdf)

EXPANSION OF RTC - INTRO 1104

Always seeking opportunities to expand the right to counsel in all civil legal matters, the Society applauds the Council's efforts to expand the RTC through Intro 1104. Intro 1104 would widen the pool of tenants eligible for representation from 200 percent of the federal poverty guidelines to include tenants with a household income of up to 400 percent of the federal poverty guidelines. It would also expand covered cases to include representation for tenants facing administrative termination of their tenancy, voucher holders facing termination of a rental subsidy, and those who wish to appeal an adverse decision affecting their tenancy. These representation enhancements are consistent with the goals of promoting right to counsel, preventing displacement, and preserving affordable housing. Intro 1104 income eligibility expansion would allow representation for a single person whose income does not exceed \$50,680 or a family of three whose household income does not exceed \$86,880. These are New Yorkers who are in fields such as social services, retail, education, healthcare, hospitality, and food services. Although they are not amongst the majority of housing court litigants, they nevertheless experience similar hardships regarding housing affordability and displacement and, are a significant number of those vulnerable to eviction – more than 527,000 households in New York City.⁹ While their income puts them just outside of income eligibility for housing assistance and other social services, private legal representation is typically beyond their financial means.

Full extension of coverage to tenants facing administrative termination of their tenancy is crucial. NYCHA, for example, is an important affordable housing resource for many New Yorkers. Tenants facing termination proceedings are usually pressured to surrender their tenancy or cede significant rights in exchange for avoiding eviction. Ironically, these concessions in the name of avoiding eviction are usually onerous and can place them at heightened risk of eviction. Representation in that forum prevents a lot of these heavy handed tactics and, at least, allows for a full, on the record, examination of the relevant issues. Establishing a robust record at the administrative level is a significant factor of success of an Article 78 appeal where the litigants' are limited to the record established at the administrative

⁹ Community Service Society NYC Right to Counsel: First year results and potential for expansion https://www.cssny.org/news/entry/nyc-right-to-counsel#_edn7

forum.¹⁰ Further, an administrative termination cannot be contested in a subsequent summary eviction proceeding. In this instance, representation in housing court is of limited utility - at that point it is usually too late.

We are heartened that the Council recognizes that representation should continue until a matter is resolved. As the RTC expands, tenants will increasingly stave off eviction and gain other favorable outcomes. It is axiomatic that landlords will contest these outcomes. Allowing tenants to face their landlords without representation in the appellate forums where the focus is on the more esoteric aspects of controversies, would be counter to the goals of the Right to Counsel.

EDUCATION AND OUTREACH - INTRO 1529

We must increase public awareness of RTC, expand it, fully integrate the right into the daily functioning and operations of Housing Court, and ensure that the poorest and most vulnerable New Yorkers have access to public benefits and supportive services that will empower them to exercise RTC to achieve their goals. Many who are eligible for RTC services are unaware that this important resource is available to them; and many others do not realize they can address rent overcharges or force their landlords to properly repair conditions affecting the habitability of their apartment without going to court. The presence of and ability to access community based organizations is essential to the success of the Right to Counsel. As members of the community, these groups are able to build trust and foster empowerment. When tenants know they have a community based organization to turn to and they can access counsel, they can act without fear of retaliation. The threat of being harassed out of their homes is all but eliminated. This is especially so for the most vulnerable New Yorkers such as the elderly, disabled, and immigrant tenants. Neighborhood based groups, with their history of improving the lives of tenants and their earned credibility are best positioned to reach out to tenants, educate them of their rights and organize them towards collective action where their strength is multiplied. We continue to see aggressive displacement tactics by landlords across the city seeking to take advantage of tenants outside of Housing Court. Without access to organizing and education, RTC will do little to stem the trend towards displacing low-income communities and

¹⁰ CPLR §7801 allows court challenge determinations of administrative agencies, public bodies or officers.

communities of color before many even become court involved. These groups must be supported as they are critical to the success of RTC.

It is our hope that the expansion will make RTC an integral part of the City's culture, and a part of its legal and social services infrastructure. We would be remiss not to keep at the forefront of discussions, the long-term sustainability of the RTC practice in New York City. Based on our experience delivering legal services to tenants over the decades, and including more recent experience implementing the RTC, we estimate that there is a significant gap in the funding resources needed to deliver the required services. We also believe that there are essential costs that will increase—e.g., for space and for personnel that are needed to deliver high quality services to our clients and to manage the administrative demands of the contracts. We appreciate the City's interest in discussing all these challenges as we partner and continue the implementation of Right to Counsel.

The Society looks forward to continuing to work with the City Council, OCJ, the State court system, the RTC Coalition, and other stakeholders to improve RTC for all New Yorkers.

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