

**No Rainbow, No Gold:
Tenant-Initiated HP Actions in the
New York City Housing Court**

CWTFHC

**City-Wide Task Force On Housing Court
29 John Street
New York, New York 10038**

May 2003

Table of Contents

| | |
|---|----|
| Acknowledgements | 1 |
| Abstract | 2 |
| One: Introduction | 3 |
| Two: Housing Code Violations In New York City | 4 |
| Three: Getting Help Through Housing Court | 8 |
| Four: Methodology | 10 |
| Five: Findings | 12 |
| Summary Statistics | 12 |
| Chronology | 13 |
| Six: Conclusions and Recommendations | 29 |

List of Tables and Figures

| | |
|---|----|
| Table 1: Number of 1999 Maintenance Deficiencies per Occupied Unit | 5 |
| Table 2: Maintenance Deficiencies by Race of Householder, 1999 | 6 |
| Table 3: Maintenance Deficiencies by Poverty Status, 1999 | 6 |
| Table 4: Summary Data | 13 |
| Figure 1: Days to First Inspection | 15 |
| Figure 2: Days to Second Inspection | 16 |
| Figure 3: Days to Inspection by Poverty Status | 17 |
| Figure 4: Average Days to First Calendar Date | 17 |
| Figure 5: Average Days to First Inspection | 18 |
| Figure 6: Percent of Cases Where First Inspection Followed First Calendar Date | 19 |
| Figure 7: Days to Stipulation | 20 |
| Figure 8: Days to Consent Order | 21 |
| Figure 9: Days to Default Judgment | 22 |
| Figure 10: Total Violations at First Inspection | 23 |
| Figure 11: Number of Cases by Violation Class | 24 |
| Figure 12: Fines as a Percent of Cases, Tenant Initiated | 25 |
| Figure 13: Fines as a Percent of Cases, HPD Initiated | 26 |
| Figure 14: Average Days Elapsed to Fine | 26 |
| Figure 15: Average Total Calendar Dates | 27 |
| Figure 16: Status of Violations, July 2002 | 27 |

Abstract

New York City's Housing Court was established to enforce the NYC Housing Maintenance Code. Over the years, concerns regarding the Housing Court's ability to achieve their code enforcement mission have been raised. In order to evaluate this claim, the Citywide Task Force on Housing Court undertook a study of over 800 HP Action cases initiated in 1999. Our study found that tenants endured substantial delays in getting inspections and resolving cases, that landlords were rarely fined for noncompliance with the City's housing maintenance codes, and that violations were often not repaired even after more than two years had passed. The report concludes with recommendations to make Housing Court a more effective institution for promoting adequate housing.

One: Introduction

Despite major improvements in the quality of the New York City housing stock over the past half-century, a great number of rental units are still inadequate as judged by local housing codes. Every year, tenants file about ten thousand cases in the city's Housing Court to force landlords to make necessary repairs. Broken locks, leaking pipes, peeling paint, exposed wiring—the problems run the gamut from mundane to life threatening. Yet tenants and their advocates complain that the court does little to enforce the city's housing maintenance code and instead acts as a collection service for landlords seeking overdue rent.

To date, little has been known about the actual processing of these tenant complaints (called “HP” or “Housing Part” actions). Anecdotal information from advocates and tenant legal services staff suggests that the labyrinthine process of filing cases, scheduling inspections, serving papers and seeking redress is more of an obstacle for tenants than a path to justice. But no systematic study of the processing of HP actions has been carried out, and reliable data on the indicators and outcomes of tenant-initiated cases has not been available.

In 1999 the City Wide Task Force on Housing Court and the Legal Aid Society initiated a study of HP actions in Housing Court to examine these issues. Reviewing nearly a thousand case files from the court, Task Force researchers tracked cases from the date of filing by the tenant, through the inspection process and court dates, recording dates, violations, and information about stipulations, judgments, and dispositions of the cases. This study presents and discusses the results of this research project.

Section Two presents background information regarding the problem of inadequate housing in New York City and describes the process of filing and pursuing HP actions in housing court. Section Three discusses the methodology for the study, and Section Four presents our findings. The concluding section provides a discussion and analysis of the findings, with particular attention to the question of how effective Housing Court is as a resource for tenants seeking repairs and burdens tenants face pursuing their cases. We also studied the lack of consequences for landlords who failed to comply with court orders and make and complete repairs. Several recommendations are provided for improving the process of code enforcement via Housing Court.

Two: Housing Code Violations in New York City

Inadequate housing conditions have been a concern for policy makers in New York for over a century. As a priority issue, however, housing adequacy has diminished in prominence over the past several decades as basic services like plumbing and ventilation have become nearly universal. During the same period, a growing crisis in housing affordability and availability has come to the forefront in housing policy discussions.

But is the battle for adequate conditions really over? Despite the low profile of dilapidated or deficient housing conditions in the press and policy journals, recent data suggest that the state of maintenance and repairs in many New York City apartments is far from ideal.

Every three years New York City conducts an extensive analysis of the city's rental market in accordance with its rent regulation laws, contracting with the U.S. Census Bureau to study housing conditions and finances in over 15,000 apartments across the city. This Housing and Vacancy Survey (HVS) provides a unique and reliable resource for evaluating housing conditions in New York City, and offers data regarding the frequency of selected code violations along with information about the households affected.

The HVS focuses on seven key maintenance deficiencies (all of which are violations of the New York City housing code) to determine the quality of the physical services provided by landlords:

1. Breakdown in heating equipment
2. Additional heating required
3. Rodent infestation
4. Open cracks/holes in interior walls or floors
5. Broken plaster/peeling paint
6. Toilet breakdown
7. Water leaks

U.S. Census Bureau calculations indicate that 55 percent of the city's nearly 2 million occupied rental units had at least one of these conditions present in 1999, 32 percent of the units had two or more deficiencies, and over four percent were deficient in at least five of the seven areas. In aggregate numbers, this translates into well over half a million maintenance deficiencies present in the city's rental units in 1999 (see Table One).

Table 1: Number of 1999 Maintenance Deficiencies per Occupied Unit

| Number of Deficiencies | Percent of Total | Total Count |
|------------------------|------------------|-------------|
| None | 45.5 | 679,750 |
| 1 | 22.7 | 339,334 |
| 2 | 13.7 | 204,419 |
| 3 | 8.3 | 123,529 |
| 4 | 5.3 | 79,383 |
| 5 | 2.7 | 40,856 |
| 6 | 1.3 | 18,807 |
| 7 | 0.4 | 6,334 |

Source: US Census Bureau: 1999 HVS Series 1A, Table 53

These figures suggest that violations of the city’s housing maintenance code is widespread in rental units, and that a significant number of apartments are in quite poor condition indeed. Over 40,000 units have five or more code violations, this means that as many as 200,000 people are living in bad conditions. Lack of code enforcement is a serious obstacle to a decent quality of life for NYC tenants.

It should be noted that these figures cover only the seven areas aggregated in the HVS—many other areas covered by the city’s housing code (e.g., faulty electrical wiring, fire hazards, missing window guards, lead paint and asbestos, etc.) are not included in the HVS questionnaire. It must be assumed that a more complete survey of apartment and building conditions would reveal many more violations than are indicated here.

Adding the race and income of the household head to our analysis suggests another dimension to the problem. We used HVS data to calculate the number of maintenance deficiencies and compared the rates of deficiencies to the racial categories reported by the householder. These figures indicate quite clearly that housing code violations are disproportionately a problem of nonwhites, Hispanics and the poor.

Table Two divides cases into two categories by the race/ethnicity of the head of household: white non-Hispanic vs. non-white or Hispanic by number of code violations. Only 36% of non-white or Hispanic live in apartments with no violations, as compared to 46% of white households living with no violations. For households reporting just one code violation the racial gap is modest: nonwhites have slightly higher (2.8 percent) rates of incidence. But the gap grows quickly for the worst-performing cases. Nonwhites have a 20.9 percent rate of incidence

of 2-4 code violations, nearly twice the rate for whites. And for the worst cases (5-7 deficiencies), the rate for nonwhites is more than six times higher than it is for whites.

Table 2: Maintenance Deficiencies by Race of Householder, 1999

| | | None | One Deficiency | 2-4 Deficiencies | 5-7 Deficiencies | Missing Data | Total |
|------------------|----------------|---------|----------------|------------------|------------------|--------------|-----------|
| WHITE | Count | 613,298 | 204,181 | 145,851 | 7,963 | 354,874 | 1,326,167 |
| | Percent | 46.2 | 15.4 | 11.0 | 0.6 | 26.8 | 100.0 |
| NON-WHITE | Count | 559,522 | 280,178 | 322,958 | 60,991 | 318,600 | 1,542,249 |
| | Percent | 36.3 | 18.2 | 20.9 | 4.0 | 20.7 | 100.0 |

Source: 1999 HVS, CTFHC Calculation

This racial disparity in housing conditions is echoed by an income disparity as well. As Table Three indicates, households whose income is below the federal poverty threshold are more likely to have code violations than those above the threshold, and again, the magnitude of the gap is largest at the worst end of the spectrum, with five percent of poor households reporting five or more violations, as compared to 1.7 percent of their higher income counterparts.

Table 3: Maintenance Deficiencies by Poverty Status, 1999

| | | None | 1 Deficiency | 2-4 Deficiencies | 5-7 Deficiencies | Missing Data | Total |
|--|----------------|---------|--------------|------------------|------------------|--------------|-----------|
| Below Poverty Threshold: | Count | 171,646 | 100,142 | 122,763 | 26,955 | 115,015 | 536,521 |
| | Percent | 32.0 | 18.7 | 22.9 | 5.0 | 21.4 | 100.0 |
| From 100-125% of Poverty Threshold: | Count | 61,254 | 26,082 | 28,863 | 5,038 | 36,664 | 157,901 |
| | Percent | 38.8 | 16.5 | 18.3 | 3.2 | 23.2 | 100.0 |
| Greater than 125% of Poverty Threshold: | Count | 939,920 | 358,134 | 317,183 | 36,960 | 521,795 | 2,173,992 |
| | Percent | 43.2 | 16.5 | 14.6 | 1.7 | 24.0 | 100.0 |

Source: 1999 HVS, CTFHC Calculations

Although maintenance deficiencies such as those tracked by the HVS are violations of New York City’s civil code, the city has no procedure for levying fines against landlords absent an HP proceeding initiated at Housing Court by tenants or the city Department of Housing Preservation and Development (“HPD”). When a landlord fails to maintain their building in compliance with the

housing maintenance code, they face no immediate penalty under the law. Unlike parking or sanitation violations, housing code violations require a trip to court before penalties can be imposed. In order for HPD to impose civil penalties against a landlord an HP Action must be initiated and actively pursued. Unfortunately for many tenants, this process can be arduous and intimidating.

A tenant may request that HPD inspect their apartment and/or building for violations of the housing maintenance code, without a court order. However, if violations are found the only available course of action by HPD is to notify the landlord that violations are found. If the landlord fails to repair the violations after notice is provided and the appropriate statutory time period for the violations to be corrected elapses, unless an HP Action is commenced, HPD has no statutory authority to impose any financial or civil penalties absent a court order.

Three: Getting Help Through Housing Court

Tenants seeking improvements in their apartments and buildings often find landlords reluctant to make necessary repairs. With chronic shortages in available rental units in New York City, landlords find willing applicants for even substandard apartments, making them less responsive to tenant demands. Many tenants hesitate to press for repairs when other housing options are so limited, especially at the lower-cost end of the rental market.

In circumstances where tenants have exhausted their options for persuading landlords to make repairs, Housing Court is a last recourse. By filing an HP Action in the appropriate borough's Housing Court, a tenant can initiate a legal process that includes an inspection by HPD and a scheduled date on the court calendar. Once the case is before a judge, then it may lead to a court-approved stipulation or consent order, and the risk of civil penalties or fines for landlords who do not comply. HPD is automatically made a party to these HP actions when tenants file their cases.

Unfortunately, Housing Court turns out to be a foreboding and disappointing experience for many tenants. Tenants must visit the court in person to file an HP Action, pay a \$35 filing fee to initiate the case (the fee can be waived for very poor plaintiffs), and fill out several forms in detail and wait for the forms to be signed by a judge—a process that can take up to two working days. The tenant must then serve the papers on the landlord, as specified by the judge. The tenant must also be home on a specified day from the hours of 9 a.m. to 5 p.m. to grant access to HPD inspectors.

Tenants must take time off from work or school to file the court papers, arrange for service of the court papers, wait for HPD inspectors, appear in court on scheduled calendar dates, and must prepare extensive documentation of problems in their apartments, including photographs, heat logs, affidavits and correspondence. In many cases, landlords petition for adjournment of cases and force tenants to return to court several times. Since the majority of landlords are represented by counsel and few tenants are, landlords can negotiate the process with little investment of personal time (since landlords may choose to allow their counsel to appear on their behalf) while tenants must take off time from work, find child care, and travel to and from the court on appointed days.

The court itself is a depressing example of how long-term neglect of public institutions can serve as a barrier for vulnerable citizens seeking justice. Lengthy delays, crowded courtrooms and hallways, and frustrated staff and judges all contribute to an atmosphere of complexity and chaos at Housing Court.

Originally established to provide teeth to the city's code enforcement, Housing Court has evolved into an institution whose purpose is primarily to help landlords collect back rent. In 1999, there were 10,500 HP actions filed by tenants or HPD,

a figure dwarfed by the 268,000 nonpayment proceedings filed by landlords. The changing dynamics of the city's housing market has focused much needed attention on the crisis in housing affordability. Efforts to address affordability, however, have largely supplanted longstanding concerns about housing quality. At the same time, the high incidence of code violations noted in the last section suggests that tenants may find the burdens imposed by Housing Court to outweigh the likely benefits that might result from a judgment in their favor.

The consequence? Few tenants pursue cases through Housing Court and there is little pressure on landlords to maintain buildings adequately. With tens of thousands of units of under-maintained housing continuing to operate each year, a Housing Court that discourages tenants from pursuing code violations is something New York can ill afford.

Four: Methodology

Starting in May of 2000, Citywide Task Force on Housing Court staff worked with summer associates from the law firm of Fish and Neeve to collect and analyze case files from HP actions across the city's five boroughs. Researchers visited Housing Court in each borough and collected a random sample of the cases filed with the court. They collected data on a total of 816 cases with court filing dates from January 1 to December 31, 1999. Where possible, photocopies of case files were made to assist in checking data accuracy.

Researchers used the case files to fill out data collection forms, recording information that included: key dates, the building address, whether the case was initiated by HPD or the tenant, inspection data, trial data, and case outcomes such as stipulations, fines and court orders. Data collection was completed by September 30, 2000, and all information from the forms was subsequently entered into a database, which was carefully checked for accuracy and completeness.

We divide our analysis of the data into three sections: summary statistics, case chronologies, and case outcomes.

For summary statistics, we compile descriptive data for all general variables included in the dataset (excluding the variables to be covered under the remaining two sections). We examine:

- total number of cases
- distribution by borough
- poverty status of the plaintiff¹
- incidence of landlord legal representation

Descriptive information is used as a basis for the more detailed analysis included under case chronologies and case outcomes, and is also useful to ensure that cases are well distributed between boroughs.

Case chronologies focus on the length of time required for prosecution of an HP Action in Housing Court. We calculate the number of days that elapsed between the filing of a case and:

- the first scheduled inspection
- the first calendar date
- second or third inspection dates
- trial dates
- resolutions such as stipulations, consent orders, or fines.

¹ Plaintiffs are permitted to (and commonly do) waive court filing fees if they can show proof of limited income such as public assistance, Social Security, SSI, unemployment, etc. We utilized this waiver as an indication of the poverty status of the plaintiff.

We compiled both summary and analytic data on case chronologies, covering the average elapsed time to inspections, the first calendar date, stipulations and other outcomes, but also examining variations corresponding to borough and the poverty status of the plaintiff.

We have avoided using analytic methods that are obscure or difficult to understand, but we do employ statistical tests where these help establish the reliability of our results or aid in explaining our findings.

Five: Findings

Summary Statistics

We reviewed case files for 822 HP Actions across all five boroughs of New York City. Of this sample, 672 cases (82 percent) were initiated by tenants, with 135 (16 percent) brought by the New York City Department of Housing Preservation and Development (HPD), and about one percent were of unclear provenance given the information in the file. HPD-initiated cases have rather different dynamics than those brought by tenants themselves; the former often come as a result of serious ongoing problems with landlords who have been identified by the HPD enforcement unit as “slumlords”, those with repeated histories of high number of violations of the city’s housing code. In these cases, HPD brings the landlord to court, often in conjunction with an inspection report detailing a large number of violations. These cases are very important from a code-enforcement point of view for the city, but they tell us little about the typical experiences of tenants seeking redress through the housing court.

We separated the HPD-initiated cases from our data-set and focused the bulk of our analysis on the 672 cases started by tenants. Unless otherwise specified, all results reported below are for this sub-set of our total sample.

As Table Four shows, nearly 90 percent of the cases were in the Bronx, Brooklyn and Manhattan, with Brooklyn representing the largest proportion with 36 percent. The last column, “Percent of Population” reports data taken from court records provided by the civil court, and shows the percent of total citywide cases filed in 1999 that came from each borough. The high concentrations in the Bronx, Brooklyn and Manhattan are unsurprising considering both the high population totals and their significant poverty rates associated with these boroughs. The sample statistics roughly track the geographic breakdown reported by the Housing Court for the 10,500 cases.

| | Frequency | Percent of Sample | Percent of Population |
|--------------------------|-----------|----------------------|-----------------------|
| BORO: | | | |
| Bronx | 178 | 26.5 | 23.2 |
| Brooklyn | 244 | 36.3 | 41.5 |
| Manhattan | 180 | 26.8 | 21.3 |
| Queens | 51 | 7.6 | 12.5 |
| Staten Is. | 19 | 2.8 | 1.5 |
| FEE WAIVED: | | | |
| Yes | 358 | 53.3 | |
| No | 61 | 9.1 | |
| Don't Know | 248 | 36.9 | |
| L.L. REPRESENTED: | | | |
| | | Valid Percent | |
| Yes | 330 | 57.0 | |
| No | 249 | 43.0 | |
| Don't Know | 88 | | |

The “Fee Waived” variable represents an attempt to track the percentage of tenants who signed an affidavit requesting a waiver of the 35 dollar court filing fee due to poverty or fixed-income limitations. While a large percentage of the files were unclear on this count, the great majority of cases where we have data indicate that the tenants typically request to have this fee waived.

Finally, studies have indicated that landlords are often represented by counsel in Housing Court, while tenants tend to represent themselves—an imbalance that has been shown to have significant negative consequences for tenants (Van Ryzin, et. al, 2001). We were able to confirm that landlords were represented by counsel in 57 percent of the cases where we had clear data. While no information was available to show how often tenants are unrepresented, the rate of tenant self-representation, prior studies have indicated that few tenants have legal representation in Housing Court.

Chronology

The adage that “justice delayed is justice denied” takes on special meaning in Housing Court, as delays in processing cases and getting inspections can mean that a tenant must continue to live in substandard or even dangerous conditions for the duration of the case. How long do cases take to arrive on the calendar?

What is the average wait for inspections? Are trials scheduled promptly? Court files provide important information to answer these questions.

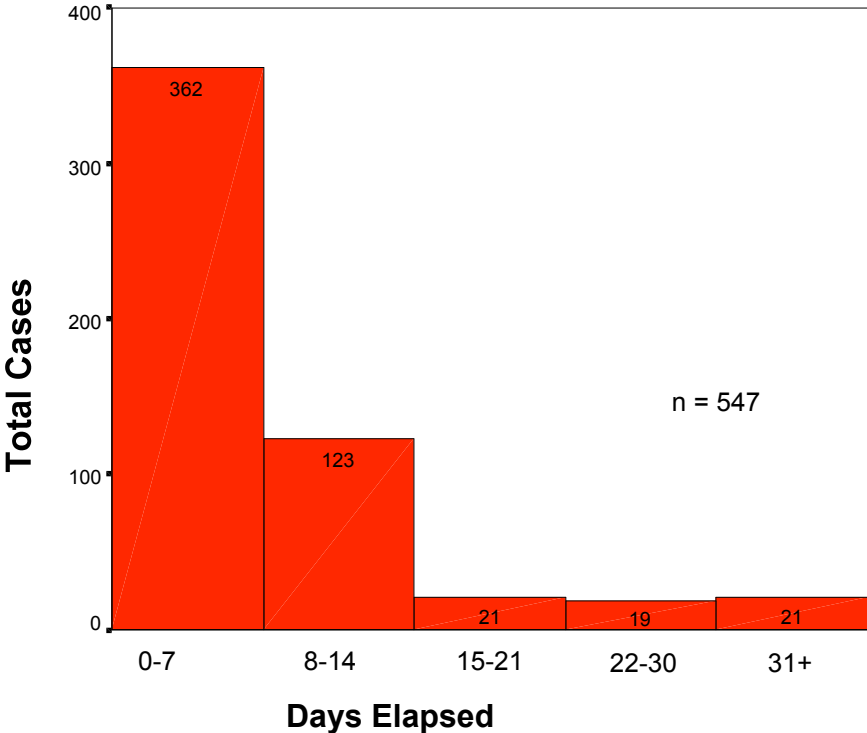
An HP action begins when a tenant files an “Order to Show Cause” directing the correction of violations. At the time the tenant files the case, the court provides the tenant with a date that HPD will come to inspect the apartment and a date on which the court will hear the Order to Show Cause. Ideally, an inspection would occur very shortly after the filing date and the court calendar date would be soon thereafter. Court regulations require that the an Order to Show Cause for immediately hazardous violations be heard within 5 days and all others within 10 days; ideally, inspections should be completed at least 2-3 days prior to the court date, to allow for the inspection report to be available to the judge. Since inspections often reveal violations that are emergency hazardous conditions and require immediate correction, it is not unreasonable to expect landlords to be available for a court date on a few days’ notice.

Figure One shows the average elapsed time in days before the filing date and the first inspection for the city as a whole and by borough. Of the 672 cases initiated by tenants, we did not have clear data for both dates in 102 cases and another 23 of the files listed an inspection as occurring on or before the filing date, a circumstance that is typical of cases where the tenant requested an inspection from HPD before proceeding with an HP action. In these cases, the time elapsed between the filing date and the inspection is irrelevant, so we set all negative values to “missing.” In addition, we eliminated all cases from the analysis where the values were so large that they qualified as statistical “outliers,” i.e., cases that are so abnormal as to distort the overall pattern of the data.²

Of the 547 cases where we had clear data on the inspection and filing dates, the average elapsed time between the filing date and the first inspection was 9.0 days. As Figure One indicates, just 62.5 percent (362 total cases) were completed within one week. 22.5 percent took between one and two weeks, while 7.5 percent did not occur until after three weeks had passed.

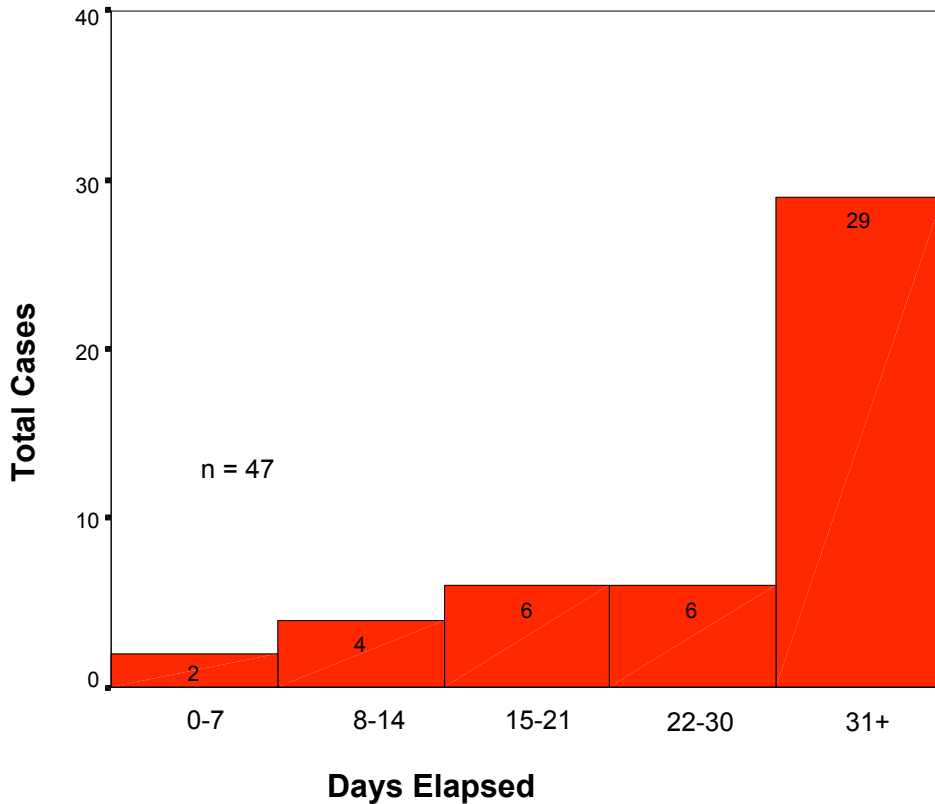
² We used a criterion of 3.29 times the standard deviation, the threshold recommended by Barbara Tabachnik and Linda Fidell (2001), *Using Multivariate Statistics*, Allyn and Bacon, Needham MA.

Figure 1: Days to First Inspection



When tenants and landlords dispute whether repairs have been completed, the court may order a second inspection. The average elapsed time to the second inspection was 43.9 days, and the bulk of the inspections took place more than a month after the filing date, as Figure 2 indicates. At the same time, our small sample size (47 cases) where a second inspection was completed renders these data more suggestive than conclusive.

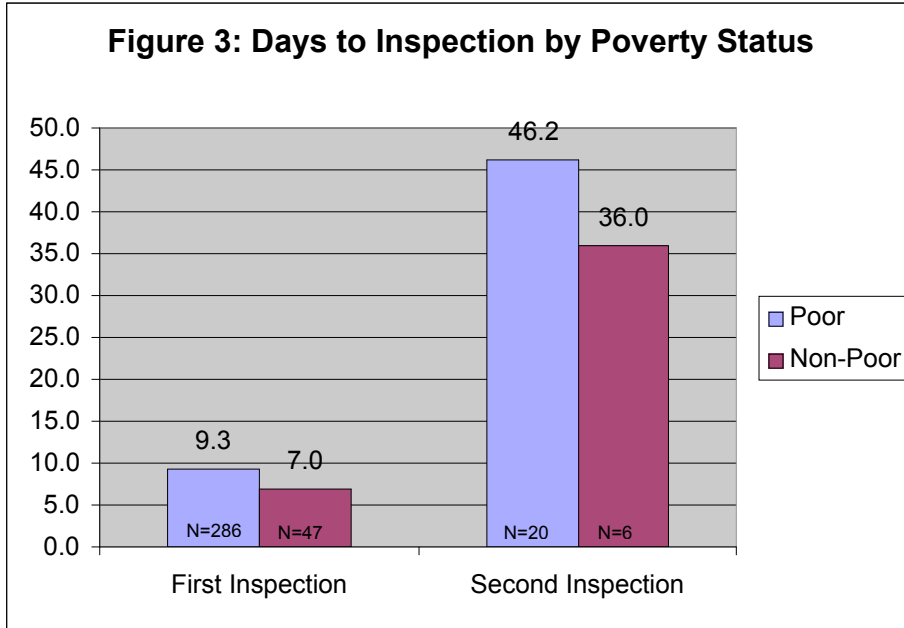
Figure 2: Days to Second Inspection



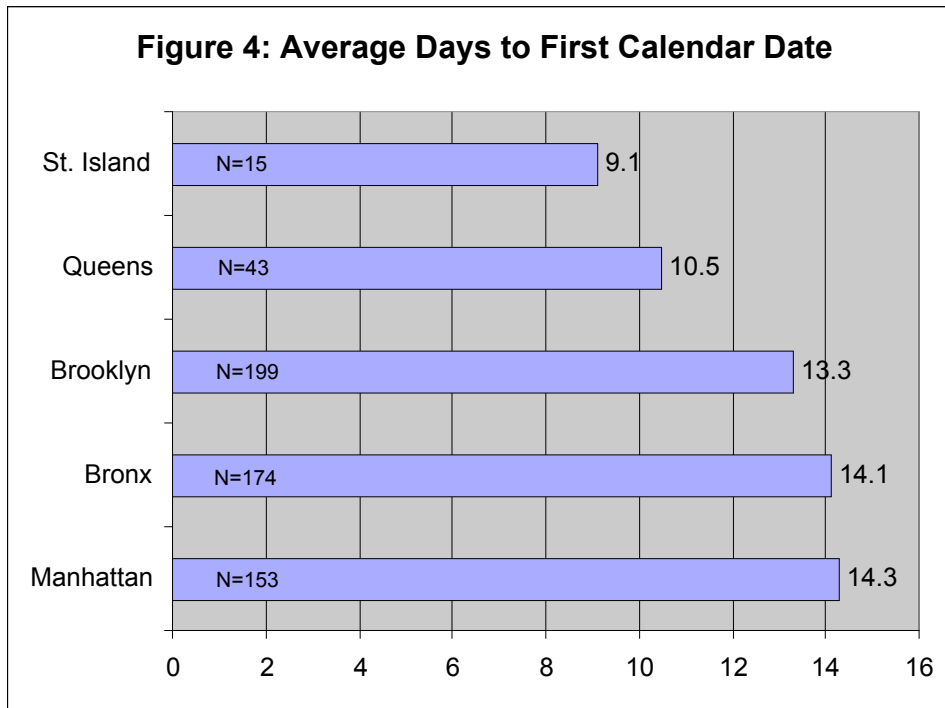
Delays in conducting inspections point to a system where plaintiffs often fail to receive timely justice. The picture becomes even more troubling, however, when we consider the interactions between poverty, geography and the court’s performance.

We divided the cases into two groups, depending on whether the plaintiff had waived court fees as burdensome, and then examined the average time elapsed to the first and second inspections for each group. We treated the waiver of court fees as an indication of the poverty status of the plaintiff, though this is an imperfect measure, as some people may opt not to waive fees due to stigma, or ignorance of their right to request a fee waiver, rather than poverty status.

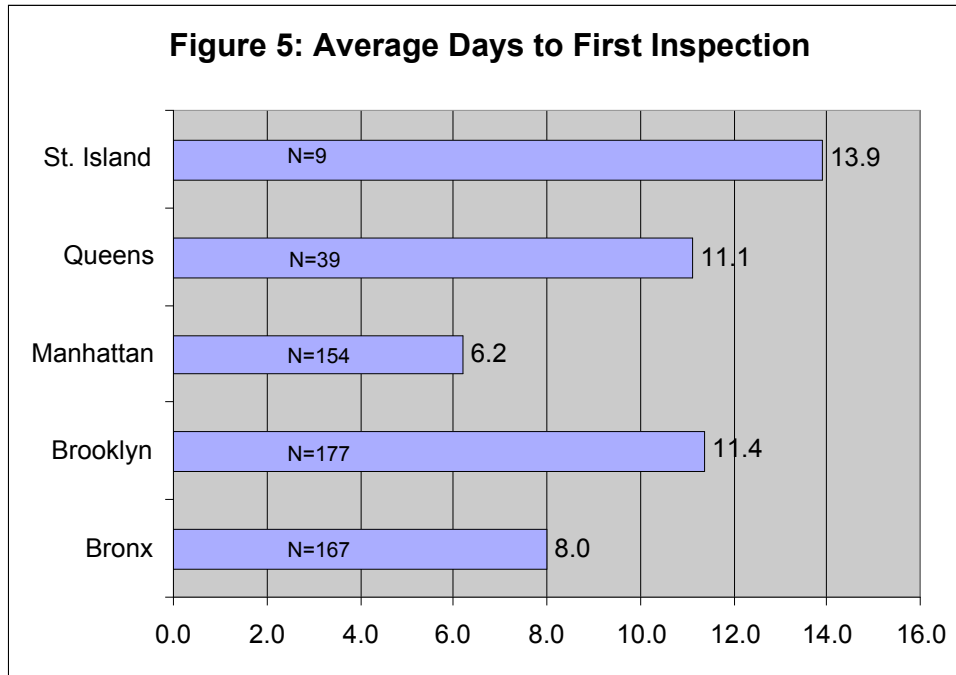
Nonetheless, the data provide some interesting results regarding the possible relationship between income and length of time waited for an inspection date. As Figure Three demonstrates, people who chose to waive the fees experienced longer wait periods for inspections, an average of 2.3 days longer for the first inspection. The fact that poor plaintiffs wait one-third longer than their counterparts suggests that problems with the HP process may not fall equally on all groups.



Breaking down the data by borough presents still more detail regarding the variation in inspection delays. Figures Four, Five and Six show that boroughs deal quite differently with scheduling both court dates and inspections, and this has important consequences for the percentage of cases where the first calendar date is reached before an inspection has been completed.



Manhattan takes the longest to schedule a calendar date, averaging more than 14 days. Staten Island, on the other hand, has the shortest average period to the first calendar date—though this is still over nine days, meaning that many cases go longer. Brooklyn and the Bronx also take about two weeks to bring a case to calendar, while Queens is somewhat faster.

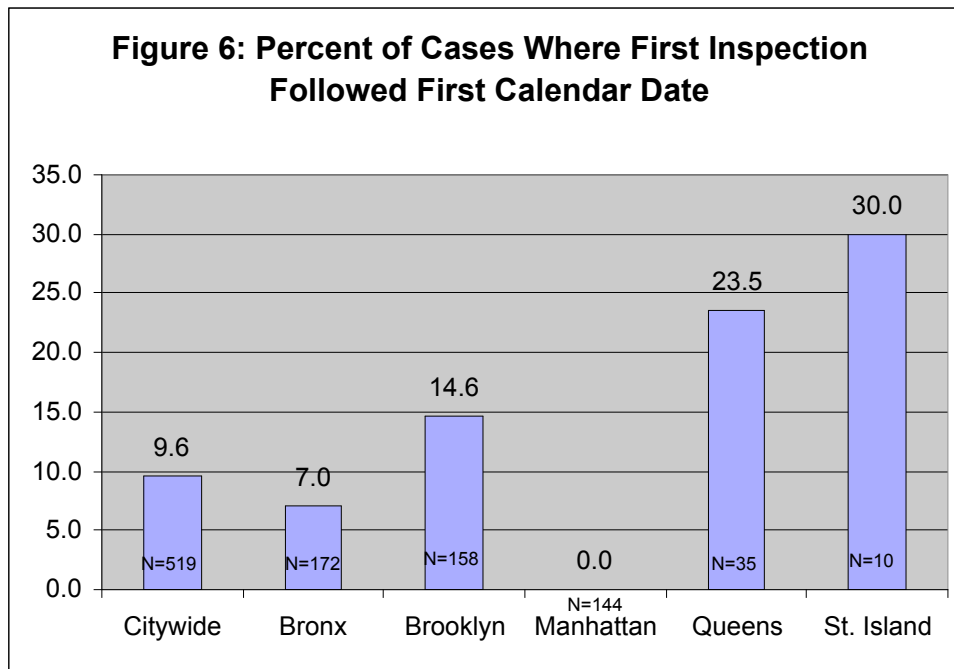


Scheduling the first inspection is even more varied according to borough: Manhattan averages just over six days, while Staten Island takes close to two weeks. The Bronx averages about eight days, but Brooklyn and Queens both take more than eleven days to conduct the first inspection.

Not surprisingly, Manhattan, which schedules inspections quickly and is slow to set calendar dates, fares the best in terms of the percentage of cases that come to calendar without an inspection being complete. We did not find a single instance where this occurred, whereas Staten Island, which takes a long time to conduct inspections and is quick to schedule court dates, misses the mark in thirty percent of the cases and fails to complete an inspection before the first calendar date. This is also a problem in Queens and Brooklyn, where 15 and 32 percent, respectively, of the first calendar dates occur before an inspection has taken place.

As Figure Six indicates, nearly ten percent of the tenant-initiated HP Actions have no inspection completed in time for the first calendar date. This is a serious problem, since little can be accomplished if no inspection report is available when the case comes to court. Inspection reports are the most reliable evidence to confirm a tenant’s allegations of poor conditions in an apartment and the

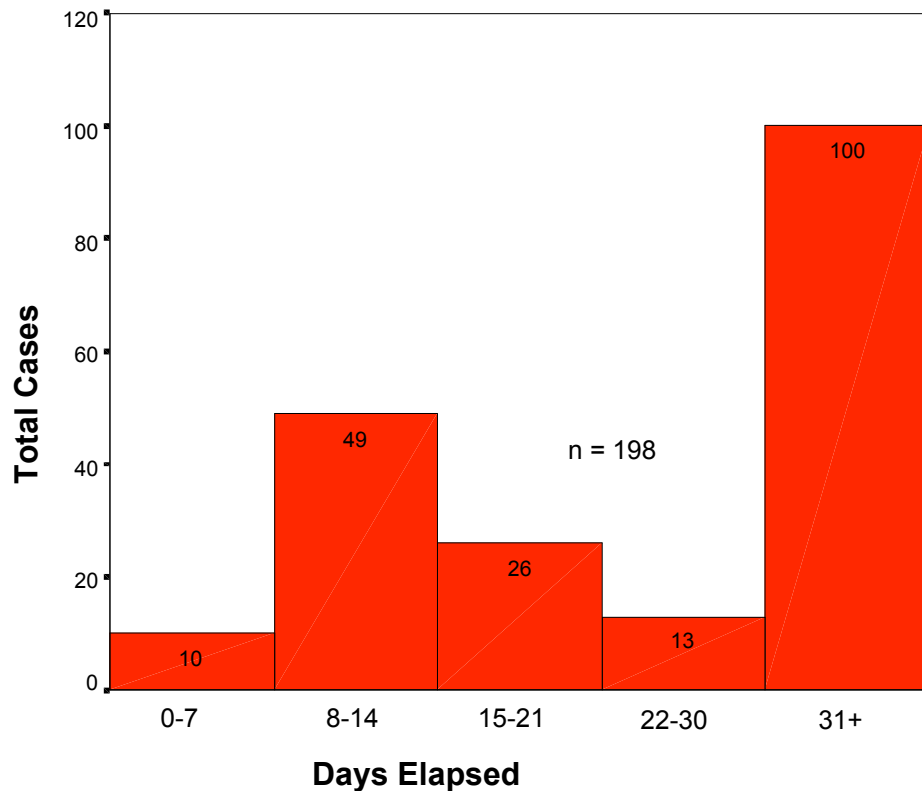
absence of this evidence seriously undermines the tenant’s case. Moreover, these circumstances aggravate the already burdensome time commitment required of tenants who pursue HP Actions and increase the likelihood that tenants will simply give up their efforts to pursue justice at Housing Court. Tenants face two choices when the inspection report is not available on the first court date. They can request that the case be adjourned and return to court on another day or they can sign an agreement with the landlord without the benefit of a list of all of the actual violations in the apartment by class of violation.



If all cases were resolved on the first calendar date, these delays would still be significant problems for many tenants living in substandard or dangerous conditions. The data indicates that a very high proportion of cases take much longer than two weeks to resolve, often more than a month, with the time required differing according to the type of resolution achieved.

Table seven focuses on cases where a stipulation was signed between the tenant and the landlord. Almost no cases are resolved in this manner within a week of filing, while a quarter reach a stipulation within two weeks. About 20 percent are resolved between 14 and 30 days. For more than fifty percent of the cases settled by stipulation, it takes the landlord and tenant more than a month to reach an agreement.

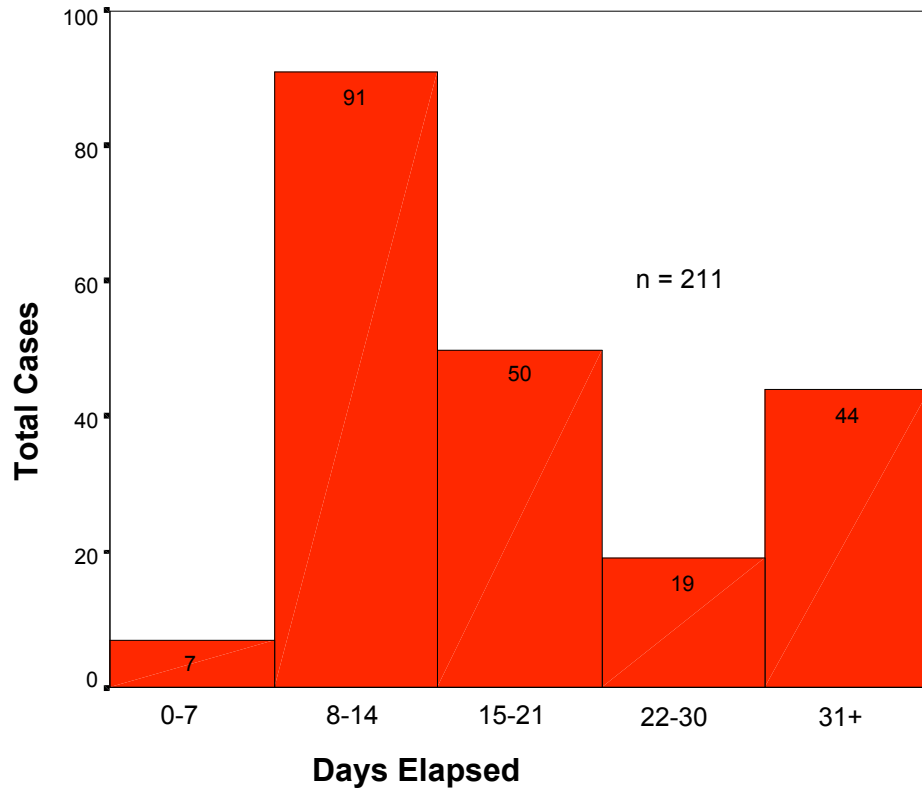
Figure 7: Days to Stipulation



Consent orders followed a somewhat different pattern. In contrast to the lopsided distribution for stipulations, consent orders were often resolved within two weeks of the filing date. Nearly 50 percent of the cases fell into this category, while another quarter were resolved within 21 days. Still, about 20 percent of the cases went more than a month, a not inconsiderable number when we note that consent orders occurred even more often than stipulations in our sample.

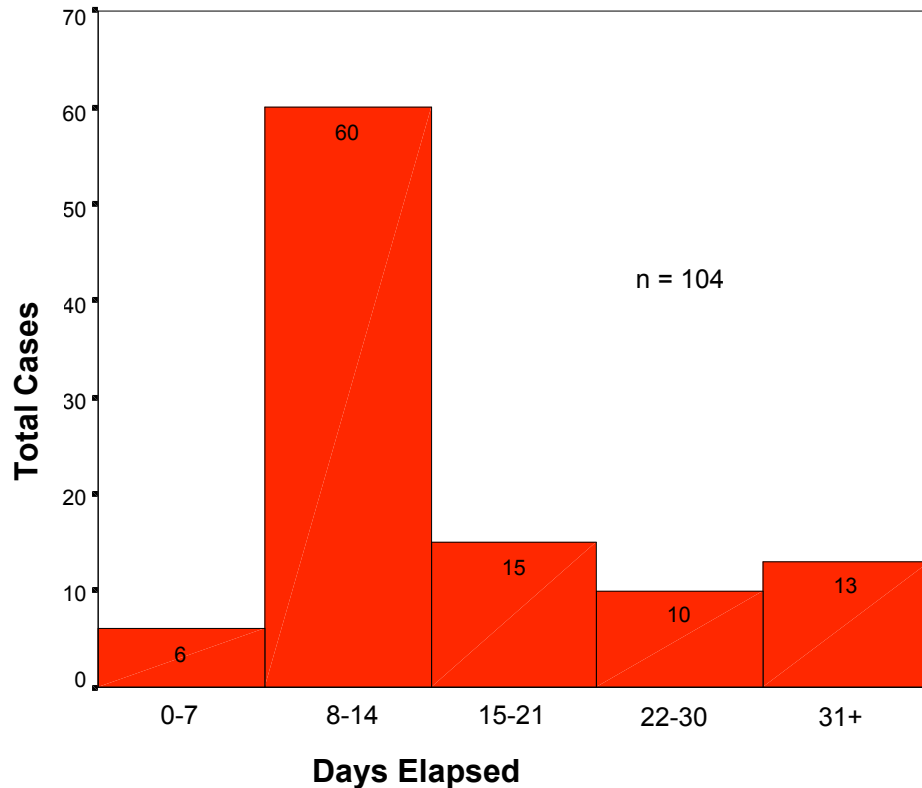
It is unclear why consent orders should be resolved more quickly, in general, than stipulations. Consent orders tend to have more legal “weight” than stipulations. Possibly, tenants who demand consent orders are more aware of their rights in general and more likely to demand timely resolution of their cases. Perhaps their evidence of code violations is more convincing and need fewer court visits to establish. In any case, consent orders clearly take less time than stipulations, but a substantial minority of the cases take more than a month to resolve.

Figure 8: Days to Consent Order



Default judgments were a different story. By far the largest group of these were resolved between seven and 14 days from the filing. A very large percentage appear to be cases where the landlord did not attend the court hearing, though many cases were later restored to the calendar and required a second visit to the court for the tenant. Generally speaking, if a case is going to receive a default judgment it will occur within two weeks of filing. Thirty six percent of the cases went longer than this, but most of these were resolved within a month of filing. Still, it should be remembered that a default judgment (like a stipulation or consent order) does not mean a case is definitively resolved. Cases are commonly restored to the calendar, requiring additional court visits before final resolution.

Figure 9: Days to Default Judgment

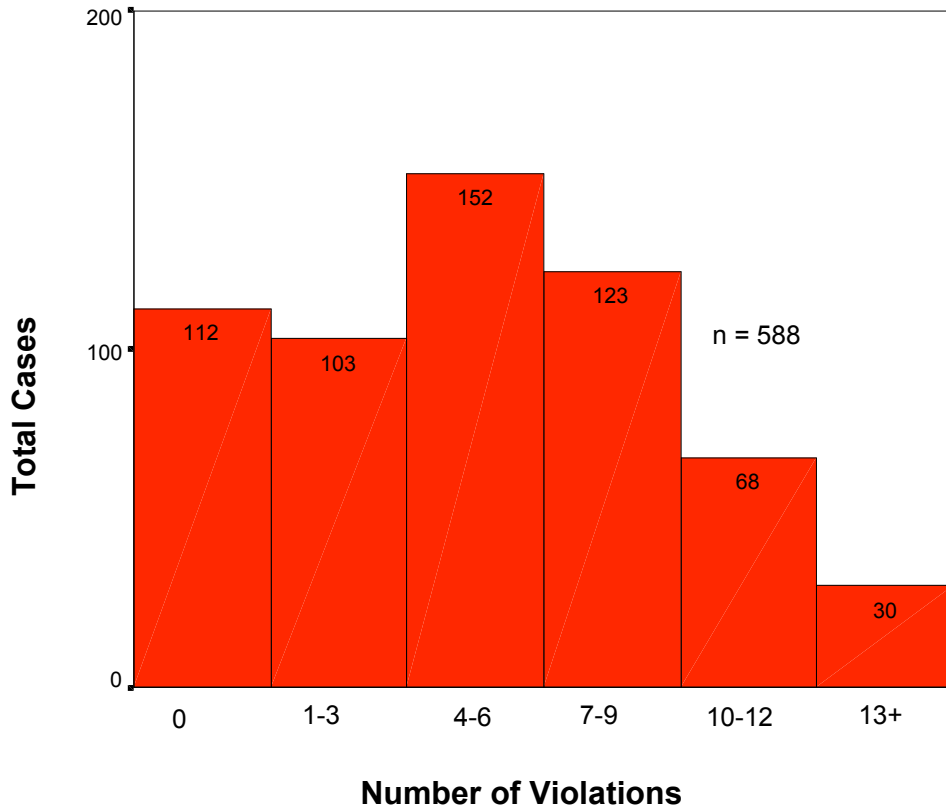


Outcomes

Finally, we examined the data to assess the different types of outcomes that resulted from filing HP Actions. Were housing code violations found in the inspections? Were fines levied by the court? Were the violations ever corrected and cleared by HPD? We began with an analysis of the violations that were found by inspectors, both in terms of the total number of violations and their severity.

As Figure 10 indicates, of 588 tenant-initiated HP actions where an inspection was completed, eighty-one (81) percent resulted in violations recorded. Sixty three (63) percent reported four or more violations, and seventeen (17) percent found more than ten violations. This data corroborates with the HVS results presented earlier in this report that indicate substantial quantities of poorly maintained rental housing in the NYC.

Figure 10: Total Violations at First Inspection



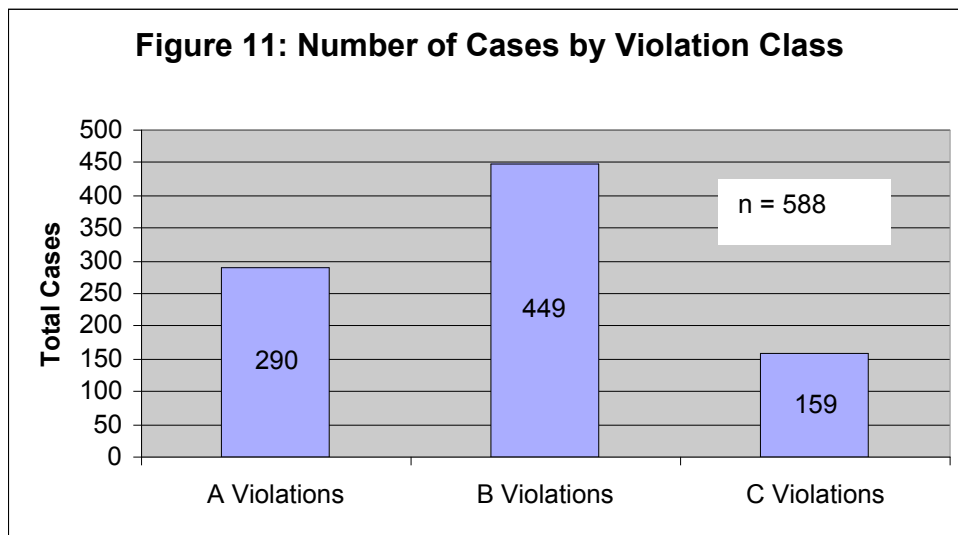
Just as interesting is the distribution of housing code violations by class of violation. Class A violations are considered nuisances (such as peeling paint or minor leaks) that must be corrected within 90 days of the inspection, Class B violations are hazards such as public doors that do not self-close or inadequate lighting in public areas and must be corrected within 30 days, and Class C violations are considered immediately hazardous (such as lack of heat in the winter), requiring correction within 24 hours.

As Figure 11 shows, 449 out of 588 cases (76 percent) resulted in a finding of at least one Class B violation, while Class A violations were present in about half the cases. More disturbing, 159 cases (27 percent) returned at least one Class C violation.

We examined the group of cases where at least one Class C violation was found in the first inspection and found that, out of 143 cases where we had data on filing dates, calendar dates and inspection results, the average time elapsed between the filing date and the first calendar date was 13.4 days. The citywide average for all cases where we had clear data was 13.5 days. Thus, in dwellings where city inspectors confirmed a housing emergency requiring immediate action worthy of correction within 24 hours, delays in court forced the tenant to endure

these continuing conditions for nearly two weeks before the court addressed the issue.

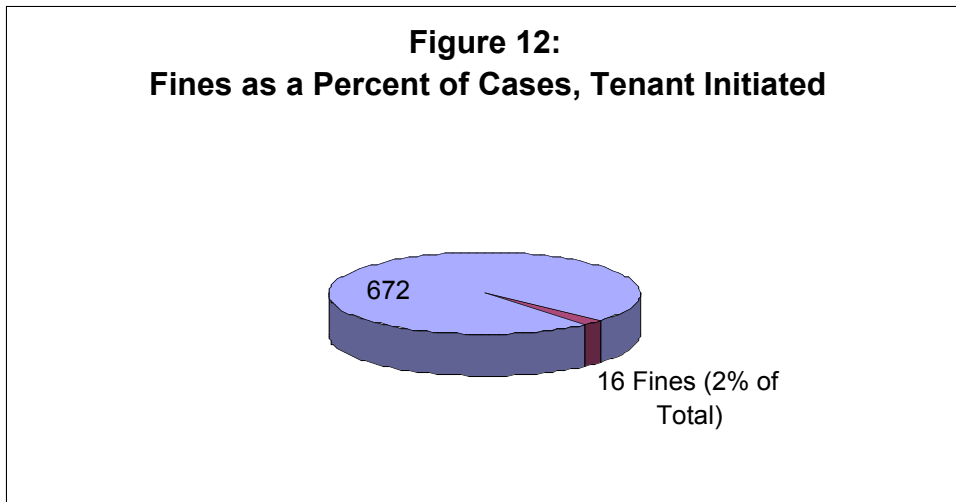
Another way to examine these data is to focus on the time elapsed between the filing and the first inspection. Again, we selected only cases where a Class C violation was recorded and found, once again, serious delays: The average wait for an inspection in these cases was 8.9 days, while the citywide average was 9.0 days. No significant reduction in times for inspections or calendar dates was observed for cases where the most serious violations were present. The statute requires that the court hear cases where C violations are alleged within five days of filing. Clearly the court is not meeting this requirement.



Housing Court is the only mechanism for fining landlords who fail to correct violations in their buildings. In contrast with the practices of the agencies that regulate sanitation, parking and health (where violators are routinely fined to encourage compliance), housing fines are only issued after a civil case has been filed in Housing Court, a court has ordered the correction of the violations, and the landlord has failed to correct the violations and the tenant or HPD has made a motion before the court requesting the imposition of a fine, and the judge orders the payment of fines.

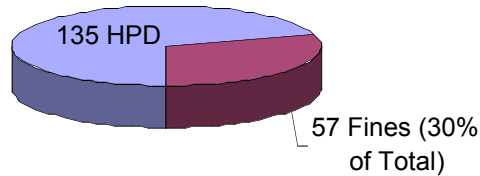
We examined case files for over 800 HP Actions and found that, indeed, Housing Court rarely leads to financial sanctions against landlords. Figure 12 shows that, of the 672 tenant-initiated cases we reviewed, just 16 resulted in financial penalties for the landlords, 2 percent of all cases. In addition, many of these cases were originally larger fines that were sharply reduced in the final judgment. When we consider the wide incidence of immediately hazardous conditions found

by housing inspectors in this same sample of cases, the general absence of sanctions is noteworthy.



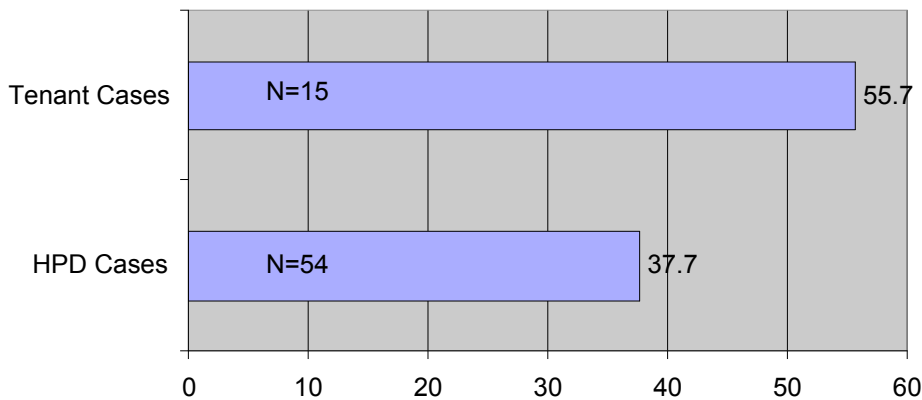
The picture changes rather sharply when we compare cases that were initiated by HPD, the city housing agency. We examined 135 cases initiated by HPD and found that 30 percent resulted in fines against the landlords. Thus, the 30 percent rate of fines for HPD-initiated cases was fifteen times higher than that of the 2 percent of tenant-initiated cases.

Figure 13: Fines as a Percent of Cases, HPD-Initiated

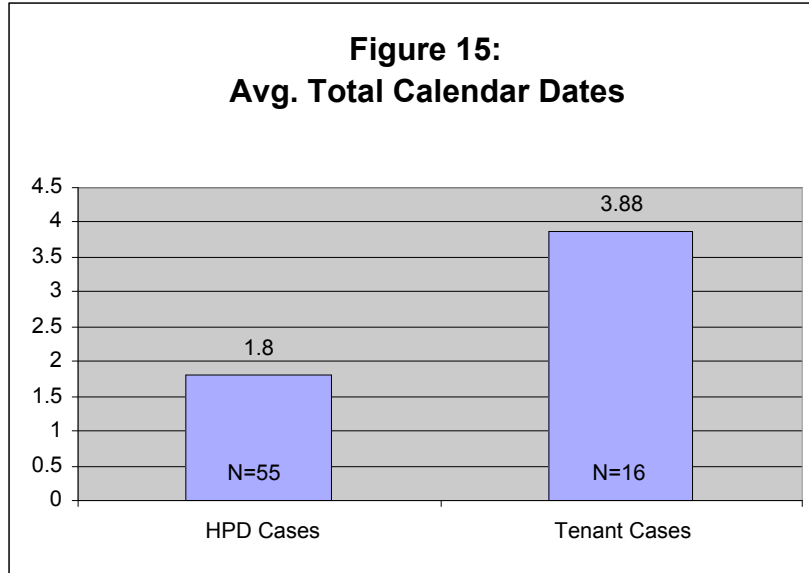


Also, when comparing the time it takes (Figures 14 and 15), tenant-initiated cases that resulted in fines took nearly 50 percent longer than their HPD-sponsored counterparts. The average time that tenants had to wait for a fine to be levied was over 55 days, while HPD cases averaged about 38 days.

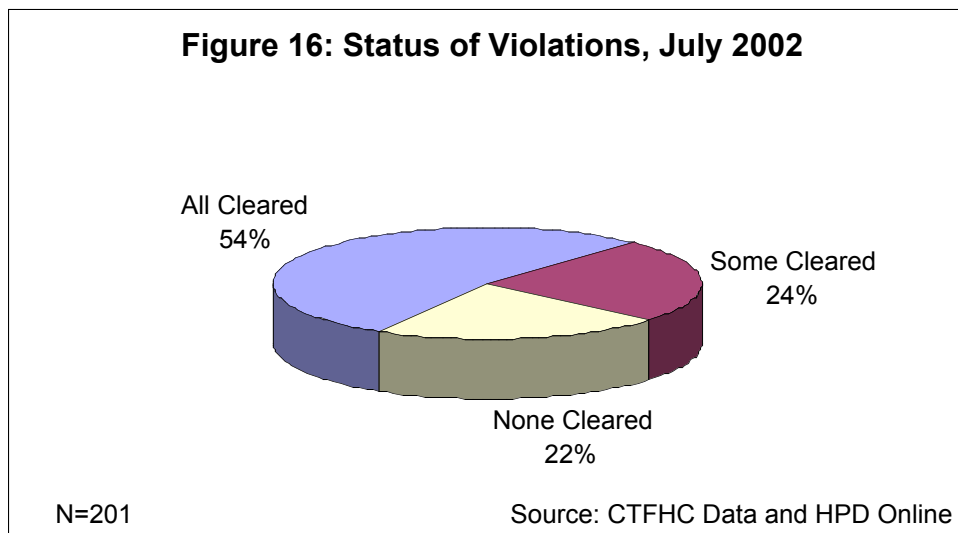
Figure 14: Average Days Elapsed to Fine



Even more dramatic was the number of calendar dates required for each type of case to reach a determination. In cases where a fine was levied, tenant-initiated cases took nearly four calendar dates on average to be resolved. City-initiated cases, in contrast, took less than half as many visits (1.88).



Finally, in July 2002, we examined the outcomes of a sample of cases by re-visiting 337 of the tenant-initiated case files to see if violations had been cleared from the HPD database. We found 201 cases where a violation had been cited during an inspection in 1999 and where clear data were available regarding violations in the HPD database in 2002. This additional round of data collection followed the end of our first round of data collection by over 2.5 years, yet nearly half (93 cases) of the cases we examined still had outstanding violations posted with HPD in 2002. As Figure 16 indicates, more than twenty percent still returned all the violations which were present in 1999 were still there over two years earlier.



Overall, we found that it took tenants a significant number of days to get a court-ordered inspection and court date, and over 55 days to have the court order fines

when repairs were not done and almost no financial penalties to the landlord for not making court-ordered repairs in a timely fashion.

Six: Conclusion and Recommendations

New York City has a serious problem with housing maintenance. With nearly five percent of the city's occupied rental stock exhibiting five or more maintenance deficiencies in 1999, and with these deficiencies falling hardest on comparatively low-income and non-white populations, the city clearly needs a system to encourage landlords to maintain their buildings in compliance with the law. If Housing Court provided swift processing of tenant complaints and meted out fair sanctions when substandard conditions were found, more landlords would maintain apartments.

Yet the data presented in this study suggest that the court is very often an ineffectual and laggardly force for promoting housing improvements. Timely inspections are essential not only because a report is needed before the first calendar date, but also because many conditions reported by tenants are life threatening hazards where emergency action is required.

The average wait to an inspection was nine days—too long in many cases for HPD to issue a report to the court in time for the first calendar date. Indeed, in nearly ten percent of the cases that we examined, the first inspection followed the first calendar date, making speedy resolution of the case an impossibility. And since many inspections were completed just one or two days before the court date, it is likely that even more cases were delayed as HPD did not have sufficient time to issue a report.

Yet delays did not fall evenly upon all plaintiffs. The data suggests a disturbing relationship between the poverty status of the tenant and the length of time it takes to get an inspection; tenants who waived their court fees due to low incomes waited an average of 2.3 days longer for their first inspection. Further, tenants in Staten Island, Brooklyn and Queens waited substantially longer than those in The Bronx and Manhattan.

Cases that were resolved through stipulations and consent orders where the landlord has appeared in court took a significant amount of time. About half of cases resolved by stipulations took more than a month, while 20 percent of cases resolved by consent orders took this long. Default judgments, in contrast tended to occur more promptly. Tenant-initiated cases that resulted in fines for the landlords took an average of nearly two months to complete, nearly twice as long as those begun by HPD, and required nearly four calendar dates on average, as compared to 1.8 days for HPD.

The long wait for resolution of HP cases is very disturbing given the poor conditions that were found in the majority of the units by City inspectors. Over 80 percent of units inspected in our sample had violations and 17 percent had more than ten violations. Even more alarming, over 25 percent of the cases returned at least one "Class C" violation, meaning an immediately hazardous condition

was present, yet inspections of these units were no more quickly carried out than the sample as a whole: waits averaged just under nine days. The delays in inspecting these units were just as long as units with less serious violations.

For cases brought by tenants, we found many landlords are not correcting violations. Our follow-up survey of buildings in the HPD Online database indicated that nearly half still had some or all of the same violations listed more than two years after the case was filed. About one quarter of the cases had brought about no removals of violations.

Taken as a whole, these results offer an image of a code-enforcement system that presents an ineffective and daunting hurdle to tenants seeking redress for poor housing conditions. For those willing to take time to complete the lengthy court papers, pay the filing fee and file them at Housing Court, stay home all day to meet inspectors, collect evidence, and attend their court dates, favorable outcomes do not happen. Large numbers of plaintiffs are enduring lengthy waits and repeated visits to court before securing stipulations or consent orders that force landlords to do repairs. In many cases landlords have not had these repairs done, even after many years. Taken as a whole, the data suggests that Housing Court is not effectively enforcing the Housing Maintenance Code.

From the perspective of the property owner, the system fails to create incentives to make sure apartments are maintained in accordance with the City housing maintenance code. Only the most motivated tenants will invest the time, money and energy to pursue a case in Housing Court—many are not aware of the Court's existence and do not know they have a legal right to a well maintained apartment. Others are afraid to challenge their landlords for fear of eviction, harassment, non-renewal of leases, or the inability to rent from another landlord.

When tenants do resort to a legal strategy, landlords can count on the burdens of the court process to weed out less persistent plaintiffs. Claims of improperly served papers, challenges to evidence and inquests can drag cases out for months. In the extremely unlikely event that a fine is issued, amounts may be reduced if the landlord shows signs of cooperating, and sanctions are rarely severe. HPD-initiated cases, in contrast, are more likely to be resolved quickly and to result in financial sanctions against the landlord.

With Housing Court providing little incentive for code compliance, it should come as no surprise that New York City has a long-simmering problem with maintaining adequate rental housing. HPD, which employs about 800 inspectors and 214 attorneys, is chronically under-funded and employs far too few inspectors and legal staff to force the correction of the tens of thousands of units that are severely out of compliance.

Unfortunately, the people who are best situated to stem the tide of housing deterioration are the ones worst treated by our enforcement system. Far from

being the linchpin of our code enforcement effort, tenant plaintiffs at Housing Court are treated as if they are somehow to blame, paying court costs, enduring delays and postponements, and often pursuing cases to little avail.

How would a more effective code enforcement system work? What would it take to harness the potential of tenants to bring landlords into compliance? How can we move beyond the present system that fails many of the tenants who need it most?

Citywide Task Force on Housing Court believes Housing Court can be an effective vehicle for code enforcement, but not without significant reforms to the city's code enforcement system. The recommendations presented here are intended to promote more equitable and effective code enforcement, while preserving the rights of all parties to fair treatment in court.

1. Recommendation: Reduce times for inspections and calendar dates especially for plaintiffs alleging hazardous conditions.

The city should complete code inspections within five days of filing in all cases, and within two days when Class C violations are alleged. All initial calendar dates should be scheduled to fall within the legally mandated 5 days from date of filing for immediately hazardous and 10 days for all other.

2. Recommendation: Increase the frequency of fines in cases where code violations are confirmed by inspections.

Fines need not be exorbitant to serve as an incentive for landlords to maintain their buildings. All the same, violations of the city's housing code—like their counterparts in parking, sanitation and health—are a real detriment to the quality of life in the city and should carry consequences. Fines should be levied as a matter of course in cases where violations were found by city inspectors, and amounts should increase in accordance with the seriousness of the violations and the resistance of the landlord to correcting them. The Housing Court has the discretion to award payment of some or all of the fines to the tenants, and should do so.

Taken together, these recommendations would require modest changes in administrative practices at Housing Court and HPD, yet they could have a far-reaching effect on the city's code enforcement outcomes. It is not difficult to imagine a system where tenants in poorly maintained buildings file HP Actions through an online or telephone-based system, where inspections are automatically scheduled on a short time-line, where tenants are given complete and accurate information about what they need to bring to make an effective

case in court, and where landlords are subject to fair sanctions for failure to maintain their buildings to minimum standards of decency.

Renters in New York face serious challenges in finding decent housing at prices they can afford. Landlords who fail to maintain buildings to minimum levels of adequacy simply exacerbate the problem, often assuming renters have little recourse but to move on, with all the economic, social and personal costs this entails. A housing code enforcement system where tenants were treated as a resource helping direct the City's attention to problem landlords rather than a burden on an already overtaxed court system, would go a long way toward raising the level of the City's housing quality over time.