As long as there have been landlord and tenant disputes - - which is as long as there have been landlords and tenants - - there has been an imbalance: Some people own the housing that other people need for shelter. And, at least since 1972, with the creation of the Housing Court within New York City Civil Court, there has been another dramatic imbalance. Landlords have attorneys, and tenants don't.

Much has been said and written about this. Little has been done.

The New York County Lawyers' Association held a conference in 2004 to analyze the issues facing housing court. A report (in pdf format) of conference findings and recommendations was recently issued.

The report points to the gap in representation in the 350,000 residential cases that are filed every year: "11.9 percent of tenants in New York City Housing Court were represented by an attorney and 97.6 percent of landlords were represented by an attorney. As grim as these figures are, they likely understate the percentage of low-income tenants who are unrepresented..."

With self-represented (called *pro se*) tenants filling the courtrooms and hallways of the boroughs' Housing Courts, it is a scene one law professor described as a "largely one-sided eviction apparatus." Others have called it Kafkaesque, or as acrimonious as a bad marriage.

Federal and state courts, including New York's Court of Appeals, have distinguished between civil and criminal cases, holding that all persons accused of crimes, facing possible loss of liberty, are entitled to free legal representation. But there has never been a similar right in civil cases. Of course, those able to retain and pay their own counsel have always been able to do so, both in civil and criminal proceedings. But the issue that has never been resolved is, who provides the lawyers for the vast majority of Housing Court litigants who lack the funds to pay their own lawyers?

Tenants are severely and dangerously under represented by lawyers. The lack of representation deprives them of a fair trial, due process, and access to courts, according to

Andrew Scherer, an expert in residential landlord-tenant law who is head of Legal Services for New York, which represents indigent clients in civil actions. Scherer believes it violates the federal and state constitutions as well as civil rights laws, and argues that there is only one solution - - to recognize a guaranteed right to counsel. But the right to counsel cannot be merely theoretical. It means that as in criminal cases, government must supply and pay for lawyers, for those who cannot afford to pay fees, and they must be lawyers who are knowledgeable in the field.

Lawyer-less litigants are generally intimidated by the maze of housing court, a court that even many lawyers have difficulty figuring out. Some conference participants urged Housing Courts judges to be more protective of tenants, especially the most vulnerable, the disabled, the impaired, the aged. But Housing Court judges, like judges elsewhere, cannot become advocates for those appearing before them and can usually do little more than try to explain to the unrepresented tenant what he or she is facing at trial or in agreeing to in a settlement. The settlement is usually contained in a stipulation signed in the corridor, and often contains terms the tenant does not understand or could never comply with, particularly when up against a lawyer for the landlord. (Joe Lamport last month wrote about these hallway settlements in Gotham Gazette's housing topic page.) In addition to judges being prohibited from giving legal advice, Housing Court judges are not elected, but appointed, and for only five year terms; they are acutely aware of the problems they could experience in their own careers. If they are seen as being "pro-tenant," they could risk not being reappointed.

With Legal Services, the Legal Aid Society and housing clinics facing strained budgets, cutbacks, overwhelming caseloads and severely overworked staffs, Scherer continues to press the position that anyone facing the loss of a home should not only be entitled to representation as a matter of fairness, but under law. The conference report calls Scherer's analysis "persuasive" and adopts his view. But neither the legislature nor the courts have ever been persuaded.

Nobody is counting on a tenant right to counsel anytime soon, even though stakes in Housing Court are high -- evictions...and more homelessness.

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