

TESTIMONY OF:

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Presented before

**The New York City Council
Committee on Housing and Buildings**

Oversight Hearing on Int 0621-2024, Int 0622-2024, Int 0623-2024, Int 0993-2024, Int 0994-2024, Int 1037-2024, Res 0119-2024, and Res 0246-2024

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Introduction

My name is Evan Ma, and I am a Staff Attorney of the Civil Justice Practice at Brooklyn Defender Services (“BDS”). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. I want to thank the Committee on Housing and Buildings and Chair Sanchez for inviting us to testify on November 12, 2024, regarding the bills and resolutions in front of this committee and how they will impact all the right to safe housing for all New Yorkers.

BDS represents approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing representation and advocacy, benefits advocacy, and immigration advice and representation.

BDS’ Civil Justice Practice aims to reduce the civil collateral consequences for the people we serve who are involved with the criminal, family, or immigration legal systems. Due to our model of representation, we often work with New Yorkers before they get to housing court. Our clients are more likely to be in informal or unstable living situations with landlords or roommates who may resort to self-help evictions. Temporary orders of protection (“OOP”) are an automatic part

of most criminal cases. These orders are issued based on the criminal complaint alone without any additional evidence, and yet have the immense power to separate and displace families. Our clients facing criminal charges frequently have these orders issued against them at the onset of their case. Often these orders of protection are limited and subject to incidental contact, meaning that the subject of the order is able to continue residing in the apartment. Regardless of the type of OOP, landlords feel empowered to illegally evict our clients based on the OOP alone and without filing a petition in housing court. We are often able to intervene to prevent irreparable harm from an illegal lockout, but additional protections are needed both to protect the many tenants who do not have access to pre-litigation legal assistance and to discourage unscrupulous landlords from engaging in self-help eviction in the future.

Background

The housing crisis in New York City persists despite the city's attempts to stymie evictions through the Universal Access to Counsel program and the expansion of programs that assist with the payment of rental arrears and ongoing rent. Kings County Housing Court continues to hear hundreds of eviction cases daily, including those of tenants who have no available defenses to preserve their tenancies, regardless of how long they have lived in their home or how many thousands of dollars in rent they have paid over the years. Tenants are forced to accept dangerous living conditions, fearing that raising concerns with their landlord or the city would put them at risk of eviction. Housing court remains a forum that substantively favors landlords despite the progress that has been made in recent years.

Beyond the thousands of tenants who are evicted legally every year,¹ there are countless New Yorkers who are illegally evicted outside of court and in gross violation of their due process right to be heard in a summary eviction proceeding. Landlords use a variety of tactics to evict tenants without properly filing an eviction proceeding in housing court. These tactics include changing the apartment door locks without notice, unending harassment, threats of physical violence, threatening to report the tenant to an adverse agency, or moving the tenant's belongings onto the street. For many tenants, this story ends here, without the knowledge or understanding that they could file an illegal lockout proceeding in housing court to get restored to their apartment. Given the extreme power imbalance that exists between landlords and tenants in this city, it is vital to bolster protections for tenants in and out of housing court.

Intro 6022-2024

First, we applaud Intros 6021-2024, 6022-2024, and 6023-2024 as necessary tenant protections against illegal lockouts and strongly recommend codifying these bills into law.

A tenant's recourse following an illegal eviction is to file an illegal lockout proceeding in housing court, wherein a housing court judge determines that person's rights to the subject premises and whether to restore that person to possession of the apartment. Any person who has lived in an

¹ City marshals legally evicted approximately 12,000 New York City residents from their apartments in 2023. Brand, David, "NYC Evictions Surged in 2023, with Legal Lockouts Nearing Pre-Covid Levels," *Gothamist*, <https://gothamist.com/news/nyc-evictions-surged-in-2023-with-legal-lockouts-nearing-pre-covid-levels> (accessed on November 14, 2024).

apartment for more than thirty days, regardless of whether they have signed a lease with the landlord, is entitled to due process and may only be legally evicted via summary proceeding in housing court. As such, if the court finds a person was entitled to such process and has been illegally evicted, that court should restore the person to their apartment immediately.

Many of these illegally evicted tenants are “occupants,” meaning that they lack long-term tenancy rights to the apartment. Although these occupants often have a substantive right to be restored to their apartment and a procedural due process right to a summary eviction proceeding, they are often denied their right to return to their homes. Most housing court judges have determined that it would be “futile” to restore occupants to possession because those occupants would not have long term tenancy rights in their apartment. As a result, these occupants’ illegal lockout proceedings are dismissed or tenants are pushed into unfavorable settlements under the threat of dismissal. This “futility” doctrine does immense harm both to the tenants who are illegally evicted in contravention of their rights, and to tenants who are deterred from asserting their rights in housing court due to the chilling effect of this judge-made law. It also empowers more landlords to rely on illegal lockouts without repercussion.

The constitutional and statutory rights that tenants have are meaningless if judges are able to craft laws around them. By codifying the right of an occupant to be restored to possession after an illegal lockout, Intro 6022-2024 takes an important step in curtailing judicial erosion of tenants’ long-held substantive and due process rights. These bills would protect the rights of all renters and ensure that illegal lockout victims, even those without a formal lease, would have recourse in housing court to return to their home. New York City residents already experience a severe disadvantage when facing eviction – it is vital to ensure that the rights of tenants and occupants are fully protected.

Intro 0993-2024

Second, we turn to Intro 0993-2024. Although we support the goal behind this bill, we recommend that a different agency other than the NYPD be designated to fulfil its purpose. As a public defense office, we see how the addition of armed officers can escalate already volatile situations, and giving broad discretion to the NYPD results in irreparable harm for New Yorkers. Many of our clients understand that calling the NYPD to resolve an issue can create even bigger problems from themselves – at times, calling the NYPD even constitutes a risk to their lives. We advocate for a version of this bill that would empower a different city agency to physically restore tenants to their apartments where they have been illegally locked out. Although this bill seeks to buttress crucial tenancy rights, we caution the city council against granting greater power and oversight to the NYPD.

If the city council determines that the NYPD is best positioned to respond to illegal lockouts, BDS has several recommendations to better protect tenants and reduce the likelihood of further conflict with the presence of NYPD officers. First, assigning a unit of unarmed officers who are specifically trained for illegal lockout situations will reduce the risk of volatile situations escalating into outright dangerous situations. It will also allow those officers to become specialized and better trained at identifying complicated and nuanced lock-out situations, which will increase the

likelihood of successful outcomes for all parties involved. It will also remove firearms from situations which should never require the use of force. This approach is particularly important when tenants are residing in small buildings where the landlord also resides, and where additional non-violent mediation resources will help resolve any conflict and manage the ongoing relationship between landlord and tenant.

Second, the council should provide the NYPD with specific guidance regarding the “procedures under which the police department shall change the door locks on dwellings.” This includes detailed and expansive descriptions of specific scenarios where a tenant is entitled to be restored to their apartment. We are particularly concerned about situations where an order of protection has been issued against a tenant and an NYPD officer, misunderstanding the scope of the OOP, fails to restore the tenant to possession of the apartment, or worse finds the tenant in contempt of their order of protection resulting in an unfounded arrest. Our office has extensive experience with the NYPD incorrectly interpreting orders of protection to our clients’ detriment. Ultimately, if the NYPD is tasked with restoring illegally locked out tenants to their apartments, it is vital that there be in-depth guidance and training from housing and criminal law experts included in the implementation of this law.

Conclusion

Housing is a human right. Although the City could go further to protect the housing rights of all residents and ensure that housing court works fairly, this slate of proposed laws contains nuanced responses to specific and niche housing issues that will affect positive change for thousands of New Yorkers.

BDS is grateful to the New York City Council’s Committee on Housing and Buildings for hosting this important and timely hearing. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact the people and communities we serve. If you have additional questions, please do not hesitate to contact Evan Ma, Staff Attorney, at ema@bds.org.