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May 16, 2017

By Regular Mail and Email

The Honorable Fern A. Fisher
Deputy Chief Administrative Judge, Courts within New York City
111 Centre Street
New York, NY 10013

Re: Proposals for handling rental arrears actions

Dear Justice Fisher:

In recent years, landlords have increasingly sued former tenants in Civil Court for monetary damages. This surprises many unrepresented defendants who thought that the matter was resolved in Housing Court, that the landlord had abandoned its interest in the unit by not making repairs, or that the landlord had given them permission to break their lease. The many problems caused by these "rental arrears" actions are thoroughly described in testimony delivered to the Commission on Access to Justice by the NYC Broken Leases Task Force in September 2016 (attached).

We respectfully propose specific reforms that your office can carry out to ensure accurate judgments and promote fairness in rental arrears cases:

First, we ask that your office propose a change to the Uniform Civil Rules for the New York City Civil Court, which would require plaintiffs in rental arrears actions to file with the summons and complaint an attorney affirmation stating the index number of all Landlord-Tenant ("L&T") proceedings related to the rental arrears action. An L&T proceeding is related to the

rental arrears case if it involved the same subject premises[1] and either (1) was brought against a party who is also the defendant in the rental arrears case, or (2) related to the same time period in which the debt in the civil action was allegedly incurred. When the affirmation discloses a related L&T action, the Civil Court must order production of all files listed in the affirmation before issuing judgments. Alternatively, the attorney affirmation should state that after a reasonable investigation, the attorney has determined that there is no related action. Considering that this rule change could take time, we also ask that you issue a Civil Court Advisory Notice encouraging judges in rental arrears cases to requisition all related files, and review them before ruling on the merits.

Second, treat rental arrears actions the same as consumer credit transactions (by directing the clerks' office to denominate them with a "C," so that they are heard in the Court's Consumer Part). This will provide support to unrepresented defendants so that procedural safeguards will attach and relevant issues will be more fully presented to the court.

Third, in connection with the conclusion of a case in L&T court, take measures to inform tenants that it may be possible for the landlord to sue them again in Civil Court for money the landlord believes it is owed. Your office could encourage this by providing information to Housing Court judges and court attorneys about the types and number of cases filed in Civil Court that stem from prior landlord/tenant actions in Housing Court, and discussing the importance of adequately explaining the monetary consequences to tenants (especially those related to ancillary fees or monetary claims not mentioned in the stipulations).

Below we define rental arrears actions, and then explain the reasons for each reform.

Types of Rental Arrears Actions

When we use the term "rental arrears actions," we are referring to the following types of cases, all of which address money only and not possession:

1. Broken lease. The tenant moved out of the unit before the end of the lease term, and the landlord is suing for a period when the tenant no longer lived there. Either there was no prior litigation, or the landlord brought an eviction action that was uncontested.
2. Use and occupancy. The landlord claims that the tenant owes arrears for a period of tenant occupancy after the lease ended, whether or not the tenant actually lived there.
3. Unpaid rent during the term of lease. The landlord alleges that the tenant did not pay rent while living in the unit. Often there was prior litigation in Housing Court, when the landlord tried to evict the tenant for nonpayment.
4. Attorney fees and costs. The landlord is seeking attorney fees from the tenant for past Housing Court litigation, and/or late fees. The tenant may still be living in the unit.[2]

[1] "Subject premises" refers to the unit/apartment that was the subject of the L&T action, and for which the current landlord now seeks additional monies in the rental arrears case.

[2]Some consumer attorneys observe that landlords will file low-value "late fee" actions where they are interested in pushing the tenant out of the unit.

5. Damage to the unit.
6. Hybrids. The landlord is pursuing multiple claims of the types described above.

Prior Stipulations and Judgments

Rental arrears actions are often preceded by landlord/tenant litigation. The closed L&T files often provide information that is crucial to reaching the correct result about moneys owed in the current Civil Court action.[3] Judges should have access to these files.

Here are some examples of why the litigation history between the landlord and tenant is crucial.

1. The landlord may be seeking a duplicate judgment. For example, the landlord seeks arrears for January 2015 through June 2015, but the Housing Court already granted a judgment for arrears through April 2015. Below are two examples based on the experience of committee members:
    - A landlord sued its former tenant for rental arrears (CV-069342- 14/KI) even though it already held a Housing Court judgment for several months of its claim (LT-110357- 11). The L&T judgment was for $4,060, and the landlord was collecting on it through a marshal. The landlord denied that it already had a money judgment, but reduced the amount sought in the CV action by $4,060 only after the tenant's lawyer asserted the overlap repeatedly in court appearances. , The attorney representing the landlord said that his firm did not know about the previous judgment because a different firm had handled that litigation.
    - In another case, the landlord was unrepresented and believed that filing a rental arrears action was the proper way to enforce his Housing Court judgment.[4]
2. The Housing Court judge granted the tenant a rent abatement due to conditions in the unit. The landlord never fixed the conditions, but is seeking full rent for months afterward.
3. The parties signed a stipulation that suggests the arrears were fully paid. *See* CV-009872-15 and LT-94490-13 (landlord signed a stipulation stating that defendant stated she had paid her share through the last month, but then sued her for many months of rent).
4. The landlord did not prevail in the Housing Court action. Landlords are not entitled to attorney fees in this situation,[5] but they sometimes pursue recovery of fees by starting a

[3] Rental arrears cases are also filed in Small Claims Court. Here, too, L&T files may be necessary to accurately resolve the matter, which may involve landlords who are individual homeowners or tenants' claims for security deposit refunds.

[4] *See, also*, CV-031075-15/KI and related L&T action; CV-018241-14/KI and CV-016747-15/KI (one of which was converted from an LT action, LT-101675-12.

[5] "Ordinarily, only a prevailing party is entitled to attorney's fees[.]" *Nestor v McDowell*, 81 N.Y.2d 410, 415-16 [1993]. "To be considered a prevailing party, a party must be successful with respect to the central relief sought[.]"*Fatsis v. 360 Clinton Ave. Tenants Corp.*, 272 A.D.2d 571, 571-72 [2d Dept 2000]. Where the landlord sought to recover possession in its petition, possession was the central relief sought. The landlord must be awarded a

separate action. Usually this happens when the L&T action was settled (with no provision for attorney fees), but it may also occur when the Housing Court action was dismissed. *See, e.g.,* CV-002417-16 (landlord sought legal fees related to multiple prior actions that were settled).

5. The Housing Court ordered the landlord to make repairs. The tenant moved out because the landlord failed to follow the order. The landlord then performed the repairs and sued the tenant for the cost of doing so.

Without viewing the previous L&T file(s), the judge may not have a full understanding of the underlying and relevant facts of the case. Courts may issue duplicative judgments, or judgments that contradict the law of the case or the parties' intent in earlier proceedings. Since older files often are not stored in the courthouse, we propose requiring plaintiffs to provide any past stipulations or judgments between the parties. If that is impracticable, we suggest that the courts themselves look up the parties' L&T history and request the files. We understand that at least one judge already makes this a practice.[6]

Rental Arrears Treated as Consumer Credit Transactions

Currently the Civil Court does not denominate rental arrears as "consumer credit transactions" (or "C" cases). We propose that you direct Civil Court clerks to denominate rental arrears matters as "C" cases because, like consumer debt cases, rental arrears cases involve personal/household debt, vulnerable and unrepresented populations, and the potential for abuse by represented, sophisticated plaintiffs.

Just as with C cases, there appear to be many service defects and default judgments in rental arrears actions. The landlords are typically represented by major collections firms that use the same process service agencies. The court system has been proactive in addressing the problems that typically arise. AN-17 educates courts about unavailable Affidavits of Service and recommends a procedure to deal with the issue; the Uniform Rules require that defendants receive an additional mailing of the summons (NY CLS Uniform Rules, NYC Civil Cts.§ 208.6(h)). These service-related protections should apply to rental arrears defendants as well.

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judgment of possession in order to be entitled to attorney fees. *Clinton Realty, LLC v. Tarra*, 15 Misc.3d 1118[A], 2007 NY Slip Op 50757[U] [Nassau Dist Ct 2007]. See also *CL Realty v. Eliran*, 137 Misc. 2d 955, 956 [Civ Ct, New York County 1987] ["the settlement of this nonpayment proceeding without a provision for attorney's fees or a reservation of landlord's right to pursue fees in the future would constitute a waiver by landlord of any claim to the fees"].

[6] Obtaining a full L&T history may require recognition that sometimes the rental arrears complaints are unclear as to what is in dispute. For example, a complaint might state that the tenant failed to pay two months of rent, but the ledger shows that the tenant paid rent every month and the landlord applied the payments to attorney fees. A plaintiff also may have sued under a different name in the past. For example, one lawsuit might be filed in the name of the building's owner, and the next one in the name of the management company.

Many people sued for rental arrears are low-income, non-English speaking, or otherwise vulnerable. Thanks to the court's attention to this issue, a number of procedural safeguards attach in "C" cases. There is a streamlined answer procedure (CCM-177); defendants receive a copy of the summons in Spanish (NY CLS Uniform Rules, Civil Cts. § 208.6(d) and (f)); and when defendants are unrepresented, their cases are heard in a courtroom where a Volunteer Lawyer for the Day Program (VLFD) is active. Defendants in rental arrears actions should have the same opportunities.

While the courts could allow rental arrears defendants to use the same Pro Se Answer form as "C" cases, there is a tailored Answer that the courts could make available. This form is already in use at CLARO programs. A copy is attached.

Currently rental arrears cases are not always heard in the same courtroom as "C" cases (it varies depending on the county and whether the case is marked for trial/conference or motion). This makes it difficult or impossible for VLFD programs to handle the cases. Location of the cases is the main obstacle to VLFD handling them; the topic was recently added to the CLARO/VLFD training. We propose that rental arrears cases be heard in the same room as "C" cases so that more defendants can receive VLFD services.

Clarifying the Parties' Intent in Housing Court

There have been numerous cases where a tenant agreed in Housing Court to leave a unit, believing that she was trading her rights as a tenant—and her claims related to conditions in the unit—in exchange for the landlord giving up its claim for back rent. This is not an unreasonable belief, considering that the legal system usually does favor finality. But absent sufficient understanding of the decision, order or stipulation, a tenant can easily misunderstand the nature of the agreement, particularly if she or he does not have a lawyer. Also, once a Housing Court matter is resolved, tenants often discard all of their evidence related to the unit and are surprised to be sued, sometimes years later, for the monetary claims.

To address this problem, we propose that the Housing Court implement additional measures to help parties understand what issues are being resolved by the stipulation and what matters are not. Specifically, litigants should know before the stipulation is entered whether they may be sued in the future for monetary claims related to the L&T proceeding. It is helpful to cover these issues in allocution of a stipulation. We suggest that this be encouraged. If desired, we could coordinate a presentation by Civil Court Committee members for Housing Court judges and court attorneys. The presentation would include information about the ways a L&T case may impact a subsequent rental arrears case and the challenges faced by litigants in these circumstances.

The Housing Court could develop written advisories that would be given to each tenant as part of the resolution of his or her case. The advisory would state, in plain English, that it might be possible for the landlord to sue the tenant again for money and that the tenant should keep all papers having to do with the case that was concluded that day. The Housing Court judge could explain to the respondent the possibility of being sued again for arrears.

The reforms we propose would help ensure that unrepresented litigants understand what they are signing without inappropriately prejudicing landlords.

Conclusion

The rise in rental arrears litigation raises a number of issues for courts and tenants. We hope that by implementing the proposed reforms, your office can substantially enhance justice. Our committees are happy to discuss this matter with you further. Thank you for your attention.

Respectfully,

Council on Judicial Administration
Hon. (Ret.) Carolyn Demarest, Chair

Civil Court Committee
Gina M. Calabrese, Chair

Housing Court Committee
Anna Florek-Scarfutti, Chair

Encl.

cc: *By Email*
Justice Lawrence K. Marks, Chief Administrative Judge
Justice George Silver, Incoming Dep. Chief Admin. Judge for New York City Courts
Justice Edwina Richardson-Mendelson, Incoming Dep. Chief Admin. Judge for Justice Initiatives
Justice Peter Tom, Acting Presiding Justice of the Appellate Division, First Department and Special Commission on the Future of the New York City Housing Court
Justice Joan Lobis, Special Commission on the Future of the New York City Housing Court
John McConnell, Esq., Office of Court Administration Counsel

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE
2016 PUBLIC HEARING
SEPTEMBER 27, 2016
TESTIMONY FROM THE NEW YORK CITY BROKEN LEASE TASK FORCE

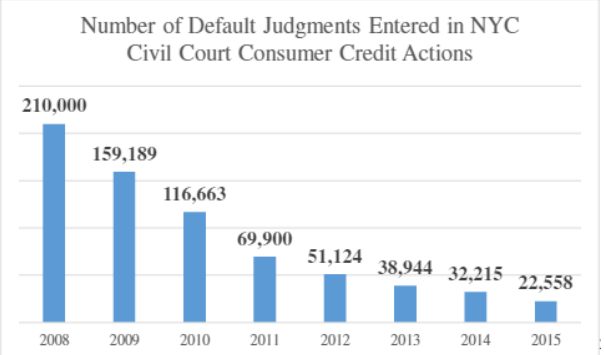
We are honored to submit this testimony as part of the Hearing on Civil Legal Services in New York. We are co-chairs of the New York City Broken Leases Task Force ("Task Force"), which was established in 2015 by Fordham Law School's Feerick Center for Social Justice, MFY Legal Services, Inc., and The Legal Aid Society. Our testimony is focused on the unmet legal services needs of low- and moderate-income New Yorkers who have been sued by landlords usually after they have vacated tenancies, most often for alleged rental arrears. We term such actions, which are brought in New York City Civil and Supreme Court, "broken lease" cases—a hybrid type of lawsuit that implicates both consumer debt collection and landlord/tenant law.

Impact of judiciary civil legal services on delivery of civil legal services

MFY Legal Services, Inc., The Legal Aid Society, and a number of the Task Force members receive Civil Legal Services funding. This funding has reduced the significant "justice gap" that existed for consumer credit actions, particularly in New York City Civil Courts. According to data from New York City Civil Court, in 2015, 14.4% of consumer credit actions had defendants who were represented by counsel.[1] By contrast, in 2014, in his Law Day Address of April 30, 2014, former Chief Judge Jonathan Lippman reported that only 2% of defendants in New York State consumer credit actions were represented.[2]

Consumer defense has a far-reaching and invaluable impact in achieving fairer outcomes in litigation—often with life-changing consequences for litigants and their families. For example, through limited-scope assistance and especially through full representation, consumer legal defense helps vulnerable New York State residents address default judgments. During an eight-year period, consumer experts estimate that at least 700,000 default judgments were entered in consumer credit actions filed in New York City Civil Court[3]—a disproportionate amount in communities of color and working poor and low-income households.[4]

[1] Source: New York City Civil Court.
[2] Hon. Jonathan Lippman Law Day Address, April 30, 2014, at 1.
[3] This estimate is based on the annual number of filings of consumer credit actions in New York City Civil Court and rough estimates of the rate of of default judgments stemming from the failure to file an answer.
[4] *See, e.g.*, New Economy Project, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* (June 2013) (examining impact of debt collection lawsuits on communities of color).



In New York City, widespread and well-documented improper service of process contributed significantly to astronomically high default rates,[5] which peaked at approximately 70% in 2008 and dropped to approximately 41% in 2015.[6] The change in the default rate reflects marked improvements in service of process in consumer credit actions over the past. Nonetheless, the 2015 rate remains unacceptably high.

Default judgments have devastating impacts on the lives of litigants—particularly those with low incomes. Although the Stop Credit Discrimination in Employment Act of 2015 goes a long way to protect New York City residents against employers' use of consumer credit history in hiring, compensation, and other terms and conditions of employment, credit history continues to be essential for accessing housing and other essentials of life, including insurance.[7] Further, when judgment creditors enforce default judgments—through income garnishment and bank restraints—litigants often suffer considerable hardship.

Legal assistance for litigants facing default judgments, particularly in debt buyer cases, makes a world of difference, first, by stopping the devastating harm of judgments on the lives of indigent and working-poor New Yorkers and, second, by assisting litigants to assert their legal rights to vacate default judgments and assert legal defenses in the underlying lawsuits.

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[5] *See* New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Server Industry* 2, 4-5 (Apr. 2010), available at http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf ; Press Release, New York State Office of Attorney General, Attorney General Cuomo Sues to Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers in Next Stage of Debt Collection Investigation, July 23, 2009, available at http://www.ag.ny.gov/press-release/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered-against-n-0 . *See also* MFY Legal Services, Inc., *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the City Court of the City of New York* 2 (June 2008), available at http://www.mfy.org/wp-content/uploads/reports/Justice_Disserved.pdf.

[6] Source: New York City Bar Civil Court Committee, which requests data from the New York City Civil Court on an annual basis. Please note that these numbers are estimates based on how the data was collected by the Court.

[7] *See* Press Release, CFPB Monthly Complaint Snapshot Spotlights Credit Reporting Complaints, Aug. 25, 2015, available at http://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/ (noting that " [c]redit reporting affects the lives of most Americans" and that " [credit reports and scores can determine everything from consumer eligibility for credit to the rates consumers pay for credit"); CFPB Consumer Advisory: Fact-Check Your Specialty Consumer Report (May 2015), available at http://files.consumerfinance.gov/f/201505_cfpb-consumer-advisory-fact-check-your-specialty-consumer-report.pdf (stating that specialty consumer reporting agencies compile and sell reports related to consumers' history of employment, rental, banking, lending, insurance, and criminal background).

Consumer legal defense is also critically important for litigants in the first instance—at the outset of litigation. Consumer debt collection consistently generates the highest number of complaints to the federal Consumer Financial Protection Bureau.[8] Unfortunately, the public record is replete with examples of industry-wide abusive and deceptive debt collection practices.[9] With assistance from counsel—ideally full scope representation, but if necessary through limited-scope assistance—defendants are often able to raise powerful substantive and procedural defenses and, as necessary, seek legal recourse when victimized by debt collectors. It must be noted, however, that legal defense and affirmative litigation in consumer credit actions are difficult and in some cases impossible for unrepresented litigants to take on and create significant burdens for courts and court administrators.

In summary, legal service representation and limited-scope assistance in the consumer area brings about fairer outcomes for consumers, which in turn assists in the fairer administration of justice in the state courts adjudicating such cases.

The unmet need: the increase in broken lease cases

Broken lease cases are primarily post-possessory actions brought by landlords for alleged rent arrears, attorney's fees and other tenancy-related charges. Landlords file these actions most frequently in New York City Civil Court, but also in Supreme Court typically in two circumstances: (1) to collect on money judgments that are obtained in Housing Court in nonpayment actions that have been concluded, or concurrent with pending and active Housing Court actions; and (2) when tenants vacate residential tenancies prior to the end of the term of the lease. In the latter circumstance, tenants are often compelled to break their lease because of conditions in the apartment (which sometimes constitute constructive eviction) and/or because of economic hardship. In the case of economic hardship, tenants often receive oral assurances from management companies—as well as from counsel for landlords and even housing court judges, according to some tenants—that the tenants may break their lease without any adverse consequences. There is precedent that landlords do not have a duty to mitigate in the latter circumstance. *See Holy Props. v. Cole Prods.*, 661 N.E.2d 694, 696 (N.Y. 1995) (holding that landlords do not have a duty to mitigate damages when commercial tenants breach their leases); *Gordon v. Eshaghoff*, 60 A.D.3d 807, 808 (App. Div. 2d Dep't 2009) (extending *Holy Props.* to residential leases); *Whitehouse Estates, Inc. v. Post*, 173 Misc. 2d 558, 559 (1st Dep't App. Term 1997) (same). Therefore, a landlord can let an apartment sit empty for the remainder of an unexpired lease and then collect on the entire owed rent. With the epidemic of homelessness, housing shortage and low vacancy rates, the lack of a duty of mitigate permits landlords to hold tenants hostage to their leases and are incentivized to let the residence remain unoccupied.

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[8] Consumer Financial Protection Bureau, *Consumer Response Annual Report: January 1 – December 31, 2015* 7 (Mar. 2016), available at http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf (showing that debt collection complaints were the leading type of complaint in 2014 and 2015, accounting for 35% and 31% of complaint volume respectively).

[9] *See, e.g.*, Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2016* (Mar. 2016), available at http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf; National Consumer Law Center, *Consumer Debt Collection Facts*, http://www.nclc.org/issues/consumer-debt-collection-facts.html; Benjamin Mueller, "Victims of Debt Collection Scheme in New York win $59 Million Settlement," *N.Y. Times* (Nov. 13, 2015), available at http://www.nytimes.com/2015/11/14/nyregion/victims-of-debt-collection-scheme-in-new-york-win-59-million-in-settlement.html?_r=0.

Tenant advocates prioritize cases in which they can help preserve housing and keep current tenants in their apartments. Indeed, many grants and funding streams base payment on assistance to tenants in possession of leased premises and will not reimburse legal services providers for services provided to litigants with broken lease cases. Moreover, it is common in non-payment proceedings for tenants to enter into settlements whereby they preserve housing, but sever portions of the rental arrear claims, which are raised subsequently in civil court . Meanwhile, consumer defense attorneys working at legal services organizations (while greater in number than in the past) do not have the capacity to adequately handle these cases. Additionally, defending breach of lease cases requires dual expertise in consumer debt collection and housing law and few legal services attorneys currently have such training and experience in both substantive law areas. The problem is compounded when Civil and Supreme Court judges are unfamiliar with housing law and regulations such as warranty of habitability and constructive eviction and the proof required to establish rental arrear claims.

Organizations providing legal services to consumers have seen an increase in the number of broken lease cases filed in New York City. For example, data from Civil Legal Advice Resource Office ("CLARO") limited-scope, consumer debt legal clinics in the Bronx, Manhattan, and Staten Island show a total of one visitor with a breach of lease case in 2009. By contrast, these clinics encountered in 2015 95 broken lease cases and through August 2016 105 broken lease cases. We note that this trend is especially stark given the decline in the number of consumer credit action filings in New York City Civil Court in recent years.

Moreover, in 2015, two law firms that specialize in breach of lease cases brought 2,383 actions based on searches on the New York State Office of Court Administration's ("OCA") ecourts database, of which 2,297 actions were filed in New York City Civil Court. According to data for the Bronx, Manhattan, and Staten Island CLARO programs, from 2010 to the present, the two debt collection law firms which represented the greatest number of landlord-plaintiffs were Kavulich & Associates, P.C. and Gutman, Mintz, Baker & Sonnenfeldt LLP. Searches on ecourts show the following number of filings by these law firms in 2015 and 2016 to date:

2015	Kavulich & Associates	Gutman Mintz	Total
Bronx	957	242	
Brooklyn	175	284	
Manhattan	189	207	
Queens	29	166	
Staten Island	15	33	
Total	1365	932	2297

2016 through September 7, 2016	Kavulich & Associates	Gutman Mintz	Total
Bronx	479	192	
Brooklyn	151	158	
Manhattan	55	188	
Queens	4	101	
Staten Island	0	11	
Total	689	650	1339

Further, some traditional debt collection law firms appear to be taking on more breach of lease cases.[10]

These numbers suggest that broken lease cases are emerging as a focus of consumer debt collection in New York City. The aggregate impact of the OCA's pioneering court rules regarding consumer credit card cases,[11] impact ligation,[12] and other reform efforts are likely resulting in a reduction of consumer credit filings in New York City (down to 55,408 in 2015) for the time being. With collection cases appearing to be diminishing, consumer advocates believe that traditional debt collection firms will seize this area as a new source of cases and this trend will intensify.[13]

The unmet need: the complexity of broken lease cases

As noted previously, broken lease cases require legal services defense attorneys to have dual competencies in consumer defense and landlord / tenant law—something a relatively small number of New York City legal services attorneys currently have. Moreover, landlord / tenant law in New York City (as in other parts of the state) is very complex and highly specialized, particularly for tenants who receive housing subsidies or live in subsidized housing. For example, legal services attorneys report regularly seeing landlords and their law firms knowingly and repeatedly suing the same tenants for rent that had been paid as part of public assistance or through a Section 8 voucher or other housing subsidy.

[10] For example, data from the Bronx, Manhattan, and Staten Island CLARO Programs show the traditional debt collection law firm of Daniels Norelly Scully & Cecere PC also representing plaintiffs in broken lease cases.

[11] Press Release, New York State Unified Court System, NY Court System Adopts New Rules to Ensure a Fair Legal Process in Consumer Debt Cases (Sept. 16, 2014), *available at* https://www.nycourts.gov/PRESS/PDFs/pr14_06.pdf.

[12] *See, e.g.*, Sykes v. Mel S. Harris & Assocs., 780 F.3d 70 (2d Cir. 2015).

[13] Feerick Center data shows that there has been an upward trend in the amount of breach of lease cases encountered at Bronx, Manhattan, and Staten Island CLARO sessions in the last several years. The following figures represent the number of breach of lease cases seen at these CLARO Programs according to Center data, by year: 2008 – 0 cases, 2009 – 1 case, 2010 – 18 cases, 2011 – 30 cases, 2012 – 37 cases, 2013 – 44 cases, 2014 – 63 cases, 2015 – 95 cases, through August 2016 – 105 cases.

Added to this complexity is the fact that many defendants are survivors of domestic violence and of identity theft—which fact presents additional considerations and complications. Not infrequently, survivors who flee apartments for which they were either the tenant or co-tenant find that abusers stay behind, stop paying the rent, and accrue rental arrears until they are evicted.[14] With regard to identity theft, these are especially pernicious types of broken lease case. Identity thieves use personal identifying information to enter into leases and obtain apartments.[15]

Moreover, because breach of lease cases are not denominated as consumer credit actions by OCA, these defendants do not have the important protections available to defendants in consumer credit actions. Those protections include, for example, receiving a copy of the summons in Spanish, receiving an additional notice, being eligible for the Volunteer Lawyer for the Day program, and default safeguards OCA promulgated for consumer credit actions.

The economic and social consequences due to the lack of legal services for broken lease cases

Broken lease cases can have long-lasting and devastating effects on litigants—particularly economically vulnerable ones. Bronx, Manhattan, and Staten Island CLARO data show that the money judgments sought in broken lease cases, on average, are greater than that for credit card cases—the most common type of consumer credit action. Judgments in these cases, thus, tend to be for greater sums of money as well.

Bronx, Manhattan, and Staten Island CLARO – Combined

	Credit Card Action – Average Amount Sued For	Broken Lease Case – Average Amount Sued For
Cases filed in 2015	$4,889	$7,570
Cases filed in 2016	$5,119	$8,023

Money judgments—either because of default judgments or judgments following the filing of an answer—appear on credit reports typically for seven years. In New York City's very tight rental market, prospective landlords can afford to be extremely selective and, in our experience, it is virtually impossible for a tenant to secure an apartment with a judgment appearing on her credit report. These credit reports are separate from tenant screening bureau ("TSB") reports, which include information from housing court filings. Negative information in TSB reports can also be very damaging and prevent low-income New Yorkers from securing apartments. Such reports

[14] New York Real Property Law § 227-c provides a judicial mechanism for a domestic violence survivor to get out from under a lease. This provision, however, is hardly ever invoked due to its onerous requirements, including that the survivor has obtained an order of protection and that the relief related to lease termination be sought in that court.

[15] The Federal Trade Commission in its annual report on fraud and identity theft now includes a category of "Other Identity Theft: Apartment or House Rented." *See* Federal Trade Commission, *Consumer Sentinel Network Data Book for January – December 2015* 20 (Feb. 2016), available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2015/160229csn-2015databook.pdf. While the numbers of these cases are small nationally, New York City legal services providers see these cases on a regular basis.

often contain inaccurate, incomplete, and / or misleading information.[16] The sharp increase in homelessness means that, once a defendant has a bad credit or TSB report history, it virtually becomes impossible to obtain housing in New York City and many families and individuals remain in shelter for prolonged periods of time.

The following case summaries from CLARO visitors illustrate the far-reaching and devastating impacts of broken lease cases.

- Ms. M., a college student, and her father sought assistance from Bronx CLARO. The family were immigrants and only Ms. M spoke English. They had vacated their leased apartment three months early because after a many years' wait, they received a NYCHA apartment. Prior to doing so they spoke with the management company and were assured verbally that they could vacate and that the apartment would be re-let quickly. The apartment was not re-let and the landlord sued them for three months' rent. The family is extremely low income with only one wage earner, who worked part time and earned about $900 per month. The lawsuit meant that Ms. M. would not be able to continue her studies.

- Ms. S. is a Spanish-speaking mother of two children who works as a home health aide. She rented an apartment with extensive conditions, including frequent leaks, of which she complained to the landlord. When the landlord sent the renewal lease, she did not sign it, but she did not immediately vacate the premises. She stayed in the apartment five months past the end of the lease term and paid all the rent. She was sued for $8,382 in rent arrears, alleging non-payment of five months of rent. The client had to take time off from work to go to CLARO and to court, which was a financial hardship.

- Ms. A is a domestic violence survivor with an infant son. She fled her apartment and entered a domestic violence shelter. She and her husband were both on the lease. The abuser stayed behind and stopped paying rent. Eventually, the landlord sued them both for non-payment and evicted the abuser. Ms. A was never served and did not appear. The judgment appeared on Ms. A's credit report and prevented her from obtaining housing from domestic violence nonprofit housing provider, as well as other mainstream housing options.

Summary: the benefits to individuals, communities, the courts, and the State, from the provision of civil legal services in matters involving the "Essentials of Life"

Due to the complexity of broken lease cases, unrepresented litigants are unable to defend themselves effectively in these actions. Moreover, limited-scope programs face challenges in appropriately serving clients, given the relatively high number of these cases going to trial, complex fact finding and legal analysis and expertise these cases require. As noted previously, judgments in broken lease cases are often for significantly more than credit card actions. Both the fact of the judgment and its impact on litigants' creditworthiness as well as the higher amounts and subsequent enforcement through wage garnishment and /or bank restraint cause tremendous financial hardship for low-income New Yorkers. These negative outcomes are

[16] New York State Bar Association, LEGALEase: The Use of Tenant Screening Reports and Tenant Blacklisting 4 (2015), available at http://www.nysba.org/workarea/DownloadAsset.aspx?id=27883.

compounded by the many unfair, abusive, and deceptive practices advocates regularly see in connection with these cases: tenant harassment; housing conditions; and illegal debt collection.

Enhanced and expanded legal services related to broken lease cases will benefit first and foremost low-income and other vulnerable litigants—protecting their financial wellbeing and ability to access housing in New York City's tight market, and in many cases protecting them from homelessness. Additional legal services capacity will also enhance and expand coordination and advocacy efforts. Opportunities exist for addressing a myriad of policy and practice issues, including:

- Advocacy with court administrators to deem broken lease cases consumer credit actions, so that defendants benefit from the consumer protections and access-to-justice programs established for such actions;
- Outreach and training to judges and court personnel—in civil court and housing court—regarding the issues raised by and applicable law in broken lease cases; and
- Impact litigation to address the chronic illegal and abusive practices by landlords and their law firms and legislative advocacy related to the law of mitigation.

Potential for reduction in unmet needs through use of non-lawyers

There is a tremendous need for community outreach and education related to broken lease cases. Non-lawyers could be very helpful in raising awareness among tenant organizations, housing advocacy groups, homelessness organizations and other community-based entities about the risks and problems associated with these actions and steps tenants can take to protect themselves from unscrupulous landlords. Collaborative efforts with non-lawyers are essential to inform consumers of their rights as tenants and to take preventative measures to protect them from unscrupulous landlords, including documenting evidence of repair conditions, navigating civil court procedures, and sharing legal and non-legal resources.

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We deeply appreciate the efforts of the Permanent Commission to expand access to civil legal services for low- and moderate-income New Yorkers. We also thank the Permanent Commission for the opportunity to submit this written testimony and to request oral testimony.

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