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### No Place Like Home: Tenant Harassment and the Frailty of Housing Court

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# **No Place Like Home: Tenant Harassment and the Frailty of Housing Court**

**By Adam Shrier**

On a Tuesday evening late last June, Michelle Richards came home from Bible study to her home in the Bronx and found the door to her room hammered off its hinges. Just days earlier, Richards, 46, had told her landlord she would take him to court if he sought to evict her for a late rent payment. Richards was shocked and angered. She quickly concluded that her door had been removed by her landlord in reaction to her threat.

Richards, a case manager for the mentally disabled, had been a tenant at 1698 Grand Ave., a brick two-story rooming house nestled in the shadow of a large apartment-complex, for over five years. Her eviction spiraled into a saga of alleged harassment, homelessness and a prolonged and ongoing effort to resolve her crisis in housing court; a situation representative of the harassment and legal difficulties that plague many New Yorkers every year.

Days after her landlord Eon Mathieson allegedly removed her door, the destruction escalated. While Richards was at work, the room's electrical sockets were destroyed, cutting Richards' power and exposing open circuits. A few days later, both her windows were removed from their frames. In response to the continued destruction of her home, Richards filed a Housing Part (HP) action on July 13—a tenant-initiated case to seek repairs for housing violations—in Bronx Housing Court, one of seven housing courts in New York City. Six days later, after her landlord received inspectors from the Department of Housing Preservation and Development (HPD), Richards returned home to find her ceiling destroyed, torn apart by what she believes was Mathieson's sledgehammer. Plaster was strewn across her bed and her belongings were covered in dust. The room was no longer habitable.

A call to Mathieson, who is out of the country, was not immediately returned.

Richards moved in with friends in Co-op City—where she is still currently living—while trying to resolve her court case. On July 14, Mathieson failed to appear for his court appearance and, through the rest of July and August, defied numerous court orders to correct the outstanding violations in Richards' room. At the end of August, Richards returned to 1698 Grand Ave. but found her room boarded up. On August 22, her belongings were removed from her room—including over \$10,000 worth of clothing, appliances and her engagement ring—and thrown under a tarp in a gated outdoor area. They have sat there deteriorating ever since.

“To see my things sitting outside, the elements destroying them, cats pissing on them, rodents running through them, is terrible,” she said. “This is not stuff I picked off the street. This is stuff I worked hard for. I feel like a part of me is missing.”

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Residents across New York City—particularly those living in rent-stabilized or rent-controlled apartments—are subject to concerted, persistent harassment at the hands of landlords determined to replace them with higher-rent paying tenants or tenants who will remain compliant in response to the landlords’ negligence or illegal actions.

The Tenant Protection Act, enacted in March of 2008, defines harassment as:

"Any act or omission by or on behalf of an owner that causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy."

Although tenant harassment is illegal in New York City, the laws and penalties of New York City Housing Court have proven to be an ineffective system for tenants and insufficient deterrent against landlords who stand to gain thousands, if not millions, of dollars from deregulating apartments and who often get slapped with little to no fines for their efforts to force tenants out.

The full extent and frequency of tenant harassment is unclear. Housing organizers in the most affected neighborhoods on the cusp of development—the East Village, Chinatown, Bushwick, Crown Heights, Harlem, among others—are quick to cite as many as a hundred buildings where residents are without gas, lack consistent heat and hot water, are bombarded with legal cases, or are hounded with buyout offers. Recent data from the Rent Guidelines Board, which controls increases or decreases in rents for New York’s rent-stabilized housing stock, found that 250,000 of the nearly one million rent-stabilized units have been deregulated since 1994, but it’s hard to know how many rent-stabilized tenants left against their will as the result of harassment versus how many apartments were deregulated by legal vacancy.

In neighborhoods facing rising rents and the pressures of gentrification and development, however, residents are experiencing similar patterns of abuse. According to interviews with tenants rights attorneys and tenants affected by harassment, tenant complaints include that their landlords offer insistent, targeted offers to buy them out; deprive them of heat, hot water, gas or electricity for days, if not months, on end; bombard them with onerous, and often specious, legal summons, case after case, year after year; or commence illegal renovations that jeopardize the building’s stability and expose residents to hazards, in the hope that the tenants succumb to the onslaught and vacate their building so that the units can be rented at market rate.

The Tenant Protection Act stipulates that harassment may include the express or implied threat or use of force; repeated interruptions or discontinuances of essential services such as heat, hot water, gas and electricity; baseless or frivolous court proceedings; the

removal of possessions; removing, obstructing or locking a door; and other acts that may disturb the comfort, peace and quiet of a lawful resident.

Tenants face great difficulty when trying to prove a harassment claim. They must present a well-documented history of violations or acts of harassment to succeed at trial, and the vast majority of tenant plaintiffs—nearly 99 percent of tenants in 2013 and just over 70 percent in 2016, according to a report issued by the Office of Civil Justice in June of 2016—are self-represented. Considering that the average penalty awarded in successful findings of harassment is \$2,500 and the money awarded is collected by the City rather than by tenants, many housing attorneys see little value in pursuing a harassment case.

“The harassment law for us is pretty meaningless,” said Jennifer Rozen, a partner at the prominent tenant’s rights firm Fishman Rozen LLP. “The problem is it’s not a tool that actually helps tenants in the long run. The reality is, it’s not serving as a deterrent.”

In September 2013, the Tenant Protection Act, a local law enacted by the City Council to protect tenants from harassment, was amended to allow the publication of the number of New York City landlords who committed harassment. Prior to that, there was no public information documenting the number of landlords who received a judgment of harassment. Over the last three years, there have been just 45 tenant actions filed in New York City Housing Court that resulted in a finding of harassment against a landlord or owner, according to data from HPD. From September 2013 to May 2016—the most recent data available—there were a total of 1,503 claims of harassment or claims of harassment and violations submitted to Housing Court. Of those 1,503 claims, only .03 percent resulted in a finding of harassment. It is unknown, however, how many of the cases that did not result in a finding of harassment went before a judge or were settled out of court. The Office of Court Administration denied a request for more specific dispositions.

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At 1113 Jefferson Ave., a three-story multi-family dwelling in Bushwick occupied by several Mexican and Central American immigrant families, residents have been fighting to hang on to their apartments since their building changed ownership in May 2015.

“The new landlord came and said that he bought the building and we need to move out,” said Teresa Ramirez, 40, through an interpreter. “He offered us \$5,000 or said he would take us to court and ruin our record.”

As promised, their landlord, Asher Alon, filed no-cause holdover cases, an eviction case filed for a reason other than nonpayment of rent, against three tenants of the building. The new landlord claimed that their leases had expired and were no longer rent-stabilized.

Alon declined a request to comment but said that the tenants he seeks to evict have not paid rent and maintained that the building was eligible for deregulation.

Ryan Napoli, an attorney with the housing and community activist group Make the Road New York which is representing the residents of 1113 Jefferson Ave., said Alon made his intentions clear in a brief private conversation in Housing Court.

“He said to me, ‘I own over 100 apartments. I know how this works,’” Napoli recalled. “‘One way or another, I’m gonna get them out.’”

Weeks after Alon assumed ownership, the gas was turned off. Alon claimed he was unaware he needed to pay a utility bill, said Napoli. For over three weeks residents of the building were without hot water, forced to sponge bathe their children and to eat take out food.

Then two nuisance tenants moved in. The instigators, who indicated to residents that they were working for or had an arrangement with the landlord, tried their best to make life hell from their shared apartment on the first floor, according to residents. An incessant plume of marijuana smoke billowed from their apartment or they smoked openly in the hallway. Rap music blasted from dusk till dawn sending tremors through the building as a steady stream of strangers lingered on the stoop or dropped in and went on their way. Two pit bulls lurked in the hallways and lived in the basement, barking through the night just feet from Ramirez’ front door. For over a month the nuisance persisted and, as intended, the abuse started to take its toll.

“It’s very hard to live with the stress, of not knowing what’s going to happen in court and having to deal with this day after day,” said Ramirez, the mother of three children. “With all the noise, my kids weren’t sleeping well. They were scared.”

Several residents received calls from concerned teachers who observed that their children were falling asleep in school or smelled like they hadn’t bathed in days. Though the chaos subsided after the instigators left, the attempted buyouts kept coming and the holdover cases dragged on. Residents have waited over a year and a half and through four court adjournments, but are determined to see their cases through.

“If we do have to leave, where are we gonna go?” said Patricia Ayestas, 33, who estimated that 80 percent of her neighbors on Jefferson Avenue had relocated since she moved in eight years ago. “Our kid’s schools are here. There’s nowhere affordable around here. We would have to go far away where we don’t know anybody.”

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New York City Housing Court, established in 1973, is the largest court of its kind in the country, with courthouses in each borough and additional community courts in Harlem and Red Hook. The 50 judges who sit on the bench in Housing Court have presided over an average of 350,000 filings a year for the past 20 years.

A quick run down of the cases files on the court calendar offers a sense of the vast majority of cases that will be litigated on any given day—a series of landlord owned LLCs in the name of myriad addresses or retail companies from across the city versus individual, unrepresented tenant plaintiffs: 2084 Grand Ave Holdings LLC v. Alfredo Ruiz. 2714 Bainbridge LLC v. Jacquelyn Mable. 3405 Putnam Realty Corp. v. Migdalia Rotger.

Over the course of 2015, there were 203,119 residential nonpayment proceedings and 31,151 residential holdover proceedings filed in New York City Housing Court by landlords against tenants for failure to pay rent or for some reason other than nonpayment. That same year there were 6,802 tenant initiated HP actions, 5,951 HP actions initiated by HPD against landlords for outstanding repairs or restoration of services and 860 harassment filings.

With such a huge disparity in the volume of landlord initiated cases, Housing Court has earned an unwelcome reputation among housing activists and tenants who describe the court system as an “eviction mill” and “debt collection agency.” Tenants, who are largely self-represented, are often ushered quickly through the courts without a full understanding of court procedures or their rights, according to tenant rights attorneys.

“The experience can be very intimidating,” said Judith Goldiner, the supervising attorney in the Legal Aid Society’s Civil Practice’s Law Reform Unit. “A lot of times tenants don’t even go in front of the judge. They just settle these things in the hallways of Housing Court.”

A report documenting tenant experiences in Bronx Housing Court conducted by the Urban Justice Center in 2013 found that 32 percent of tenants surveyed did not know that they needed their calendar number before going into the courtroom. An additional 25 percent reported that no one explained the legal implications of the binding agreements negotiated in hallway deals.

“Tenants are functioning in an institution which demands they know the law and have a lawyer and going against landlords who always have lawyers,” said Ed Josephson, the Director of Litigation and Housing at Legal Services NYC. “There’s a built-in disadvantage.”

Numerous studies have shown that tenants with legal representation fare far better than those who are unrepresented. Mayor de Blasio’s \$100 million commitment to provide city-funded legal services to low-income New Yorkers, expanding legal representation to just over a quarter of tenants, has resulted in evictions falling 24 percent over the last two years.

But even with legal representation, a court claim for harassment is not easily proven or quickly resolved and provides no monetary compensation to tenants even if successful.

For instance, proving that repeated interruptions or discontinuances of service constitute harassment—a common deprivation that often results in tenants going months without heat or gas—requires substantial documentation in the form of 311 complaints, letters to the landlord and HPD inspections to validate tenant allegations.

“It is very difficult to prove that it’s not a matter of the landlord being negligent and not maintaining the boiler or not getting it serviced often enough,” said Rozen. “If someone is going down there and physically turning it off and then turning it back on, it’s actually harassment. It would take a lot of resources and time and energy to prove that sort of thing.”

Like the majority of civil cases, the plaintiff tenant must satisfy the burden of proof for a claim of harassment. There are, however, proposals in City Council that would shift the burden so that in buildings with a high debt-to-income ratio tenant harassment allegations would be assumed to be true and be incumbent on a landlord to disprove.

Even where a harassment case may proceed, it is often a long, burdensome wait before the case ever gets resolved. Frequently landlords delay trial dates with a series of adjournments that can extend the duration of a tenant’s case by months if not a year.

During a recent no-cause holdover case, for instance, Chris Veyssier, 43, a resident of 2 Saint Nicholas Terrace in Harlem, waited through 14 court adjournments that prolonged his case 13 months before he reached a settlement with his landlord. Veyssier received a 40 percent rent abatement and recouped the full cost of his legal fees but was forced to spend two brutal New York winters without heat or gas, huddled near space heaters and sleeping in a jacket and balaclava to stay warm in his freezing home. To date Veyssier, who manages an expensive French bistro, has paid attorneys over \$20,000 to fight the harassment he and his fellow tenants—most of whom cannot afford to file claims or are hesitant to do so because of their immigration status—still continue to suffer.

“When presiding over these harassment or repair cases, housing court judges let the landlords adjourn and postpone and six months elapse,” said Jonathan Furlong, the Director of Organizing at Housing Conservation Coordinators, a low-cost legal services provider in the Hell’s Kitchen and Upper West Side neighborhoods. “Most tenants after going through a six-month process to get a leaky ceiling fixed will never do it again.”

The request for multiple adjournments is a legal strategy that Napoli believes landlords employ to continue harassment while a case is ongoing. It maintains a sense of unease for tenants unsure of their housing status and saddles poor and working class residents with the prolonged strain of paying legal fees and missing work for court appearances.

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One of the most destructive and effective eviction tools in a landlord’s arsenal is constructive harassment. Housing organizers and community groups believe landlords are

using construction to force tenants out of rent-stabilized housing and to vacate entire buildings for gut renovations.

“The landlord will come in and remove a whole set of stairs or someone’s kitchen under the guise of fixing or improving the space but really what they’re doing is making the conditions in the building completely unlivable for the tenants,” said Furlong.

In the process of conducting gut or major renovations, landlords can subject tenants to unsafe building conditions, hazardous waste, excessive noise and repeated disruptions of basic services.

Take the case of David Tang, 63, who has lived with his mother Fung King at 90 Elizabeth St. in Chinatown since 1989. When Marolda Properties, a landlord recently sued by the State Attorney General’s Office, purchased the building in May of 2015, the landlord commenced efforts to evict tenants through constructive harassment, successfully deregulating six units before selling the building a year and a half later for more than three million dollars over its purchase price, said Tang.

“The reason they bought the building is to bump up the rent to market value, around maybe \$3,600 or \$4,000, easy,” said Tang, who pays \$273 per month for his rent-stabilized two-bedroom apartment. “They had no intention to keep it a low-rent apartment. They buy the building and try to force out as many rent-stabilized tenants as they can.”

Tang estimates that in his building, a six-story walk up with twenty units, a landlord can collect an additional \$30,000 to \$40,000 per year for successfully deregulating an apartment. Based on Tang’s estimate, Marolda’s successful eviction of six rent-stabilized tenants may have increased his annual rent roll by as much as \$200,000 per year.

For almost ten years, Tang’s bathroom did not have enough water pressure to shower. He and his mother opted for sponge baths instead. The water took 20 minutes to turn lukewarm. The apartment was so cold he was forced to sleep in long johns and street clothes. But when the constructive harassment began, Tang reached out to CAAAV, an activist group representing Asian immigrant communities in the city, for legal assistance.

Tang’s ceiling collapsed three times—twice upon his mother’s unoccupied bed—during Marolda’s renovation of the apartment above his own. Over the course of the 18 months Marolda owned the property, bundles of debris lined the building’s hallways, dust swirled without mitigation and new leaks sprung, spreading water damage to Tang’s apartment. Exposed wires hung from the ceilings and the noise of hammers and power tools persisted long after working hours.

“You never knew when it was going to stop,” Tang said. “You knew it was going to get worse. It’s a game, up and until you break.”

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Community groups, housing organizations and legal service providers have banded together to form the Stand for Tenant Safety (STS), a citywide coalition to address constructive harassment and to propose legislation to reform the Department of Buildings (DOB). The Stand for Tenant Safety contends that DOB's response to tenant complaints is slow and ineffective and that DOB imposes insufficient fines for work conducted without proper permits or safety precautions.

A survey the group conducted of tenants living in buildings undergoing major construction from January to June 2015 found that 52 percent of residents considered moving out of their apartments because of construction and 71 percent reported that construction was a threat to their health or safety. STS' analysis of DOB complaint, violation and permit data also found an average wait time of 42 days between the date a complaint is filed and a DOB inspection. Of the 197 documented complaints of work performed without a permit the group discovered, only 12 resulted in the issuance of a violation.

In September 2015, a twelve-bill legislative package to reform DOB was introduced in the City Council. Currently, seven of the bills have received hearings before the Council's Housing Committee. Within the next two months, the remaining five bills should receive hearings. Advocates are optimistic the legislation will go before the Council to be voted on this year.

"The package of legislation puts a check on what DOB is doing before they are able to give out a permit and it provides that certain notices must be given to the building if there are residents there," said District 2 Councilwoman Rosie Mendez, who represents the Lower East Side and East Village neighborhoods. "We've had landlords lie and say that the building is empty and meanwhile they're doing lead abatement work and the building is not empty. That double checking could go a long way in maintaining someone's quality of life."

Legislation included in the coalition's package proposes the creation of a Real Time Enforcement Unit in the DOB to respond more quickly to complaints and to more accurately track complaints and violations; the creation of an interagency task force between state and city agencies to oversee renovation and construction work; increased fines and violations for landlords who perform work without proper permits or when a stop work order is in effect; and a requirement for landlords to file a tenant protection plan when performing construction in an occupied building.

"We expect that work in apartments and work in buildings is going to be done within the law, respecting the peace and safety of tenants," said Rolando Guzman, Deputy Director of Community Preservation at the Williamsburg-based community organization St. Nick's Alliance. "We expect the DOB will be more proactive ensuring the safety of tenants in occupied buildings."

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The New York State Attorney General's Office and the state's Tenant Protection Unit (TPU) have expanded efforts to combat tenant harassment, selecting a handful of prominent landlords to investigate each year. Government initiated cases often result in more serious, potentially criminal, consequences and assess much larger penalties than those assessed in Housing Court.

In November 2016, Joel and Aaron Israel pled guilty to engaging in a scheme to defraud and three counts of unlawful eviction. It was the first successful criminal referral the TPU has made since its creation in 2012. To date, TPU's enforcement efforts have re-registered over 50,000 improperly deregulated apartments and recovered \$2.5 million in rent overcharges.

The Israel Brothers history of intimidation and harassment included demolishing the second floor of a building at 300 Nassau Ave., causing the floor to sag and jeopardize tenants on the floors above and below. The Israels hired people to terrorize tenants with baseball bats and pit bulls, destroyed tenants' kitchens and bathrooms, depriving them of running water for 17 months, and built walls sealing residents out of their homes. For their crimes, they received five years probation, 500 hours of community service and were ordered to pay nearly \$250,000 in restitution to eight tenants affected by their abuse. The Israels were allowed to maintain ownership of their buildings, however, despite the seriousness of their crimes.

City and state officials commended the success of the Israel Brothers' prosecution. In a press release issued by the governor's office after the announcement of their guilty plea, several politicians spoke of the message it would send to would-be criminal landlords.

"Today we send a message that law enforcement won't stand by as landlords try to force tenants out of their homes and take existing rent-stabilized housing away from the community," wrote HPD Commissioner Vicki Been.

But housing organizers and community activists felt the Israels' sentence did not impose a harsh enough penalty commensurate with their crime, demanding the brothers receive mandatory jail time or forfeit their right to own and manage properties.

"I think it's time that landlords start doing time in prison for their illegal activities," said Guzman who helped organize the residents of 300 Nassau Ave. "I don't see how they can commit fraudulent practices to kick tenants out and still be owners of properties."

Housing activists and tenants are hopeful that the recent criminal charges for fraud and grand larceny filed against Steve Croman—a real estate mogul who owns 185 buildings who New York Attorney General Eric Schneiderman referred to as the "Bernie Madoff of landlords"—will create a poster boy for landlord harassment and lead to jail time. The State Attorney General's Office also filed a civil suit against Croman for illegal operations, including harassment, coercion and fraud, to evict rent-stabilized tenants, but it will not result in criminal penalties.

Cynthia Chaffee, the co-founder of the Stop Croman Coalition and a tenant who has earned Croman's designation as his "worst tenant ever," has battled her landlord since the day he became the owner of her building, 346 East 18th St., in May 1999. Soon after he bought the building, Croman allegedly began his campaign against Chaffee and the occupants of the other 62 units within her building complex. Today, only seven of the original tenants in those units remain.

Chaffee believes her asthma developed as a result of the constant dust released through years of unmitigated renovations. She has endured months on end without heat and intermittent flooding from leaky pipes and light fixtures. Chaffee has been to court with Croman eleven times, including eight landlord-initiated appearances for what turned out to be fraudulent nonpayment cases.

"This guy is a monster. He's doing it to all his tenants, not just us," she said.

Investigators with the State Attorney General's Office reached out to Chaffee after a coalition rally in May 2014 and collected over 150 exhibits to include in its complaint. Chaffee is cautiously optimistic that the state's case against Croman will end the torture she's endured.

"He need's to go to jail and to lose his license," said Chaffee. "Take his buildings away. That's the only way he'll stop."

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Despite the best efforts of the New York State Attorney General's Office and the TPU to combat tenant harassment through aggressive criminal prosecution or civil lawsuits against prominent landlords, systemic change that affects landlords big and small will likely require reforms of the city's harassment laws, including strengthening penalties and an effort to address the lack of tenant representation in New York City Housing Court.

Recent developments—including the mayor's commitment to provide funding for legal representation for tenants at risk of eviction, the political momentum behind the legislation to address constructive eviction and reform the DOB, and the City Council's passage of three measures in September 2015 which outlaw buyout offers—offer promising signs of change. Still, most tenant attorneys and activists agree, harassment will continue as long as landlords have a financial incentive to force tenants out.

"As long as landlords can double or triple the rent, it's a sucker's game," said Josephson. "From a business point of view, they'd be crazy not to try to get their tenants out."

The \$2,500 average penalty assessed by the courts after a finding of harassment pales in comparison to the tens or hundreds of thousands of dollars landlords may potentially collect after deregulating rent-stabilized units.

“The city has to change its point of view and say ‘We have to protect tenants and punish the landlords,’” Guzman said. “The punishment that hurts them the most is their wallets.”

In addition to the inadequacy of the penalties, however, tenants also have little incentive to file a claim—the money collected is paid to HPD, not kept by tenants.

“A lot of times tenants will throw their hands up and say ‘I’m not going to keep coming back to court if all I’m going to get is the landlord a slap on the wrist and some fines,’” said Rozen. “It doesn’t make sense if you’re employed to take a lot of time away from work because you don’t get any compensation as a tenant.”

What’s more, a recent audit conducted by the City Comptroller found that often penalties assessed by HPD go uncollected by the city. In 2015, the 4,441 Housing Court cases that assessed penalties against building owners totaled \$23.9 million. Only \$14.8 million was collected.

Beyond penalties and deterrence, to truly level the playing field in Housing Court, more tenants need legal representation. In late September 2016, the City Council held a hearing on a bill that would guarantee low-income New Yorkers the right to counsel.

“Often times, residents want to fight back and pursue charges but are left at a loss due to the inaccessibility or knowledge of legal support,” said a spokesperson for District 10 Councilman Ydanis Rodriguez, a key sponsor of the legislation which would make New York City the first jurisdiction in the country to guarantee representation for low-income residents. “With the Right to Counsel bill, tenants in need of support will automatically be connected with lawyers and end the clear advantages landlords possess in this arena.”

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Harassment is the weapon of choice for some landlords waging battle on the frontlines of tenant displacement. For landlords with financial incentive—and there’s no shortage of it—harassment is the most effective and efficient means to force people out of their homes.

Tenants living with the daily reality of harassment possess little means to defend themselves. Harassment laws and the Housing Court system do not deter landlords from committing abuse and offer inadequate recourse for those who are suffering.

“The landlord's thumb their nose at the law,” said Chaffee. “There’s no accountability because of the dysfunction of city agencies.”

There are encouraging remedies being devised by activists and lawmakers, but they won't come quickly enough for people like Michelle Richards, who remains homeless as she navigates Housing Court in hopes of a favorable resolution.

On September 9, 2016, the Legal Aid Society filed a proceeding in Bronx Supreme Court on behalf of Richards to restore her possessions and resolve her unlawful eviction. Richards is hopeful that she will be able to claim damages for her destroyed property, but after two court adjournments, her case is still far from its conclusion.

“I want to get back to my original standing,” Richards said. “To be able to lock my own door, have my own key, have my own heat. I just need justice. I lost a lot and I need justice.”