



Eviction, legal counsel and the courthouse

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About the RVA Eviction Lab

Created in August 2018, the RVA Eviction Lab has a primary mission of collecting, analyzing and disseminating data and research that will:

- Inform policy-making that will support stable housing for low- and moderate-income households;
- Facilitate shared knowledge production about community needs and opportunities; and
- Support efforts of communities most impacted by housing instability to research and advocate for themselves.

We use two primary approaches to advance these goals. First, we provide data analysis and written reports to decision-makers, policy advocates and government agency staff about eviction-related trends, policies and structural bases. Second, we engage with community-based organizations to provide community-relevant research and data that can be used for knowledge-building and action.

Our work is supported through grants from the Richmond Memorial Health Foundation and the VCU Office of Community-engaged Research that enable us to respond to community-identified needs for data analysis across the Commonwealth.

Acknowledgements

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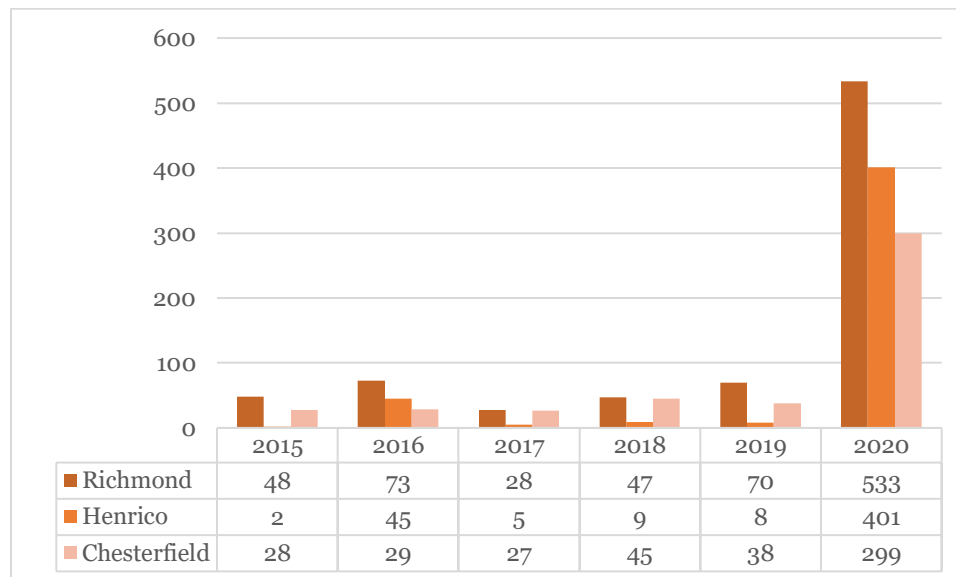
Executive Summary

In states and cities across the country, communities have increasingly acknowledged the important role of legal counsel in reducing housing instability and preventing eviction. Indeed, in Virginia, a combination of philanthropy and state support has led to the expansion of pro bono legal support for tenants facing evictions. Yet there has been no in depth look at the courthouse experience, the role of legal counsel and the impacts for tenants of working with representation in Virginia. As part of a request by community partners, this report answers a few questions:

- How many tenants in Virginia have legal representation in the courthouse?
- What role does representation play in the outcomes of eviction cases?
- What is the process by which cases are heard and tenants present their defenses?
- Are tenants receiving information about their rights and the opportunities for COVID-related assistance in the courthouse?

To do this, we used existing court data on evictions by jurisdiction, direct observation of nearly 600 cases in three separate general district courts, and research on best practices.

Figure 1: Representation in the Richmond Region, 2015-2020



Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

This report finds:

- Representation of tenants has increased due to investments from philanthropic and state sources. Between 2019 and 2020, tenant representation increased—rising from an average of 53 tenants, or less than half of a percent of tenants, to 533 tenants, or 11% of all eviction cases in Richmond. **Conversely, nearly 90% of all tenants facing eviction in Richmond have no legal representation.**

- While nearly all landlords had legal representation, just two law firms represented landlords in 35% of all cases leading to an eviction judgement across the region. This translates to 28% of all attorney fees and 29% of the principal owed regionwide.
- The average hearing length in Richmond was less than three minutes. The majority (82%) of all hearings took less than five minutes. ***Nearly 40% of hearings were shorter than a minute, giving tenants little time to make a case, learn their rights or ask questions about the process.***
- Tenants with legal representation had better outcomes than tenants without representation in 2020. Hearings where a tenant attorney was present were, on average, twice as long as those without an attorney. Further, tenants were more likely to have a favorable outcome that addressed inconsistencies in process, the eligibility for rental assistance and improper notification. ***In 2020, there was a 30% reduction in judgments for the plaintiff when tenants had representation.***
- There was significant variation in courtroom procedure across three study areas in the summer of 2021. In Richmond, for example, judges checked notices for legal sufficiency in 40% of all hearings, and ensured that the defendant was properly served with a summons in almost half of all cases. This was notable compared to other jurisdictions where this happened in fewer than a fifth of all hearings.

We continue to conduct court observation after the end of federal CDC tenant protections and we will revise this report at the end of 2021 with these additional observations and with an analysis of the full 2021 year eviction court cases.

Based on this work and examination of best practices, we recommend:

1. The expansion of funding for community-based rental housing counseling;
2. State-level tenant-based rental assistance; and
3. Significant geographic and financial expansion of tenant-based legal support.

We see critical opportunities for change to provide improved access to tenant resources that will support long term stability across the commonwealth.

Introduction

The condition of low-income and marginalized renters has been examined in a variety of contexts over the last quarter century, including qualitative and quantitative studies about eviction and its lasting effects. These studies reveal the enormous volume of eviction cases in court each year--a total of 3.6 million filed with approximately 1.5 million judgements nationwide (Princeton Eviction Lab). The dynamics of housing court and representation (or lack of representation) for poor tenants, who make up the majority of all eviction proceedings due to an inability to meet monthly payments, are of integral importance in understanding eviction outcomes. What numerous studies and observations have determined is that there is widespread inequity in access to legal counsel, which not only limits defendant knowledge of rights but also affects the procedure of the court unfavorably. Eviction cases are processed, on average, in under three minutes (Bezdek, 1992) and often result in default judgements; the presence of a legal advocate or lawyer has been shown to slightly increase processing time and result in better outcomes for disputes and eviction terms (Seron et al, 2001). In the first year of New York City's Universal Access law in August of 2017, 84% of all tenants who were provided an attorney remained in their homes. 97% of those receiving legal services for New York City Housing Authority administrative termination of tenancy were able to remain in their homes (Office of Civil Justice, 2018). The research on the eviction courtroom indicate that bias in both law and practice, barriers to full access of the law in the court system, including barriers to counsel and other key levers, and systematic challenges in court procedure contribute most to the high number of eviction judgements annually.

This report documents the ways that tenants have been represented – both before and after the COVID-19 crisis. We use both data from the Virginia court system and from observations of more than 600 cases conducted during the summer of 2021 in Richmond, Newport News and Alexandria. Specifically focusing on the Richmond region, we examine the outcomes of eviction proceedings, the roles played by attorneys, tenants and judges and the geography of this work. Together, these data illustrate that, historically, tenants in the Richmond region have had little support in eviction court. More importantly, they have not had positive outcomes that have allowed them to remain in place. We argue that the growth in the number of available attorneys and other legal support has allowed tenants to take advantage of critical resource to prevent displacement. Consistent with work conducted in cities like New York and Philadelphia, the presence of attorneys improved outcomes and reduced displacement in the Richmond region. Further, their work has been assisted by changes in the law that required landlords to apply for emergency rent relief before proceeding with an eviction.

Support for Tenants in the Courthouse in Virginia

In 2019, the City of Richmond, in partnership with the nonprofit Housing Opportunities Made Equal (HOME), and the greater Richmond bar Foundation created the Eviction Diversion Program. The program worked in the courthouse to mediate between tenants and landlords and developing payment plans that would prevent an eviction judgement and keep tenants in their homes. This was followed by a state pilot working in



Richmond, Hampton Roads, Danville and Petersburg. At the same time, the Virginia Department of Housing and Community Development established an eviction prevention program to implement programs and develop new approaches to reducing eviction in the Commonwealth.

In 2019, the Virginia Poverty Law Center initiated the Eviction Helpline to be a direct connection to tenants facing eviction. Through the helpline, volunteer attorneys could triage and connect residents to legal counsel and housing services. In 2019, [Equal Justice Works](#), a national nonprofit focused on providing support for public service and justice in the law, supported six law fellows and two organizers at three legal service organizations in Richmond. As part of the Housing Justice Program, these fellows work directly with tenants – both in the courthouse and in the community – to provide representation, tenant education on rights and conduct legal research. In August 2020, Governor Northam announced a partnership with Ikea to offer \$4million (\$2m from Ikea and \$2m from the Commonwealth) in grants to legal services providers working with tenants facing eviction. This funding would support the hire of 20 additional attorneys across the Commonwealth.

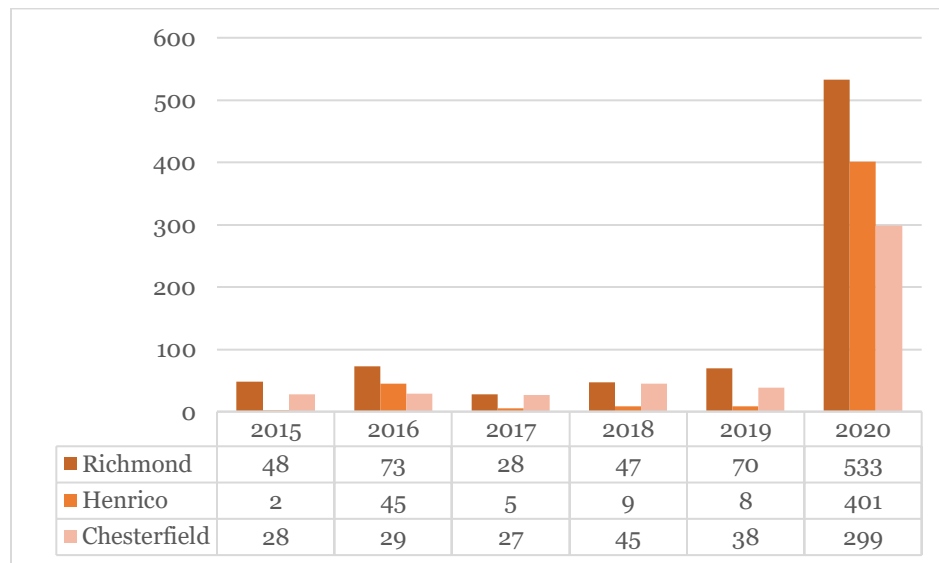
When federal programs to prevent COVID-19 related eviction and pay rent arrears for the millions of families out of work passed in Congress, the programs created pre-pandemic were important pieces of infrastructure that allowed for a rapid response. Attorneys were able to be in the courthouse to ensure that tenants covered under the CARES Act were not evicted; housing justice organizers could proactively engage with tenants where they lived to let them know about the moratoria, CDC protections and rent relief funding. At the same time, DHCD was ready to implement a system to disperse more than \$1.1 billion in rent relief across the Commonwealth¹.

¹ National Low Income Housing Coalition ERA1 Spending by State Program (October 25, 2021)
https://docs.google.com/spreadsheets/d/1RnHX7Ld7KJ_jgj8Sk52xjCygYRETwU-OthOGE3uduHM/edit#gid=1432075608

Representation in the Richmond Region

Between 2015 and 2019, 386 tenants had representation in Chesterfield and Henrico Counties and the City of Richmond. Figure 2 illustrates the number of tenants represented between 2015 and 2020. In 2020 alone, 1,233 tenants had legal representation with 533, 401 and 299 in Richmond, Henrico County and Chesterfield County, respectively. This represents a regional increase of 963% between 2019 and 2020.

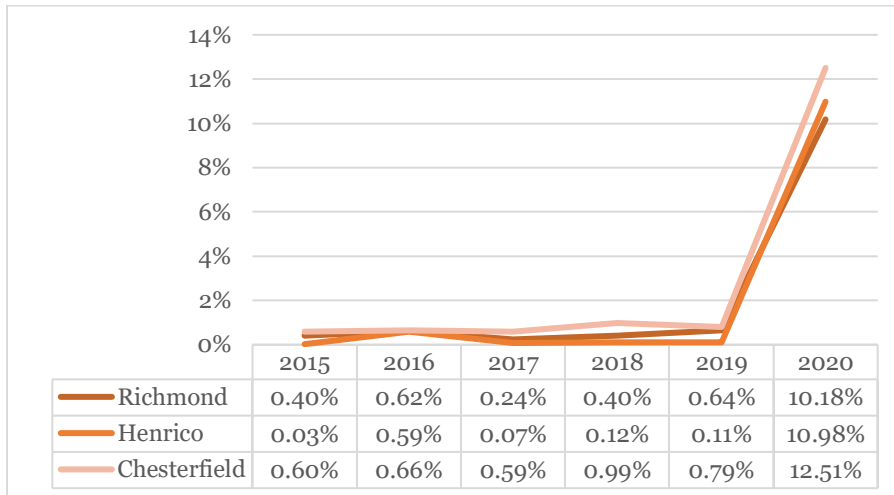
Figure 2: Number of Tenants Represented in the Richmond Region, 2015-2020



Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

According to the [RVA Eviction Lab's report from the fourth Quarter of 2020](#), unlawful detainers in the city of Richmond, as with jurisdictions across the Commonwealth declined by 57.5% from 2019. As a result, the impact of an increase in pro bono attorneys in the courts made an outsized impact in the share of represented tenants. Figure 2 shows the percentage of tenants with an attorney during their unlawful detainer hearings. From 2015 to 2019, fewer than 1% of tenants had an attorney present during their eviction proceeding in the Richmond Region. In fact, the highest percentage of Richmond tenants in that time period who had representation was in 2019 when 0.64% had an attorney, or 70 tenants. Henrico County tenants have historically been the least represented in the region. However, in 2020 this trend changed with 11% of Henrico tenants having representation, compared to 10.2% in Richmond and 12.5% in Chesterfield County.

Figure 3: Percent of Tenants in eviction court with legal representation in the Richmond Region, 2015-2020



Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

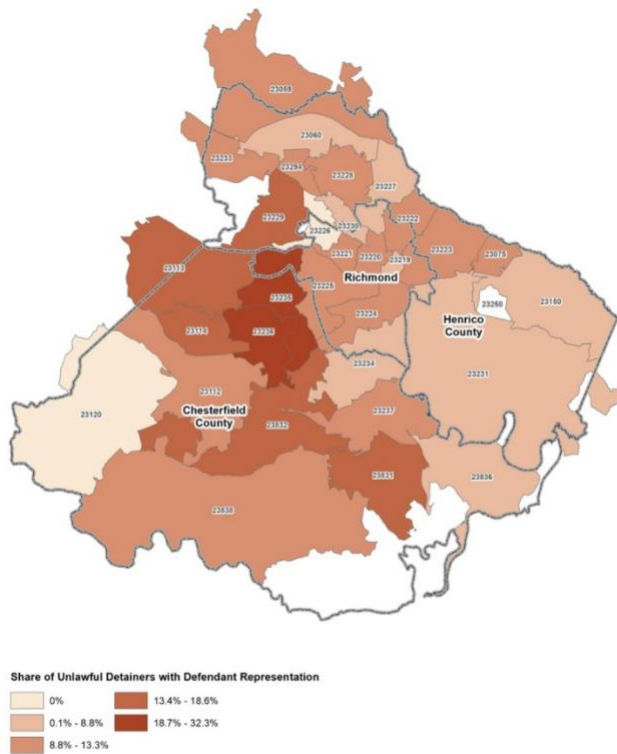
Conversely, nearly all landlords were represented in court. In fact, in 2019 two firms in the region accounted for 35% of all eviction judgements across the region. This trend was particularly pronounced in Henrico and Chesterfield, where two firms accounted for more than 40% of all evictions and nearly 30% of all attorney fees and the principal owed. Figure 4 shows evictions, fees and principal amounts for these two firms across the region. These firms represent almost \$5.4 million in total principal owed, an average of \$1,099 per case.

Figure 4: Total Evictions and fees for top two firms representing tenants, 2019

	Total Unlawful Detainers	Percent of the Total	Total Attorney Fees	Total Principal Amount
Chesterfield County	1158	40.7%	\$ 139,629	\$ 1,551,792
Henrico County	1812	40.4%	\$ 214,294	\$ 1,831,760
City of Richmond	1797	26.0%	\$ 217,326	\$ 1,860,888
Region	4876	34.2%	\$ 579,392	\$ 5,360,266

Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

Figure 5: Share of tenants represented in eviction cases, 2020



Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

While there has been growth across the region, legal representation remains uneven. Figure 5 illustrates this trend, showing the share of cases with defendant representation by zip code. The highest percentage of cases with tenant representation are in western Chesterfield County, while parts of Richmond’s southside, northside and eastern Henrico County show a gap in representation.

In the City of Richmond, a look at representation by zip code (Figure 6) illustrates the increases in the representation of tenants, compared to the decrease in unlawful detainers. Citywide, the number of unlawful detainers filed decreased by more than 50 percent while the number of tenants represented increased by more than 650%, and the percent of tenants

in represented by an attorney increased by more than 10-fold. Zip codes in the northside and southside of Richmond have historically had the city’s highest eviction rates. Between 2019 and 2020, eviction filings and judgements fell by more than 40% and 60%, respectively in these communities, while the percentage of represented tenants increased 10-fold in all of these communities.

Figure 6: Change in Tenant Representation by Defendant Zip Code, 2019-2020

ZIP Code	Unlawful Detainers	Represented Tenants	Percent Represented
23219	-52.8%	333.3%	817.3%
23220	-61.8%	733.3%	2081.3%
23221	-64.4%	**	**
23222	-49.2%	4800.0%	9543.2%
23223	-68.7%	331.3%	1275.7%
23224	-49.3%	1140.0%	2347.6%
23225	-41.3%	1410.0%	2471.6%
23226	-61.5%	**	**
23227	-35.6%	37.5%	113.5%
23230	-54.2%	**	**
23231	-66.6%	600.0%	1992.9%
23234	-49.8%	183.3%	463.9%
23235	-31.1%	**	**
Other ZIP Codes	-30.2%	1500.0%	2193.3%
All ZIP Codes	-52.2%	661.4%	1491.4%

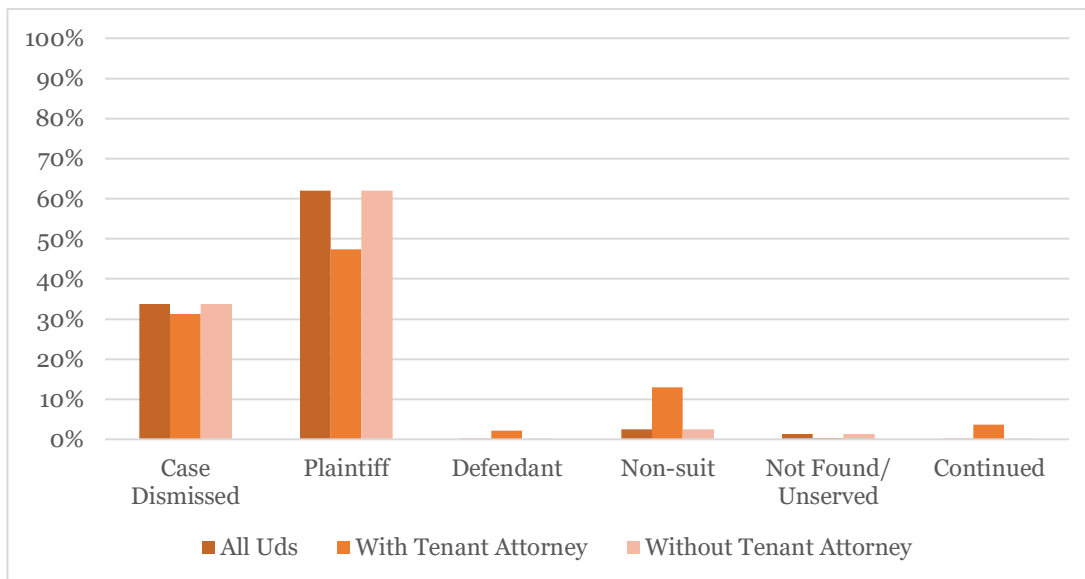
Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

**These zip codes had no tenants represented by legal counsel in 2019

Cases and outcomes

To understand the role of attorneys in case outcomes, we examined data in the city of Richmond, Henrico County and Chesterfield County from 2015 to 2019. To better understand a typical year, we aggregated data from 2015 to 2019 (Figure 7) and 2020 (Figure 8) as a single year of data. Overall tenants in Richmond, Henrico and Chesterfield courts who had legal counsel had better outcomes, and their cases were less likely to be found for the plaintiff when they had counsel than when they did not. While fewer than 1% of all cases in 2020 and 2.2% over the period from 2015 to 2019 were found in favor of the tenant, an attorney present reduced the risk of eviction. In a typical year, tenants who have representation receive a more favorable outcome in 18.4% of cases versus 2.4% of the time for those where tenants are not represented.

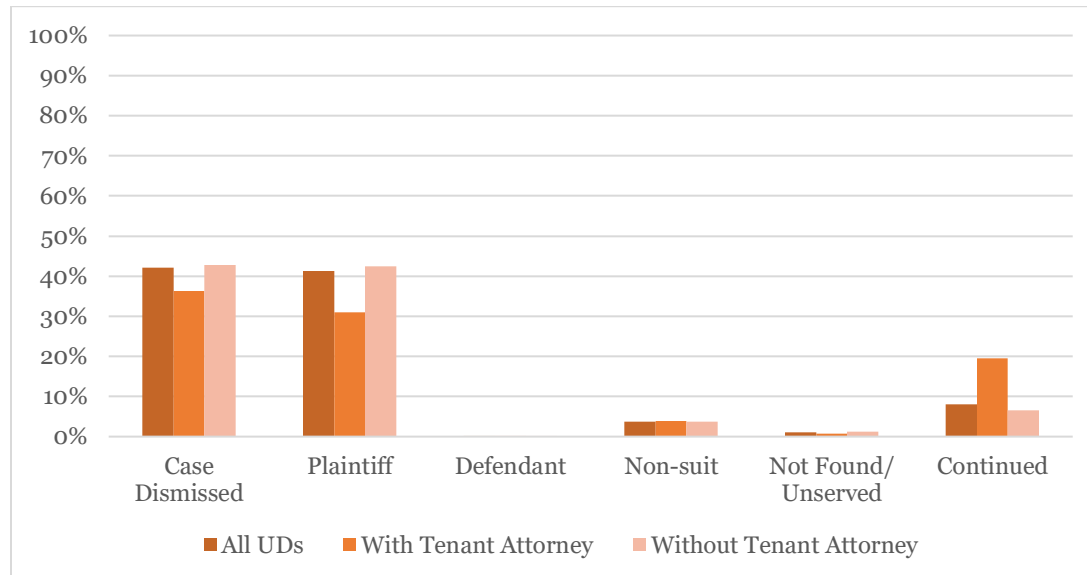
Figure 7: Outcome of cases for tenants by legal representation, 2015-2019



Source: Virginia Courts, Ben Schoenfeld, RVA Eviction Lab Analysis

While these outcomes often represent ongoing precarity for tenants, the time that tenants have to find additional financial resources, search for new housing or negotiate payment plans can mean the difference between moving in crisis and remaining in stable housing.

Figure 8 Outcome of cases for tenants by legal representation, 2020



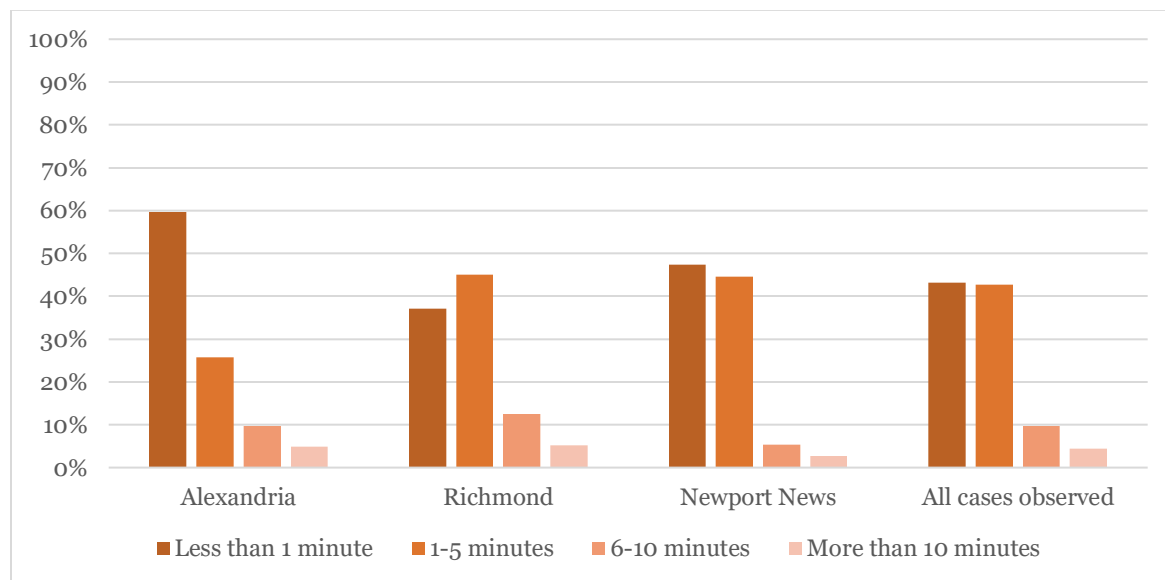
In both 2020 and a typical year, more than a third of all cases are dismissed, often meaning that the tenant has paid the amount owed before the case comes to court. Importantly, in 2020, 31% of all cases where tenants had an attorney present were decided for the plaintiff, compared to 42.5% where no attorney was present for the defendant. The gap between these numbers was 14.6 percentage points between 2015 and 2019. At the same time, the percentage of cases that were continued or non-suits was larger for tenants with attorneys than those without. In 2020, almost 20% of all cases where tenants were represented were continued, and 4% were a nonsuit. In observations of Richmond General District Court in the Summer of 2021, 44% of all cases where tenants had an attorney, compared to just a third of those without an attorney were continued, reflecting the expansion of the Rent Relief Program and the ongoing need for representation.

Cases were usually continued during the pandemic in cases where tenants asserted an impact from COVID-19 and landlords were required to apply for Rent Relief Funding before proceeding with the case. To do this, tenants would need to know their rights and make the assertion. Although observational data suggests that many judges informed tenants of the available funding, this was not universal. Nonsuits occur when there is a procedural question – improper notification, for example – that put the case in jeopardy. Landlords may withdraw the case once and refile later. Legal representation is often necessary to note these discrepancies. For example, Figure 7 shows a 10-percentage point difference between the nonsuit outcomes for tenants with and without an attorney.

The Eviction Process in Practice

The daily practices of the courtroom give additional insight to these aggregate numbers. Cases are decided quickly, and tenants rarely have the opportunity to make an argument. This is largely because in typical years, there are few defenses for non-payment of rent, the primary reason landlords file eviction. While this has changed with the advent of protections from the Commonwealth, the CARES Act and the Centers for Disease Control, as well as rent support from the Rent Relief Program. Yet Figure 9 shows that in the summer of 2021, more than 40% of all hearings lasted less than one minute, and fewer than 5% lasted more than ten minutes. There was some geographic variation – with 60% of Alexandria’s cases taking less than a minute, versus 37% in Richmond. Conversely, 45% of Richmond eviction cases took between one and five minutes, compared to just 26% in Alexandria. Across all cases, hearings were longer when a tenant was represented. In fact, across all courts, cases with tenant attorneys were twice as long as those without a tenant attorney.

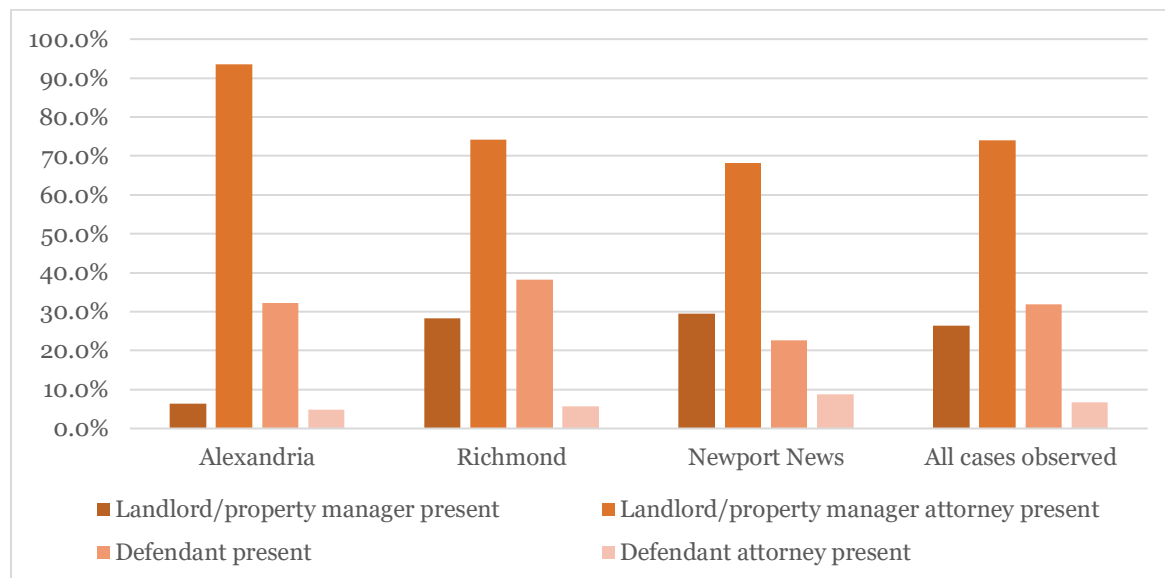
Figure 9: Length case by jurisdiction studied



Source: Observation, Summer 2021

Across all hearings in the three courts observed, seven percent of tenants had an attorney present (Figure 10). While this number was slightly higher (8.8%) in Newport News and slightly lower (4.8%) in Alexandria, it is consistent with the trends found for 2020 for Richmond and its surrounding communities. These numbers may have declined due to both a rise in the number of individuals with eviction hearings, as well as a change in the resources available for tenants facing eviction.

Figure 10: Who was present at the hearing?



Source: Observation, Summer 2021

The ways that eviction cases proceeded varied across the three cases observed. Defendants in Richmond’s General District Court had the highest level of interaction with the judge and were most likely to have their cases examined at a basic level. As Figure 11 shows, in Richmond, almost 40% of judges checked the eviction notices, 14% asked to see proof of nonpayment, and, in almost half of all cases, the judge discussed or checked the process of tenant notification of the unlawful detainer. Notably, starting in 2019, the Virginia law requires judges to check the eviction notice and admit it into evidence, 100% of the time.² Importantly, in Richmond, while not all tenants had representation, there was often a pro bono attorney in the courtroom, which may have influenced the behavior of the judges. This variation in the behavior of judges suggests that there is significant flexibility for practice by judges across the state.

² Code of Virginia §8.01-126(D)(2)(a): “Notwithstanding any rule of court or provision of law to the contrary, no order of possession shall be entered unless the plaintiff or plaintiff’s attorney or agent has presented a copy of a proper termination notice that the court admits into evidence.”

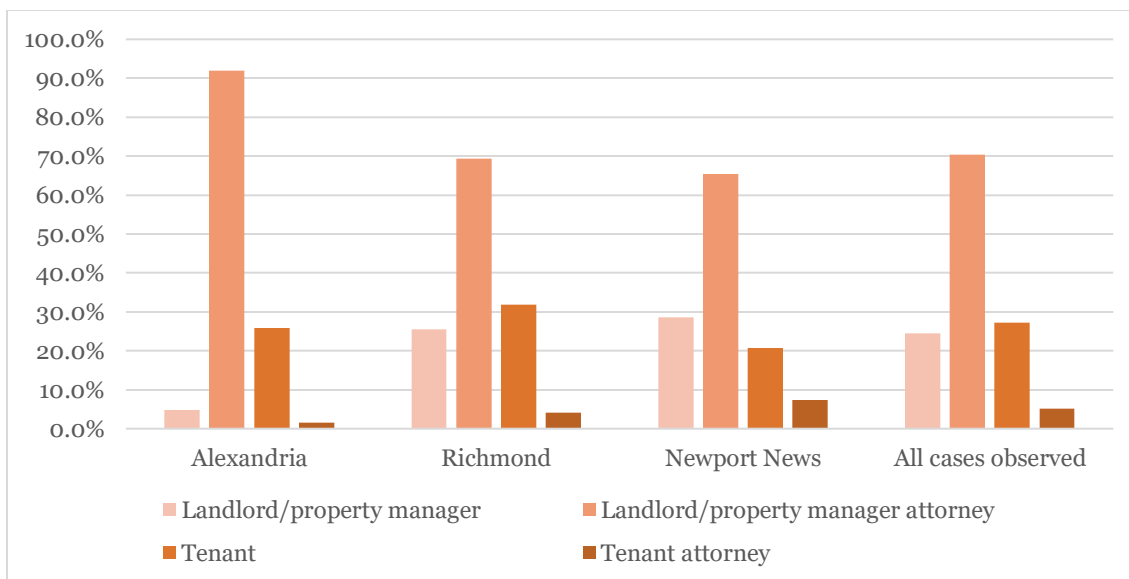
Figure 11: Procedural Rights in the Courthouse

	Alexandria	Richmond	Newport News	All cases observed
Judge discussed/checked service	1.6%	47.8%	5.1%	27.3%
Judge swore in parties	1.6%	13.7%	11.5%	11.6%
Judge checked notice	3.2%	38.2%	20.3%	11.6%
Defendant informed of rights	0.0%	13.4%	2.8%	8.1%
Judge asked to see proof of nonpayment or other lease violation	6.5%	14.0%	12.4%	12.6%
Judge asked tenant if they owed rent or committed other lease violation	1.6%	11.5%	11.5%	10.5%
Judge asked tenant if they had a defense	3.2%	9.6%	3.7%	6.7%
Defendant articulated a defense	12.9%	14.3%	4.6%	6.7%
Defendant presented evidence	0.0%	3.8%	0.9%	2.4%

Source: Observation, Summer 2021

The variation in the behavior of judges in hearings is reflected in the variation in who spoke during hearings as shown in Figure 12. In Richmond, tenants spoke in more than a third of hearings, while in Alexandria and Newport News, they spoke in 25% and 20% of cases, respectively. This also reflects the percentage of cases in which tenants were present discussed in Figure 11. But importantly landlord attorneys spoke in the vast majority of all cases. However, even in cases where a tenant attorney was present, they were rarely heard from. While an attorney was present in almost 7% of all cases, they spoke in just 5% of cases across the three jurisdictions.

Figure 12: Who spoke during the case?



Source: Observation, Summer 2021

Conclusions and Recommendations

These findings suggest some policy goals for the Commonwealth’s courthouse approach to reducing housing instability for renter families. In 2019, we released a [report](#) and [table on best practices](#) for preventing eviction. These findings serve to reinforce many of those findings and suggest additional opportunities for prevention. While these recommendations do not address the imbalances of law and practice, they do serve to address immediate needs, including knowledge, rent payments and advocacy.

Community-based Rental Housing Counseling

Many tenants come to court with little or no knowledge of the eviction process. They may not be aware of their rights as a tenant or know if procedure has been followed. Thus, it is difficult to create a defense, know when and if to pay back rent and whom to call to additional assistance. We recommend the expansion of funding for community-based rental housing counseling that includes rights and requirements of landlords; procedures for notification, payment and contestation of unlawful detainers; and information about support services to address emergency rental assistance and long term rental assistance. Most particularly, we see that this work should be administered through organizations with relationships to communities and experience in engaging directly with impacted communities. While this does not address underlying imbalances of power in landlord-tenant relationships, it does create better opportunities to ensure tenants are present and understand their existing rights under the law.

Tenant-based rental assistance

Increasingly, states and local jurisdictions have looked to local housing assistance to address the critical gap in affordable housing – particularly for households earning less than half of the region’s median income or Area Median Income (AMI). [The National Low Income Housing Coalition](#) finds that in the Richmond region, there are just 63 affordable and available homes for every 100 that are needed for families earning less than 50% of the AMI. That number falls to 36 for families earning less than 30% of AMI. Further, in our summer report on the [Public Cost of Eviction](#), we find that it is far more affordable to provide rental assistance to families than to evict them and pay for the costs of housing instability. This suggests that many families come into housing with a need for additional support. The state’s rent relief program has illustrated the possibilities for prevention through direct assistance. However, in jurisdictions such as [Philadelphia](#) and [Washington, DC](#) have experimented with shallow subsidies to fill the gap.

Expansion of Legal Services

This report shows a clear need for a geographic and financial expansion to support increased access to legal counsel in the courthouse. While the number of attorneys and the share of tenants represented have both increased dramatically since 2019, nearly 90% of Richmond tenants come to court with no legal support. More importantly, these legal resources have been focused primarily in the Richmond region, leaving tenants



across the Commonwealth with limited access to attorneys. Nationally, many jurisdictions have instituted [a civil right to counsel](#) that, similar to the rights afforded to defendants in other types of legal proceedings, makes pro bono attorneys available to all defendants in eviction cases. Jurisdictions, including Louisville, Cleveland, Philadelphia, Tulsa, and Denver have instituted these laws in the past year. There is some variation in the tenants who are covered (all families, versus just those with children, for example), these communities have recognized that legal counsel in the courthouse can even the playing field and ensure all parties are following appropriate laws and procedures. However, at minimum, it is clear that too few of the Commonwealth's tenants have representation that can prevent housing instability.