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## Examination of Eviction Filings in Lancaster County, Nebraska, 2019–2021

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# Examination of Eviction Filings in Lancaster County, Nebraska, 2019–2021

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## I. INTRODUCTION

This study examined and analyzed eviction filings and proceedings in Nebraska, with a specific focus on Lancaster County—the home to the State’s capital, Lincoln. The primary objective of this study is to place eviction proceedings under a microscope to gain a better understanding of the volume of evictions in Nebraska, and whether the statutorily mandated processes are being followed. The study also attempts to capture the impact of certain external factors present during the period examined. Such factors include the COVID-19 pandemic and various eviction moratoria in place during 2020 and 2021, as well as the increased availability of legal representation for tenants facing eviction and the influx of funding for rental assistance programs.<sup>1</sup> With a population of just under 300,000,<sup>2</sup> Lincoln represents an average metropolitan city, with traits typical of cities both larger and smaller. Although there are a myriad of dissimilarities and variables—such as differing demographics, policies, and culture—it is projected that many of the findings herein are mirrored in eviction courts across America.<sup>3</sup>

The study utilized data obtained from over 3,000 court hearings occurring in eviction actions filed between December 2019 and October 2021. The data was collected from public court records and through observations of hearings in open court. The analysis revealed that a significant portion of the eviction actions were conducted unlawfully in some manner. It was commonly observed that the tenant being evicted had not been properly served with notice of the action and was, therefore, unable to appear to invoke available protections or to assert their defenses to the claim. This resulted in a considerable number of evictions ordered by default. The pleadings were also found to be defective in most instances, often naming the wrong parties or failing to state a proper claim for relief under the heightened pleading standards required in eviction cases. Overall, it was

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<sup>1</sup> The other meaningful circumstances present included the COVID-19 pandemic itself and the economic recession that followed, the impact the pandemic may have had on tenants’ decisions to relocate due to health risks, and the increase in rental housing costs occurring during the examined period.

<sup>2</sup> *Quick Facts: Lincoln, Nebraska*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/lincolncitynebraska#> (last visited Mar. 6, 2022) (reporting that Lincoln’s population was 291,082 as of the 2020 Census).

<sup>3</sup> Notwithstanding these possible differences, there remain two fundamental characteristics universal to most jurisdictions: 1) the existence of laws creating an expedited eviction process that when viewed objectively favor landlords in several material ways, and 2) the imbalance of legal representation at the courthouse (i.e., landlords almost always have legal counsel, and tenants almost never have legal counsel). These two factors played a significant role throughout this examination, and thus, the findings here are likely to be predictive of the eviction proceedings in other jurisdictions where these factors are also present.

determined that fewer than ten percent of the eviction filings satisfied the minimum statutory requirements. Also apparent throughout the study was the impact of the availability of legal representation for tenants. When tenants had legal representation, the rate of unlawful evictions decreased significantly, as did the rate of evictions overall.<sup>4</sup> The study also revealed that eviction actions that did not comply with statutory requirements were nonetheless permitted to proceed to trial, and often resulted in the tenant being evicted from the home.

Ultimately, the results of the study highlight the need for legal representation for tenants in eviction proceedings, as well as the need for more stringent judicial oversight.<sup>5</sup> Without legal counsel to advise tenants of their rights and assist in invoking them, and without courts taking a more active role in ensuring the statutorily required procedures are followed, unlawful and unnecessary evictions will persist.

## II. PERIODS EXAMINED

During the examined period, from December 2019 through October 2021 (the EP), there were several distinct sub-periods during which the data was impacted by significant external circumstances. One external event was the establishment of the Tenant Assistance Project (TAP),<sup>6</sup>

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<sup>4</sup> The profound impact of access to legal counsel on tenants' ability to remain in their homes has been documented in other jurisdictions throughout the United States. *See, e.g.*, Emily Benfer, *How Tenants' Right to Counsel Can End Inequality in the Eviction System—and Save Lives*, THE APPEAL (Mar. 10, 2021), <https://theappeal.org/how-tenants-right-to-counsel-can-end-inequality-in-the-eviction-system-and-save-lives/> (observing that right to counsel programs in New York City, San Francisco, and Cleveland resulted in 86%, 67%, and 93% of tenants, respectively, were able to remain in their homes).

<sup>5</sup> Stringent judicial oversight is particularly critical in eviction proceedings for the reasons that: 1) due to various barriers and limited notice, most tenants are unable to or otherwise do not attend the hearing, and when they do appear, they are most often unrepresented and in an inferior position to know and understand the law, and in either instance are unable to bring to the court's attention the landlord's failure to adhere to the statutorily imposed procedure; and 2) the consequences of the proceedings are so devastating, often culminating in members of law enforcement being ordered to forcibly remove a family from their home and subjecting them to immediate homelessness.

The use of the "cattle-call" hearing model for eviction proceedings, where there can be several dozen cases set for a single timeslot, likely contributes to the absence of consistent stringent judicial oversight observed in this study. This hearing model is used in Lancaster and Douglas Counties and is commonly utilized across the nation for eviction hearings, as well as for other hearings involving matters where the defendants are predominantly low-income and without legal counsel, such as debt collection cases, small claims matters, traffic court, and criminal arraignments. The high volume of eviction cases assigned to an eviction court judge presumably also acts to hinder the court's ability to review the court file for each case to ensure that service was proper, that the pleadings are adequate, and that the court has jurisdiction over the parties.

<sup>6</sup> TAP is a grassroots, courthouse-based eviction defense program. It operates as a collaboration between several partners, primarily the Nebraska State Bar Association's Volunteer Lawyers Project, the University of Nebraska College of Law's Civil Clinical Law Program, and the Lincoln Commission on Human Rights. TAP began with a few volunteers on April 9, 2020, near the beginning of the COVID-19 pandemic. It has since grown into a nationally recognized, established program that provides legal services and other resources to low-income Nebraskans, and pro bono opportunities to law students and attorneys. *See* Kala Mueller, *Sullivan's Tenant Assistance Project Represents Renters Facing Eviction*, 53:2 NEB. TRANSCRIPT 14 (Fall 2020), <https://law.unl.edu/transcript/fall-2020-sullivans-tenant-assistance-project/>; Andrew Wegley, *Nebraska College of Law Recognized Nationally for Tenant Assistance Project*, LINCOLN JOURNAL STAR (Jan. 28, 2022), [https://journalstar.com/news/local/education/nebraska-college-of-law-recognized-nationally-for-tenant-assistance-project/article\\_4d6c8531-05f9-534a-b1f0-225ef4ccaea7.html](https://journalstar.com/news/local/education/nebraska-college-of-law-recognized-nationally-for-tenant-assistance-project/article_4d6c8531-05f9-534a-b1f0-225ef4ccaea7.html).

and the associated increase in available legal assistance for tenants facing eviction. The Pre-TAP period (the PTP) spans from December 1, 2019 to April 8, 2020, and the TAP Period (the TP) spans from April 9, 2020 through October 2021. The other meaningful external circumstances impacting the data stem from the COVID-19 pandemic—namely, the temporary eviction moratoria in place during certain periods, as well as the increase in funding for rental assistance programs. In Nebraska, there were three applicable eviction moratoria: the Governor’s Executive Order,<sup>7</sup> the CARES Act,<sup>8</sup> and the CDC Order.<sup>9</sup> Because the moratoria arising from the Governor’s Executive Order and the CARES Act had minimal practical effect,<sup>10</sup> only the periods in which the

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<sup>7</sup> Governor Pete Ricketts’ order was in effect from March 25, 2020 to May 31, 2020. This moratorium required the tenant to “demonstrate to the landlord, with documentation or other objective evidence that the tenant” suffered a substantial loss of income or missed work to care for a relative or child resulting from COVID-19 or the related state emergency. Exec. Order No. 20-07 (Neb. Mar. 25, 2020); see Dennis Capati, *Renters Scramble as Ricketts Lifts Halt on Evictions*, 1011 NEWS (May 21, 2020, 5:53 AM), <https://www.1011now.com/content/news/Renters-scramble-as-Ricketts-lifts-halt-on-evictions--570653411.html>.

<sup>8</sup> The CARES Act Moratorium was in effect from March 27, 2020 through July 24, 2020. CONG. RSCH. SERV., FEDERAL EVICTION MORATORIUMS IN RESPONSE TO THE COVID-19 PANDEMIC 1 (2021). This moratorium applied only to “covered properties.” Covered properties were those receiving financial support from HUD, USDA, and the Treasury (Low Income Housing Tax Credit), and properties with federally backed mortgages (e.g., FHA, Fannie Mae, and Freddie Mac). *Id.* at 2.

<sup>9</sup> The moratorium issued by the Centers for Disease Control was in effect from September 4, 2020 to August 26, 2021. CONG. RSCH. SERV., THE CDC’S FEDERAL EVICTION MORATORIAM 1 (2021) [hereinafter CDC Moratorium]. The CDC Moratorium was the first broadly imposed moratorium, as it applied to virtually all eviction actions brought based on non-payment of rent. *Id.* at 1–2. To invoke the protections offered, tenants had to make certain attestations to the landlord under penalty of perjury. *Id.* The original CDC Moratorium expired and was extended multiple times throughout this period. *Id.* at 1. There were noticeable spikes in filings as each expiration approached, presumably because landlords believed that by the time the hearing would occur, the moratorium would no longer inhibit them from moving forward with the eviction. See *infra*, 8 chrt.c. (highlighting that evictions filed for non-payment of rent spiked around the same periods the CDC Moratorium was set to expire). There was also a small window—August 1 through August 2, 2021—when the moratorium was allowed to expire temporarily. It seemed to have no significant impact on the volume of filings, and little impact on the outcomes. The final extension took the moratorium period to October 3, 2021; however, the U.S. Supreme Court terminated the moratorium as of August 26, 2021, finding the manner in which it was established was unconstitutional. *Ala. Ass’n of Realtors, et al. v. Dep’t of Health and Hum. Servs.*, 141 S. Ct. 2485, 2489–90 (2021). Renters who had been protected by the moratorium were afforded effectively no notice that it would no longer shield them from immediate eviction. Adam Liptak, Glenn Thrush, *Supreme Court Ends Biden’s Eviction Moratorium*, NEW YORK TIMES (Aug. 26, 2021), <https://www.nytimes.com/2021/08/26/us/eviction-moratorium-ends.html> (reporting on the court terminating the moratorium, and instantly putting “hundreds of thousands of tenants at risk of losing shelter”).

<sup>10</sup> The moratorium issued by Governor Pete Ricketts likely had minimal effect due to its narrow scope and because it required tenants to prove to their landlord—using “documentation or other objective evidence”—that they had “suffered a substantial loss of income.” Exec. Order No. 20-07 (Neb. Mar. 25, 2020). Moreover, the Order was only minimally publicized and lasted for such a short period that it is probable few tenants were aware of it. Interviews with attorneys volunteering at eviction proceedings confirmed this postulation; they reported that none of the tenants they assisted were aware of the moratorium, and that it was virtually ineffective at trial to pause the eviction proceedings. Similarly, the CARES Act Moratorium offered little protection because it was functionally infeasible for a tenant to establish that they were protected by the Act, as it required the tenant to affirmatively establish the rental unit was a “covered property.” To meet this burden, a tenant had to prove the property associated with their rental unit received federal funding or had a federally backed mortgage. This was a nearly impossible feat for tenants to achieve. See Brenda Wintrode et al., *Confusion over CARES Act Eviction Ban Leaves Some Families on the Brink of Homelessness*, USA TODAY (Sept. 2, 2020, 7:35 PM), <https://www.usatoday.com/story/news/investigations/2020/09/02/cares-act-eviction-ban-confusion/5686217002/> (“The only way tenants could find out whether their building was covered by the federal moratorium was to search

CDC Moratorium was in effect (the CDCP), which spanned from September 4, 2020 through August 26, 2021, and the period after the CDC Moratorium expired (the ACDCP), which ran through the remainder of the examined period, are explicitly analyzed. Overlapping many of these periods was a sharp increase in the flow of rental assistance funds provided by the federal government in response to impacts of the COVID-19 pandemic, referred to herein as the Rental Assistance Period (the RAP), which ran from September 22, 2020 through the remainder of the examined period.<sup>11</sup> The analysis below often juxtaposes the findings from the various periods examined.

### III. FINDINGS AND ANALYSIS

The following sections set forth findings and analysis on a range of components and characteristics of eviction proceedings. Unless otherwise stated, the data relied upon was eviction data taken from filings in Lancaster County, accumulated and analyzed for this study.<sup>12</sup>

#### A. Volume

The county courts of Lancaster County, Nebraska presided over 14,778 eviction matters from 2012 through 2019, averaging 1,847 per year—peaking at 1,946 filings in 2019.<sup>13</sup> In 2020, eviction

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online databases, some of which only a mortgage holder could access.”); *see also* FEDERAL EVICTION MORATORIUMS, *supra* note 8, at 2; Annie Nova, *How the CARES Act Failed to Protect Tenants from Eviction*, CNBC (Sept. 2, 2020, 9:56 AM), <https://www.cnbc.com/2020/08/29/how-the-cares-act-failed-to-protect-tenants-from-eviction.html>. (“Fewer than half of states required landlords to attest that their evictions didn’t violate the CARES Act.”). Making this arduous task even more challenging was the commonly observed practice of landlords filing the eviction action under a fictitious name or in the name of a property manager that had no interest in the associated property. *See infra* E.1. Standing (discussing this phenomenon). In an effort to identify all “covered properties” in Lincoln to determine whether evictions were being filed on units protected by the moratoria, the Author sought to obtain from the Lincoln Housing Authority a list of all properties that were financially supported by Federal Funds. The City denied the public information request, citing privacy laws. Letter from Shawn D. Renner, Counsel, Lincoln Hous. Auth. (Sept. 28, 2020) (on file with author). While the Governor’s Executive Order and the CARES Act provided little help in forestalling evictions already filed, in light of the decrease in eviction filing volume during the periods each was in effect, it is probable that at least some landlords *believed* they were effective and therefore refrained from filing to evict. It is probable that in at least some of these circumstances, the landlord chose instead to work collaboratively with their tenant to overcome the issue and allow the tenant to remain housed. Assuming this to be the case, these moratoria did have some positive effect in preventing avoidable evictions.

<sup>11</sup> The RAP represents the span when the Tenant Assistance Project and the City of Lincoln collaborated to place a rental assistance agent (or several) at the courthouse on mornings when eviction hearings took place. The agent was able to pre-qualify tenants for rental assistance, and the volunteer attorney or student attorney representing the tenant could use that as a tool to forestall the eviction (if the landlord was willing to accept the funds). The funds would typically be mailed to the landlord within seven to ten days of that hearing. *See* E-mail from Mindy Rush Chipman, Dir., Lincoln Comm’n on Hum. Rts. (Dec. 27, 2021, 10:58 AM) (on file with author). The City initially utilized CARES Act funding (\$1,703,000 received in 2020), but for the remainder of the period relied on ERA 1 funding (\$13,400,000 received in 2021). *Id.*

<sup>12</sup> *See infra* App. C [hereinafter Lancaster County Data].

<sup>13</sup> ADMIN. OFF. OF CTS. & PROBATION, COURT EVICTION REPORT 1 (Neb. 2021) [hereinafter NEB. EVICTION REPORT] (reporting the total number of unique eviction cases by county between Jan. 1, 2012 and Aug. 30, 2021).

filings dropped to 1,163,<sup>14</sup> and through October 2021 there were 993 filings, which would amount to 1,192 if annualized.<sup>15</sup>

During the approximate five-year period prior to the TP, eviction filings averaged 35 per week,<sup>16</sup> peaking at 37.4 in 2019.<sup>17</sup> During the TP, the weekly average dropped to 21. It is not possible to identify with any precision exactly what led to the sharp decrease, as this period included not only the addition of legal representation for tenants, but also an effective eviction moratorium, and an increase in funding for rental assistance programs.<sup>18</sup> However, examining a three-month snapshot of May, June, and July during each of the last five years revealed that the presence of legal representation had a noticeable impact on the volume, and that the volume was lowest during periods where legal representation, an effective eviction moratoria, and rental assistance were all present.<sup>19</sup>

2017 (PTP; no moratorium; no RA):	398
2018 (PTP; no moratorium; no RA):	481
2019 (PTP; no moratorium; no RA):	519
2020 (TP; no moratorium; no RA):	299
2021 (TP; CDC moratorium; RA):	253

Examination of the data also revealed that most cases were filed on a Tuesday (28%) and that the busiest hearing day was also Tuesday (37.7%). The data also showed filings were most voluminous between the 10th and the 19th of the month,<sup>20</sup> and that hearings occurred throughout the month with no clear pattern identified.

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<sup>14</sup> This figure (and most all figures reported throughout this examination) were derived from cases identified through a weekly review of the hearings scheduled for Lancaster County eviction court, as reported in Lancaster County Data. *See supra* note 12. Other sources of eviction data were reviewed to test the reasonable accuracy and reliability of the data collected through this process, namely: Report from the City of Lincoln Urban Development Department, see email on file with author (reporting 1,210); Together Report, (reporting 1,236); Supreme Court Report (reporting 1,241). Through reconciliation of a select batch of case filings, it was determined that the disparity in reported volume figures is the result of two factors. The first is that the data collected for this study excluded evictions for commercial properties and storage units. Second, by collecting the data from hearing schedules posted approximately one week ahead of the scheduled hearing, cases that were filed but then dismissed within a few days after filing were often left out of the dataset for this study. This disparity results in slight under reporting of volume figures, and moderately impacts ratios related to dismissals, but did not significantly impact any other figures or findings.

<sup>15</sup> *Id.*

<sup>16</sup> *See id.*; Lancaster County Data, *supra* note 12 (data from January 1, 2020 through April 9, 2020).

<sup>17</sup> *See* NEB. EVICTION REPORT, *supra* note 13, at 1. Filings during the PTP averaged 33.1 per week.

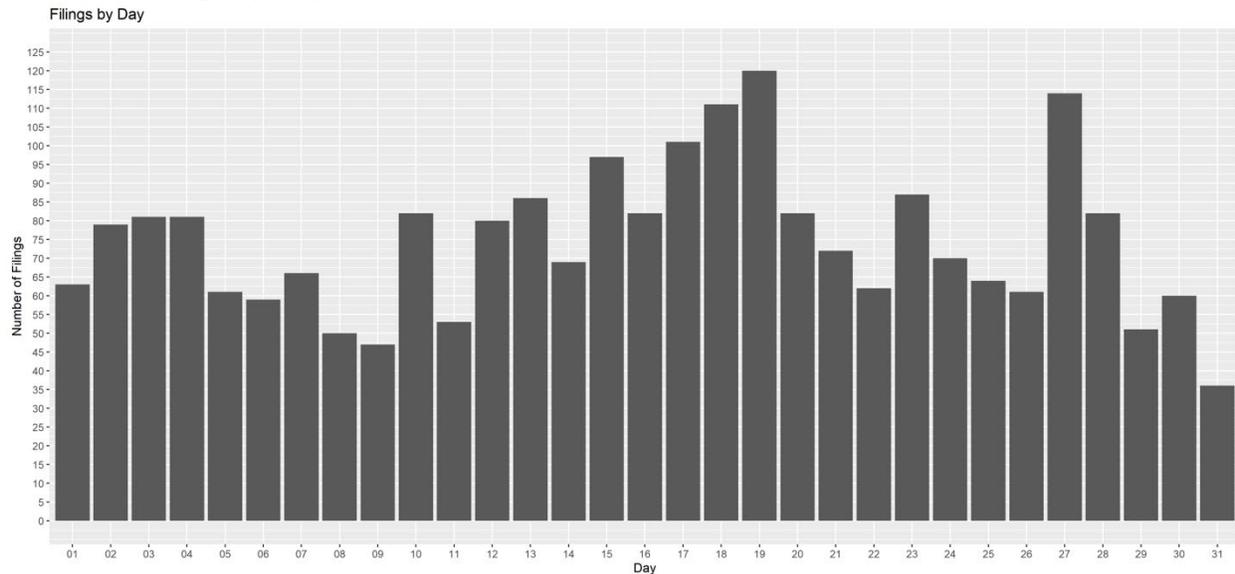
<sup>18</sup> *See supra* note 4; *Emergency Rental Assistance (ERA) Program*, STATE OF NEB.

<https://coronavirus.nebraska.gov/EmergencyRentalAssistanceProgram> (last visited Feb. 20, 2022).

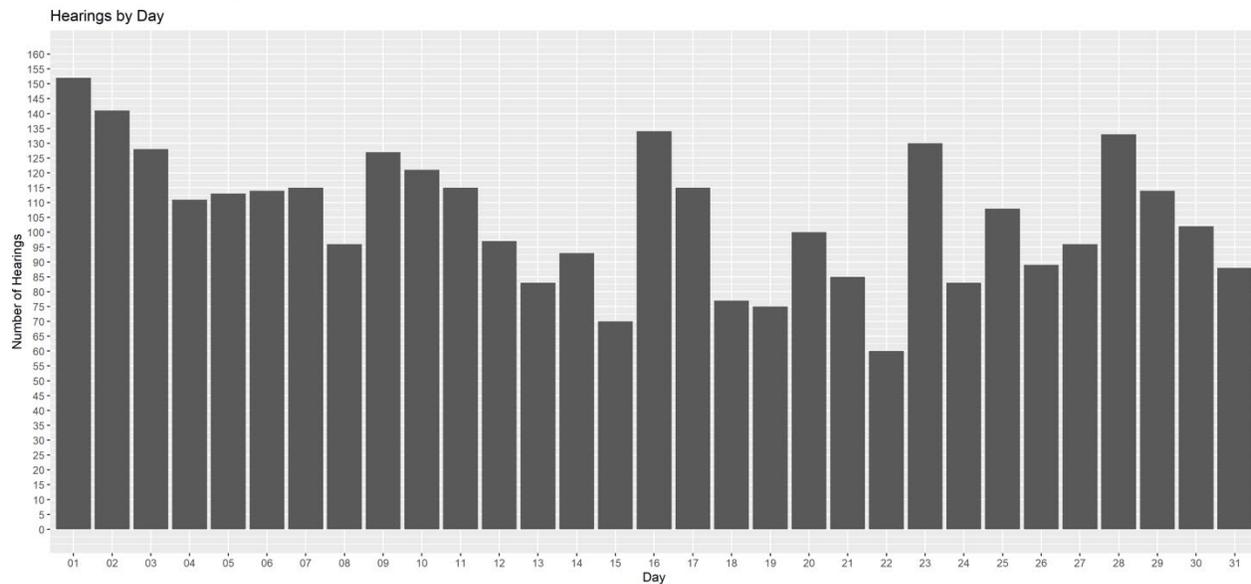
<sup>19</sup> Supreme Court Data was used for 2017 through 2020. *See* NEB. EVICTION REPORT, *supra* note 13, at 1. Lancaster County Data was used for 2021. *See* Lancaster County Data, *supra* note 12.

<sup>20</sup> This syncs with the eviction timeline under Nebraska law and common practice. It is common for a lease to include a grace period of three to five days, making rent delinquent between approximately the 4th to the 6th, at which point the tenant is provided a seven-day notice. *See, e.g., Hearing on L.B. 434 before the Comm. on the Judiciary*, 106th Leg. 1st Sess. 100 (Neb. Mar. 1, 2019) (statement of Lynn Fisher) (Member, Lincoln Real Est. Owners & Managers Ass'n; Neb. Prop. Owners Ass'n) (discussing the common practice of giving tenants a four-day

## Chart A. Filings by Day



## Chart B. Hearings by Day



grace period before serving them with a notice pursuant to NEB. REV. STAT. § 76-1431(2) for non-payment of rent). Presuming the notice was hand-delivered, the landlord would be permitted to file the action between approximately the 11th and the 13th. If the notice was sent by mail, the landlord should wait a few additional days to ensure the tenant was provided the full seven days from receipt of notice to come current on rent before the action is filed. *See* Ryan P. Sullivan, *Nebraska’s Anything-But-Uniform Residential Landlord and Tenant Act*, 100 NEB. L. REV. 101, (forthcoming 2022) (discussing how the notice period begins when the notice is received). This is the fastest a landlord can proceed to filing. A landlord has discretion to delay filing beyond this timeline—discretion landlords appear to exercise quite often considering the high volume of evictions filed on the 17th, 18th, and 19th.

**Table I. Volume Across Relevant Periods<sup>21</sup>**

<b>Period</b>	<b>Total Filings</b>	<b>Total Initial Hearings<sup>22</sup></b>	<b>Total Final Hearings<sup>23</sup></b>	<b>Total Hearings<sup>24</sup></b>
EP (12/1/19 – 10/31/21)	2,309	2,059	2,229	3,142
PTP (12/1/19 – 4/8/20)	583	490	551	650
TP (4/9/20 – 10/31/21)	1,726	1,569	1,678	2,492
CDCP (9/4/20 – 8/26/21)	981	915	957	1,499
ACDCP (8/27/21 – 10/31/21)	297	245	298	432
RAP (9/22/20 – 10/31/21)	1,257	1,104	1,206	1,867

### **B. Grounds for Eviction<sup>25</sup>**

In Nebraska, as in most states, there are several statutory grounds upon which to bring an action for eviction.<sup>26</sup> The most common grounds are failure to pay rent, violation of a lease term, alleged criminal activity, non-renewal of a month-to-month lease, non-renewal of a term lease, and forcible entry and detainer.<sup>27</sup> Under most states’ laws governing residential evictions, each type of eviction proceeds under specific statutory authority, and such authority will be cited or referenced in the complaint for eviction. However, in Nebraska, many eviction complaints reviewed did not cite to the correct statute or cited to no statutory authority at all. This precise issue was brought to the attention of the Nebraska Legislature in 2021 and the law was amended to make clear that the

<sup>21</sup> To determine volume during a particular period, the date of the relevant event or action was utilized to determine within which period the data point fell. For example, for total filings, the filing date was used. However, for total final hearings, the date of the final hearing was used. Thus, the table shows the number of *final hearings* occurring during a certain period, which may include cases that were *filed* during a previous period.

<sup>22</sup> “Total Initial Hearings” includes every initial hearing that took place during the period indicated. It does not include the initial scheduled hearing in matters that were dismissed prior to the initial hearing. Thus, the notable discrepancy between the total filings and the total initial hearings can be attributed in part to cases in which the matter was dismissed prior to the initial hearing. *See infra*, note 131 and accompanying text (discussing generally the percentage of cases dismissed prior to a scheduled hearing).

<sup>23</sup> “Total Final Hearings” includes all final scheduled hearings (the last hearing in the matter), including the final scheduled hearing in those cases where the eviction action was dismissed prior to that hearing.

<sup>24</sup> “Total Hearings” includes every hearing scheduled, including those cases where the eviction action was dismissed prior to that scheduled hearing.

<sup>25</sup> To determine the period in which the relevant reporting applied to grounds for eviction, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *first* recorded entry for that case (first scheduled hearing date).

<sup>26</sup> *See generally* NEB. REV. STAT. §§ 76-1431, 76-1437 (providing grounds for eviction under Nebraska’s Residential Landlord and Tenant Act); NEB. REV. STAT. §§ 76-14,101 to 14,102 (providing grounds for eviction under Nebraska’s Mobile Home Act); NEB. REV. STAT. §§ 25-21,220 to 21,221 (Nebraska Forcible Entry and Detainer statutes).

<sup>27</sup> In Nebraska, each of these can be broken down even further because Nebraska has a separate set of statutes governing evictions from a mobile home lot. *See* NEB. REV. STAT. §§ 76-1450 to 14,111. Throughout this paper, unless specifically stated, a report based on a particular type of eviction will combine actions brought under both the Nebraska Uniform Residential Landlord and Tenant Act and the Nebraska Uniform Mobile Home Landlord and Tenant Act.

*specific statutory authority must be pled in the complaint.*<sup>28</sup> Despite the explicit mandate, a significant number of eviction complaints filed after the amendment took effect failed to properly plead the relevant statutory authority.<sup>29</sup> In those instances, for purposes of this study, the grounds for eviction had to be gleaned from the facts alleged or the notice provided to tenants; at times, the pleadings were so defectively drafted that speculation was required to code for the grounds for the eviction.

The data revealed that evictions filed for non-payment of rent were most prominent during the EP (71%). This prominence remained consistent across all periods. However, during the period when the CDC’s eviction moratorium was in place, there was a noticeable increase in filings for the types of evictions not covered by the moratorium—namely no-fault evictions<sup>30</sup> and evictions based on allegations of tenant misconduct.<sup>31</sup> During the three-month period prior to the CDC Moratorium, no-fault eviction filings accounted for 8.2%<sup>32</sup> of the cases filed; during the CDCP, this rose to 24%.<sup>33</sup> Similarly, during the three months preceding the CDC Moratorium, evictions based on alleged tenant misconduct accounted for only 9.4% of the filings; this number rose to 14.8% during the CDCP. Correspondingly, the percentage of overall evictions filed based on non-payment of rent fluctuated greatly in response to the CDC Moratorium:

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<sup>28</sup> See L.B. 320 § 7, 107th Leg., 1st Reg. Sess. (Neb. 2021) (enacted) (revising NEB. REV. STAT. § 76-1441 to explicitly require that the complaint allege the specific statutory authority under which the eviction action is brought).

<sup>29</sup> See *infra* section E.2 Properly Stating a Claim (discussing complaints that failed to properly state a claim for restitution of the premises).

<sup>30</sup> Unless otherwise specifically stated, throughout this article, “no-fault” will include eviction actions brought under NEB. REV. STAT. § 76-1437(2) (non-renewal of month-to-month); § 76-1437(4) (non-renewal of term lease, often referred to as “holdover”); and § 25-21,219 (alleges there is no rental agreement in place). The data appeared to confirm that landlords capitalized on the loophole in the CDC Moratorium that allowed *no-fault* evictions to proceed unabated. The CDC Moratorium applied only to eviction actions brought on the basis of non-payment of rent; it did not apply to any action filed alleging a non-renewal of a month-to-month lease, even where the reason for the non-renewal was the tenant’s inability to pay rent. This is one of the many loopholes identified within the CDC Moratorium. See Kyle Swenson, *Renters Thought a CDC Order Protected Them from Eviction. Then Landlords Found Loopholes*, WASH. POST (Oct. 27, 2020), <https://www.washingtonpost.com/dc-md-va/2020/10/27/trump-cdc-eviction-moratorium-loopholes/>; Kent Luetzen, *Omaha Landlord Evicts More Tenants Despite CDC Moratorium*, KMTV NEWS (Mar. 18, 2021, 10:27 AM), <https://www.3newsnow.com/news/local-news/omaha-landlord-evicts-more-tenants-despite-cdc-moratorium> (depicting how one landlord utilized this loophole to evict a family who had complained about the substandard housing conditions that the landlord refused to remedy); Kent Luetzen, *Loophole in Eviction Moratorium Lets Landlords Evict Tenants*, KMTV NEWS (Mar. 3, 2021, 9:19 AM), <https://www.3newsnow.com/news/coronavirus/omaha-landlord-exploits-loophole-in-cdc-eviction-moratorium>; (discussing how eviction actions brought based on non-renewal of a month-to-month tenancy rose in Douglas County, even where the underlying reason appeared to be that tenants were behind on rent).

<sup>31</sup> For purposes of this section, “tenant misconduct” will include eviction actions brought under NEB. REV. STAT. §§ 76-1431(1) (lease violations), 76-1431(4) (alleged criminal activity or drug possession), and 76-14,101(1) (lease violations pertaining to the rental of a mobile home lot). See Bracey Harris, *Housing Advocates Say Evictions Are Continuing at “Full Steam,” Despite a Federal Ban*, NBC NEWS (Apr. 3, 2021, 3:30 AM), <https://www.nbcnews.com/news/us-news/housing-advocates-say-evictions-are-continuing-full-steam-despite-federal-n1262943> (detailing evictions continuing to be filed throughout the U.S.—despite the CDC Moratorium—for infractions as trivial “as having a trampoline or an unkept lawn”).

<sup>32</sup> Most of these (85.7%) were filed as non-renewals of month-to-month tenancies.

<sup>33</sup> Again, most of these (76.3%), were filed as non-renewals of month-to-month tenancies.

Three Months Pre-CDC: 81.5%  
 During the CDCP: 56.9%  
 During the ACDCP: 76.1%

The table below compares the volume of eviction filings by type during the EP:

**Table II. Volume and Percent of Evictions Filed During the EP by Type**

<b>Grounds for Eviction</b>	<b>Count</b>	<b>Percent</b>
Non-Payment <sup>34</sup>	1,642	71.1
No-Fault <sup>35</sup>	350	15.2
Lease Violation <sup>36</sup>	169	7.3
Criminal/Drugs <sup>37</sup>	90	3.9
Other <sup>38</sup>	58	2.5

The chart below shows the eviction volume across the examined period by eviction type:

<sup>34</sup> “Non-Payment” encapsulates evictions brought under NEB. REV. STAT. §§ 76-1431(2) or 76-14,101(2).

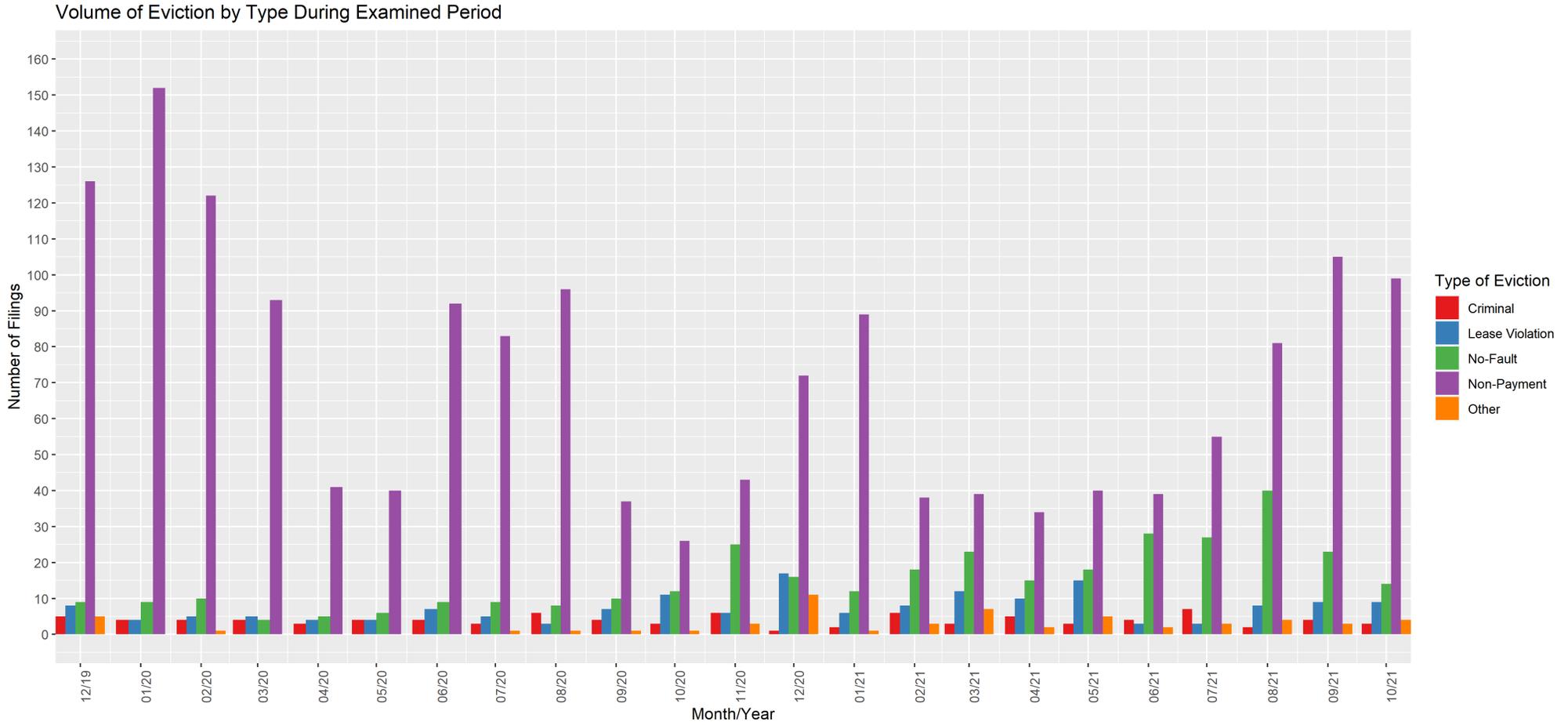
<sup>35</sup> See *supra* note 30 for a detailed discussion on no-fault evictions.

<sup>36</sup> “Lease Violation” includes evictions brought under NEB. REV. STAT. §§ 76-1431(1) or 76-14,101(1).

<sup>37</sup> “Criminal/Drugs” covers evictions brought under NEB. REV. STAT. § 76-1431(4).

<sup>38</sup> “Other” encapsulates evictions brought on multiple grounds, seeking to recover possession of a garage associated with a residential property, where the tenancy is associated with the tenant’s employment, or where the complaints for eviction were so poorly drafted that the grounds for the eviction were indecipherable.

### Chart C. Volume of Evictions by Grounds for Eviction



For reference, significant events impacting the volume of filings in the above chart include:

- March 13, 2020:** Issuance of Governor’s Executive Order.
- March 27, 2020:** CARES Act Moratorium takes effect.
- April 9, 2020:** Launch of TAP.
- July 24, 2020:** CARES Act Moratorium expires.
- September 4, 2020:** CDC Moratorium takes effect, set to expire December 31, 2020.
- September 22, 2020:** Rental assistance funds become available; TAP and the City of Lincoln place rental assistance agents at the courthouse.
- December 31, 2020:** Anticipated expiration of CDC Moratorium (note the increase in filings in December 2020 and January 2021).
- December 31, 2020:** CDC Moratorium extended to January 31, 2021.
- January 29, 2021:** CDC Moratorium extended to March 31, 2021.
- March 28, 2021:** CDC Moratorium extended to June 30, 2021.
- June 24, 2021:** CDC Moratorium extended to July 31, 2021.
- August 3, 2021:** CDC Moratorium extended<sup>39</sup> to October 3, 2021.
- August 26, 2021** U.S. Supreme Court finds the CDC Moratorium unconstitutional, and it terminates it, effective immediately.

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<sup>39</sup> This CDC Order extending the moratorium was more than just an extension of the prior order—it was revised in scope to be narrowly tailored, applying only in jurisdictions that were experiencing substantial or high levels of COVID-19 transmission. See CTRS. FOR DISEASE CONTROL & PREVENT., CDC ISSUES EVICTION MORATORIUM ORDER IN AREAS OF SUBSTANTIAL AND HIGH TRANSMISSION (Aug. 3, 2021), <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html>. Lancaster County remained in that range during that entire moratorium period. See Jared Austin, *Rental Assistance Available in Lincoln as Moratorium Is Extended*, 1011 NEWS (Aug. 4, 2021, 6:05 PM), <https://www.1011now.com/2021/08/04/rental-assistance-available-lincoln-moratorium-is-extended/> (noting that “Lancaster County is in the high category” under the new terms of the CDC Moratorium).

### C. Service of Process<sup>40</sup>

To initiate an eviction action, the tenant must be served with process.<sup>41</sup> In Nebraska, like most states, this can be done by personal or residential service. Nebraska law also permits service to be accomplished by a process coined “constructive service,” an alternative form of service that amounts to posting the summons and complaint on the front door and mailing a copy by first-class mail to the tenant’s last known address.<sup>42</sup> Constructive service is intended to be an “alternate” form of service used only when service cannot reasonably be made by traditional means.<sup>43</sup> However, during the period examined, constructive service was the most common method of service utilized—employed by landlords in 49.2% of the cases filed.<sup>44</sup> Coming in second was personal service at 37.8%,<sup>45</sup> followed by residential service, which was used in 11.3% of the cases. Finally, in 1.2% of the cases, the court records show the tenants were not served at all.<sup>46</sup> These ratios remained largely unchanged throughout the examined period and did not seem to be affected by either the presence of tenant advocacy or the existence of an eviction moratorium. However—as set out in more detail below—during the TP, the appearance rate of those alleged to have been served with constructive service rose sharply,<sup>47</sup> as did the number of tenants who were able to successfully avoid eviction.<sup>48</sup>

In most states, a summons may be served only by an authorized individual deputized in some capacity with authority to serve process. In Nebraska, only a sheriff or a constable can serve

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<sup>40</sup> To determine the period in which the relevant reporting applied to service of process, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

<sup>41</sup> See NEB. REV. STAT. § 76-1442.

<sup>42</sup> See *id.* §§ 76-1442 to 1442.01.

<sup>43</sup> *Id.* § 76-1442 (providing that plaintiffs may resort to constructive service only after having made “diligent efforts . . . to serve the summons” by traditional means). See also *Greene v. Lindsey*, 456 U.S. 444, 454–55 (1982) (rejecting a state law allowing for service via posting only where one attempt at personal service had been made, stating that one unsuccessful attempt at personal service “hardly suggests that the tenant has abandoned his interest in the apartment such that mere pro forma notice might be held constitutionally adequate”).

<sup>44</sup> Constructive service via NEB. REV. STAT. § 76-1442.01 was used approximately 45% of the time, and constructive service via NEB. REV. STAT. § 25-517.02 was used in the remaining 4%. Although NEB. REV. STAT. § 76-1442.01 provides landlords the right to use constructive service without first seeking court permission, some landlords instead used constructive service via the State’s substitute service process (NEB. REV. STAT. § 25-517.02), which requires the landlord to first prove to the court that reasonable attempts were made to serve by traditional means before resorting to constructive service.

<sup>45</sup> Unless otherwise stated, “Personal Service” will always *also* encompass situations where one tenant was served by personal service and all other tenants were deemed to have been served by residential service. Notably, in a significant number of the cases where personal service was effectuated, the landlord had *sought* to serve by constructive service, but the tenant happened to be home and came to the door and was therefore personally served before the process server could resort to posting and mailing. Thus, *attempts* to utilize constructive service are even more prevalent than the record indicates.

<sup>46</sup> The remainder were coded as either “Multiple” (e.g., one tenant was served by personal and another served by constructive service), or “Not Applicable” (e.g., the matter was dismissed prior to service being made).

<sup>47</sup> See *infra*, notes 100–101.

<sup>48</sup> See *infra*, Table III.

process.<sup>49</sup> During the examined period, 13% of the summonses issued were to be served by a deputy of the sheriff's department, and 86.8% were issued to be served by the constable. Of those served by the sheriff's department, 49% were served by constructive service, 37.7% were personally served, and 6.6% were served by residential service.<sup>50</sup> Of those served by an employee of the constable, 49.2% were served by constructive service, 37.9% were personally served, and 12.1% were served by residential service.<sup>51</sup>

In eviction matters, the summons must be served within three days of issuance and must be returned within five days.<sup>52</sup> During the EP, the summons was not timely served in 31 out of 2,309 of the cases reviewed, and the return was not timely filed in 34 cases. Nebraska law requires that, in addition to serving the tenant and filing a service return indicating that service had been completed, the process server must also file an affidavit setting forth the details of how service was made.<sup>53</sup> Although this requirement had been in place since 1974, the data revealed that it was rarely followed or enforced until 2020, around the beginning of the TP. In fact, the frequency in which the required affidavits were filed rose exponentially, from 2.4% during the PTP to 72.5% during the TP. Despite the sharp increase during the TP, still over 27% of the filings failed to include the statutorily required affidavit.

Across the EP, even in cases where an affidavit *was* filed, a considerable number of them (28.4%)<sup>54</sup> were defective.<sup>55</sup> Of the 1,393 cases identified during the EP where service was statutorily defective due to either the failure to file the required affidavit<sup>56</sup> or the failure to file a *proper* affidavit,<sup>57</sup> the court nonetheless allowed the matter to proceed in most instances (73%), and of

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<sup>49</sup> See NEB. CT. R. CIV. PROC. §§ 25-506.01 to 25-507. There are a few rare instances when it is permissible for someone other than a sheriff or constable to serve process. For example, if certified mail is used, such service can be made by the plaintiff or an attorney for the plaintiff. *Id.* at § 25-507.01(2). Also, in jurisdictions that do not have a constable, a private person or entity may apply to register as a process server. *Id.* at § 25-507. While section 76-1442 appears to expand who can serve process to include "any person," there is no indication that this was intended to circumvent section 25-506.01; rather, it is most likely stated broadly in contemplation of the possibility that under sections 25-506.01 or 25-507 someone other than a sheriff or constable is appointed by the court or duly registered to serve process in the matter.

<sup>50</sup> For the remainder, there was either no service or service was attempted using multiple methods.

<sup>51</sup> For the remainder, there was either no service or service was attempted using multiple methods.

<sup>52</sup> NEB. REV. STAT. § 76-1442.

<sup>53</sup> *Id.* § 76-1442.01.

<sup>54</sup> Of the 1,265 affidavits filed during the EP, 359 were defective in some way.

<sup>55</sup> Affidavits were deemed defective if they failed to include the statutorily required attestations (e.g., "describing the diligent efforts made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01, the reasons why such service was unsuccessful, and that service was made by posting the summons on the front door of the dwelling unit and mailing a copy by first-class mail to the defendant's last-known address" as is required by section 76-1442.01); or were executed by someone other than the person who served the summons (only information known firsthand may be sworn to in an affidavit). Only those affidavits that were objectively defective were categorized as defective for purposes of this study; if the affidavit was only arguably defective, it was categorized as proper.

<sup>56</sup> In 1,034 cases during the EP, the affidavit was not filed.

<sup>57</sup> In 359 cases during the EP, the filed affidavit was defective in some way.

these matters, 84.6%<sup>58</sup> resulted in the tenant being displaced<sup>59</sup> from their home. Arguably, every order of restitution entered by a court in a matter where the required affidavit was not filed or was defective could be deemed invalid or otherwise unlawful.<sup>60</sup> This amounts to approximately 33.3%<sup>61</sup> of the cases during the EP, and 64.5%<sup>62</sup> during the PTP. Of course, an appearance by a tenant for any reason other than to challenge service would waive the requirement of filing the affidavit and any defense based on improper service.<sup>63</sup> Even removing those matters in which the tenant appeared, there remain 550 cases across the EP in which the court entered an order to forcibly remove the tenant from their home where the record indicated the service requirements had not been satisfied.<sup>64</sup>

During the EP, service was found defective in 62.3% of the cases analyzed.<sup>65</sup> Service was deemed defective for one or more of the following reasons: the process server failed to exercise diligent efforts to serve by traditional means before resorting to constructive service (6.2% of the cases);<sup>66</sup>

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<sup>58</sup> Of the 1,393 cases where the affidavit was either not filed or defective, 818 resulted in the tenant being ultimately evicted from their home. Of these, 442 were evicted during the TP, and 188 were evicted during a period when the CDC's eviction moratorium was in place and, had the tenant appeared, they could have sought protections under the moratorium.

<sup>59</sup> Displaced means the case was coded as "ultimately evicted." *See infra* section H. Outcomes (defining ultimately evicted as "any instance where—on the record or through supplemental evidence—it is confirmed that the tenant was ultimately displaced from the premises either voluntarily, by agreement, or as the result of a judgment and writ of restitution").

<sup>60</sup> The Nebraska Supreme Court has held "statutes prescribing the manner of service of summons are mandatory and must be strictly complied with." *Anderson v. Autocrat Corp.*, 194 Neb. 278, 287, 231 N.W.2d 560, 565 (1975). "Mandatory" implies that the plaintiff must demonstrate compliance before the action can proceed, meaning the court is not free to ignore these deficiencies, particularly here in matters involving potentially defective service resulting in the defendant's inability to appear and assert the defense on their own behalf. *See also Burns v. Burns*, 23 Neb. App. 420, 425, 872 N.W.2d 900, 904 (2015) *rev'd* on other grounds, 293 Neb. 633, 879 N.W.2d 375 (2016) (holding that requirements for service of summons must be "strictly construed"); JOHN LENICH, 5 NEBRASKA PRACTICE SERIES, CIVIL PROCEDURE § 10:1 (2022) (stating that if a "defendant is served in a manner that does not comply with the statutes, then the service is invalid even if the defendant received actual notice of the action").

<sup>61</sup> 770 of 2,309.

<sup>62</sup> 376 of 583.

<sup>63</sup> *See* NEB. REV. STAT. § 25-516.01.

<sup>64</sup> Nearly half (284) occurred during the short (spanning just over four months) PTP, amounting to approximately 70 per month. During the TP, this phenomenon occurred only about 14 times per month.

<sup>65</sup> When reviewing only matters where constructive service was used, the rate of defective service is even higher, coming in at 70.1%.

<sup>66</sup> For purpose of this study, the process server was deemed to have failed to use diligent efforts only where they made only one attempt (or no attempt) at providing actual service before resorting to posting and mailing. One or fewer attempts does not comply with sections 76-1442 and 76-1442.01. Under the prior version of Nebraska's statute, it remained ambiguous how much effort amounted to "diligent." Previously, § 76-1442 referenced "diligent efforts" (plural) but the required affidavit described in § 76-1442.01 referenced "an attempt" (singular). However, the law was amended in 2021 to make clear that multiple attempts were required. *See* L.B. 320 § 8, 107th Leg., 1st Reg. Sess. (2021) (enacted) (amending section 76-1442.01 to require the process server to describe in the affidavit "the diligent efforts made to serve summons"). Moreover, making only one attempt before resorting to posting and mailing is also constitutionally suspect. *See Greene v. Lindsey*, 456 U.S. 444, 454 (1982) ("The failure to effect personal service on the first visit hardly suggests that the tenant has abandoned his interest in the apartment such that mere *pro forma* notice might be held constitutionally adequate."). A reasonable argument could be made that "diligent" means not only more than one attempt, but actual persistent and conscientious efforts to notify the tenant

no service affidavit was filed (44.8% of the cases); the affidavit was filed but defective (15.5% of the cases); no service was made (1.2% of the cases); the summons was not timely served (1.3%); or the service return was not timely filed (1.5%). Notably, the rate at which tenants were ultimately evicted in cases where service of process was in some way defective fell from 65% during the PTP to 53.4% during the TP.

Another notable observation related to service of process was that during the EP, 401 *default evictions*<sup>67</sup> were carried out in cases where the landlord sought to utilize constructive service but failed to follow the statutorily required procedures in some way—procedures that were put in place to ensure the absent tenant had in fact been provided notice of their hearing and an opportunity to appear.

#### D. Notice<sup>68</sup>

Prior to initiating an eviction action, a landlord is required to provide to the tenant statutorily mandated notice.<sup>69</sup> Notice requirements vary depending on the grounds for eviction; however, they must typically provide either a certain number of days to cure the default or vacate the premises (evictions for non-payment of rent<sup>70</sup> or alleged lease violations<sup>71</sup>), or a demand to vacate with no opportunity to cure (evictions for alleged criminal activity<sup>72</sup> or no-fault evictions<sup>73</sup>). The length of the notice period is dependent upon the type of eviction. Across the country, notice periods vary for each type of eviction, particularly for actions based on non-payment of rent. In Nebraska, a prerequisite to filing an eviction for non-payment of rent is the issuance of a seven-day notice, during which the tenant has an opportunity to cure the default and avoid termination of the

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of their hearing before resorting to a form of notice that the tenant is less likely to actually receive. Perhaps, given what is at stake at the hearing of which the tenant is to be given notice, “diligent” requires multiple attempts over multiple days, and during varied times of the day; it may also require attempting to serve the summons at a known place of employment, or at another address where the landlord knows the tenant to be. *See, e.g.,* Edelhoff v. Shakespeare Theatre at the Folger Libr., Inc., 884 A.2d 643, 645–46 (D.C. Ct. App. 2005) (quotations omitted) (holding that even where the statute did not explicitly require “diligent” efforts, “it [was] a prerequisite to posting that a diligent and conscientious effort be made by the process server to either find the defendant to effect personal service or to leave a copy of the summons with a person residing on or in possession of the premises); Frank Emmet Real Estate, Inc., v. Monroe, 562 A.2d 134, 136-37 (D.C. Ct. App. 1989) (holding that resorting to posting and mailing was improper where the landlord knew the tenant was located outside the district and had actual knowledge of an alternate address where the tenant could be found, and that “the concept of diligent and conscientious effort that permeates the statute as a prerequisite to posting requires more”). In any event, “diligent” cannot mean one or fewer attempts, and presumably means something in line with the traditional definition of the word: “[c]areful, attentive, and hardworking; persistent in doing something; industrious; assiduous[;] . . . [c]arried out with care and steady effort.” *Diligent*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>67</sup> A “default eviction” occurs when a tenant does not appear for the hearing, and therefore a judgment is entered by default against the tenant in their absence.

<sup>68</sup> To determine the period in which the relevant reporting applied to notice, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

<sup>69</sup> *See* NEB. REV. STAT. § 76-1441 (requiring that anyone filing an eviction action demonstrates the “requisite compliance with the notice provisions” found within the Landlord-Tenant Act).

<sup>70</sup> *See id.* § 76-1431(2).

<sup>71</sup> *See id.* § 76-1431(1).

<sup>72</sup> *See id.* § 76-1431(4).

<sup>73</sup> *See id.* § 76-1437.

tenancy.<sup>74</sup> In other states, this period can be as short as 3 days or as long as 30.<sup>75</sup> Notice periods for evictions based on a tenant’s alleged non-compliance with a lease term vary depending on the type of non-compliance.<sup>76</sup> In Nebraska, if a tenant violates a lease term, such as having an unauthorized pet or failing to keep the premises in a clean condition, the tenant must be given a 14-day notice, during which they have an opportunity to cure the default.<sup>77</sup> If the tenant fails to cure during that period, the lease will terminate on a specified date at least 30 days from the initial notice.<sup>78</sup> For a violation that involves allegations of criminal activity or threat of violence, the tenant is given only a five-day notice, and the default is incurable.<sup>79</sup> In standard no-fault evictions—such as non-renewal of either a month-to-month or term lease—the notice period is usually 30 days prior to the beginning of the next periodic rental period.<sup>80</sup>

The written notice must contain certain information for it to be valid. For instance, a notice for failure to pay rent in Nebraska must, at a minimum, state how much rent is past due, by when it must be paid to avoid termination, and that the landlord intends to terminate the tenancy if the amount is not paid by such date.<sup>81</sup> In cases where a notice was filed with the court, the notice was analyzed for propriety. A notice was deemed improper if the stated notice period was too short, or if the contents of the notice were plainly inaccurate, materially conflicting, or failed to include the required information. During the period examined, 12.3% of the notices reviewed were improper.<sup>82</sup> The change in magnitude across the EP was not meaningful. Most of the cases (51.9%)

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<sup>74</sup> *Id.* § 76-1431(2).

<sup>75</sup> See Ann O’Connell, *State Laws on Termination for Nonpayment of Rent*, NOLO (Jan. 26, 2022), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

<sup>76</sup> *Comprte Janet Portman & Ann O’Connell, State Laws on Termination for Violation of Lease*, NOLO (Jan. 26, 2022), <https://www.nolo.com/legal-encyclopedia/state-laws-termination-violation-lease.html>, with Janet Portman & Ann O’Connell, *State Laws on Unconditional Quit Terminations*, NOLO (Jan. 26, 2022), <https://www.nolo.com/legal-encyclopedia/state-laws-unconditional-quit-terminations.html>.

<sup>77</sup> NEB. REV. STAT. § 76-1431(1).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* § 76-1431(4).

<sup>80</sup> See *id.* § 76-1437(2) (for month-to-month). For non-renewal of a term lease, the law is less clear on the notice that is required, but written leases typically include a term requiring the landlord to provide thirty-days’ notice of its intent to not renew the lease upon its expiration.

<sup>81</sup> See *id.* § 76-1431(2).

<sup>82</sup> This examination is limited to only those matters in which the notice was filed along with the complaint. The law does not require the notice be filed; however, notices were filed in 90.4% of the cases during the EP. Only in cases where the notice was objectively defective was it categorized as defective for purposes of this study; notices that were only arguably defective were categorized as proper. The analysis also did not include cases where the notices were factually inaccurate in a way that could not be identified from the pleadings alone. An example would be a notice that included an inaccurate amount due, but such inaccuracy could not be gleaned from the record itself, but instead would require further investigation. According to housing advocates, it was quite common for landlords to miscalculate the amount of rent due, and then demand this inaccurate amount in the notice. It was also quite common for notices to include late fees, attorneys’ fees, administrative fees, eviction fees, reinstatement fees, eviction notice fees, and other related fees that would arguably be deemed unlawful charges and penalties under Nebraska law. Late fees and other similar fees associated with late payment or non-payment of rent are viewed as unconstitutional penalties under Nebraska law if the assessed amount exceeds the actual damages (compensatory damages) sustained. See NEB. CONST. art. VII, § 5, cl.1 (providing that any penalty arising under the general laws of the state “shall be appropriate exclusively to the use and support of the common school”); *Abel v. Conover*, 170 Neb. 926, 932, 104 N.W.2d 684, 689 (1960) (“Since all penalties must go to the benefit of the common schools of

in which an improper notice was identified were brought on the basis of non-payment of rent. Cases with defective notices were nonetheless allowed to proceed, and resulted in the tenant being evicted in 65.3% of matters analyzed (74.2% during the PTP and 62.8% during the TP).

## E. Pleadings<sup>83</sup>

The pleadings of each eviction matter filed during the EP were reviewed and analyzed for compliance and general lawfulness. Additional research<sup>84</sup> beyond the pleadings was conducted to determine whether the named plaintiff had standing to bring suit, and to determine whether the complaint included all necessary parties. Evaluation of the propriety of the pleadings focused primarily on standing and determining whether the complaint properly stated a claim for relief.

### 1. Standing

Only a landlord entitled to possession of the property has standing to bring a suit for restitution of premises, i.e., an eviction action.<sup>85</sup> The filings revealed the named plaintiff often lacked standing to bring suit. During the EP, the plaintiff lacked standing in 38.6% of the filings.<sup>86</sup> The lack of

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the state, a penalty for the benefit of a private person is violative of the cited constitutional provisions.”). Notices with arguably unconstitutional fees were nonetheless categorized as proper for purposes of this study, except where the fee exceeded or was in direct violation of a term within the written lease.

<sup>83</sup> To determine the period in which the relevant reporting applied to pleadings, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

<sup>84</sup> A search of the Lancaster County Register of Deeds real property database was conducted to determine actual ownership of the rental unit identified in the complaint. In cases where a named plaintiff was alleged to be an entity, a search of the Nebraska Secretary of State’s business entity database was conducted to determine whether the entity was registered and authorized to do business in Nebraska.

<sup>85</sup> See NEB. REV. STAT. § 76-1435 (emphasis added) (providing that if the rental agreement is terminated, the “landlord is entitled to possession”). Section 76-1410(7) defines a landlord as “the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part,” then further provides that a property manager can be deemed a landlord for limited purposes if the property manager “fails to disclose [the identity of the actual landlord or agent for the landlord] as required by section 76-1417.” Significantly, section 76-1417 *does not* convey to a property manager a right to bring a lawsuit in its own name on behalf of the true landlord; rather, it provides only that if the property manager fails in its duty to disclose to the tenant the identity of the true landlord or a person authorized to act on behalf of the landlord, the property manager becomes an agent for the landlord for the *limited purposes of receiving service and notices, and for performing the obligations of the landlord under the law and under the lease agreement*. While a landlord may devise to a property manager authority to bring an eviction action on its behalf, the action must be brought in the name and for the benefit of the landlord. There does not appear to be any legal authority in Nebraska for a property manager to bring an eviction action in its own name for the benefit of another. A litigant in Nebraska must “assert its own rights and interests and demonstrate an injury in fact, which is concrete in both a qualitative and temporal sense.” *Lindsay v. Fitl*, 293 Neb. 677, 682, 879 N.W.2d 385, 390 (2016). See also *In re Estate of Schurman*, 30 Neb. App. 259, 267, 967 N.W.2d 734, 740 (2021) (citing *Nielsen v. Nielsen*, 13 Neb. App. 738, 743, 700 N.W.2d 675, 680 (2005)) (“The litigant must have some legal or equitable right, title, or interest in the subject of the controversy.”).

<sup>86</sup> This percentage can be broken down further: 4.1% lacked standing on the pleadings, 16.8% lacked actual standing, and 17.8% lacked both standing on the pleadings and actual standing. These numbers are very conservative, as they include only those cases where the lack of standing was definitive under the law. There were a significant number of other cases where standing was suspect, or where the status of the plaintiff or the property could not be conclusively confirmed; for purposes of this study, standing was categorized as proper in these instances.

standing stemmed from one or more of the following issues: the plaintiff was not a landlord entitled to possession, the action was brought in the name of an entity that did not exist or did not have authorization to do business in Nebraska, or the plaintiff did not include sufficient allegations to establish standing. Of the cases in which the plaintiff lacked standing to bring suit, in most instances (88.2%) the matter was nonetheless allowed to proceed,<sup>87</sup> often displacing the rights of the actual owner of the rental unit.<sup>88</sup> In nearly every matter reviewed where the plaintiff lacked standing, the person or entity with the actual right to possession was not even made a party to the suit.

Many of the suits reviewed were unlawfully brought in the name of an agent—either a property manager or an officer of the entity that owned the property—or were filed under a fictitious name. Housing advocates speculate that filing the action in the name of another or under a fake name was likely an attempt to avoid being outed as a landlord that was evicting tenants in high volume, particularly during a pandemic. Additionally, landlords who received federal funding through any program under Section 8 were prevented from evicting tenants for non-payment of rent during the period in which the full CARES Act Moratorium was in place,<sup>89</sup> and were subject to other limitations even after the expiration of the CARES Act Moratorium.<sup>90</sup> Advocates believed that filing suit under a name other than the actual landlord was intentional for the purposes of circumventing the limitations under the CARES Act.

## 2. *Properly Stating a Claim*

In addition to standing issues, many pleadings failed to meet the requirements to state a claim for relief under Nebraska law. Section 76-1441 of the Landlord-Tenant Act requires complaints for eviction to contain: the underlying facts, pled with particularity; a reasonably accurate description of the premises; and that the plaintiff has complied with all the notice requirements.<sup>91</sup> In most civil actions brought in Nebraska, notice pleading—i.e., “a short and plain statement of the” facts demonstrating the plaintiff “is entitled to relief”<sup>92</sup>—is sufficient. However, in eviction matters, the legislature imposed a heightened pleading standard by requiring the facts be pled “with particularity.”<sup>93</sup> Also, because eviction actions are statutory, the complaint must include requisite

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<sup>87</sup> That is, the court did not immediately dismiss the matter or require the plaintiff to cure the default or join the real party in interest, but instead allowed the matter to proceed as if the plaintiff had standing.

<sup>88</sup> A typical order of restitution will “restore” the premises to the named plaintiff. When the named plaintiff had no right to the property to begin with, the court in effect displaces the property rights of the actual owner and, in most instances, this is conducted without any notice to the actual owner.

<sup>89</sup> See *supra* note 8 and accompanying text.

<sup>90</sup> *Id.* Even after the CARES Act Moratorium expired, evictions associated with a covered property required a 30-day notice and opportunity to cure, rather than the 7-day notice prescribed by section 76-1431(2). See *Protections for Renters in Multi-Family Housing or Federally Subsidized Housing*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/federally-subsidized/#30-day-notice> (Aug. 17, 2021).

<sup>91</sup> NEB. REV. STAT. § 76-1441.

<sup>92</sup> NEB. CT. R. PLDG. § 6-1108(a).

<sup>93</sup> The heightened pleading requirement recognizes that tenants are not entitled to discovery in eviction matters and, therefore, must be provided within the complaint all the facts, in particular detail, that would be necessary to give

allegations to bring the action under the statute. Under the law that existed during much of the EP, the complaint was required to set forth sufficient allegations to put the tenant on notice of the statutory authority providing grounds for the lawsuit.<sup>94</sup> Effective August 28, 2021, this pleading requirement was codified to expressly require the complaint contain “the *specific* statutory authority under which possession is sought.”<sup>95</sup> Thus, as an example, it became inadequate to merely allege sufficient facts to put the tenant and the court on notice that the basis for eviction was non-payment of rent—effective August 28, 2021, the landlord must specifically allege in the complaint that such eviction is brought under section 76-1431(2).<sup>96</sup>

Of the 2,309 complaints examined, 62.4% failed to properly state a claim under the heightened pleading standard required in eviction matters. Common failures included the absence of allegations indicating the lease had been terminated, failing to properly plead the notice requirements had been satisfied, or failing to plead with particularity. Also, many complaints cited to no authority for the eviction, nor pled sufficient facts to make it apparent, leaving the defendant-tenant and the trial court to speculate as to the grounds for the eviction. Even after the statute was changed to require citing to specific statutory authority within the complaint, pleadings did not improve. In fact, it appears this clear requirement has been almost entirely ignored by landlords, as only 7.6% of the complaints filed since August 28, 2021 complied with this new requirement; nonetheless, it appears that nearly every matter was allowed to proceed as if there had been compliance.

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the tenant a reasonable opportunity to respond and to defend the claim. Even in abbreviated proceedings, a defendant should be presented the facts upon which the claim is based before trial so that they know what evidence—including witnesses—may be necessary to bring with them to trial to rebut the plaintiff’s claims. Pleading with particularity is not only mandatory but is essential in these proceedings, and failing to do so is more than harmless error.

<sup>94</sup> *George Rose Sodding & Grading Co. v. City of Omaha, Douglas Cnty.*, 190 Neb. 12, 14, 205 N.W.2d 655, 656–57 (1973) (“The complaint must state such facts as will clearly bring the defendant within the provisions of the statute.”); *Sommerville v. Bd. of Comm’rs of Douglas Cnty.*, 117 Neb. 507, 221 N.W. 433, 434 (1928) (“One whose authority to prosecute an action is limited by statute must plead facts which bring him within such statutory limitations.”).

<sup>95</sup> *See* L.B. 320 § 7, 107th Leg., 1st Reg. Sess. (Neb. 2021) (enacted) (revising NEB. REV. STAT. § 76-1441 to explicitly require that the complaint allege the specific statutory authority under which the eviction action is brought).

<sup>96</sup> The amendment was in part enacted to ensure that the defendant-tenant and the trial court were not forced to speculate as to the grounds for the eviction (and thus which requirements and defenses would apply), but also to enable the Supreme Court of Nebraska to generate the reports required by the recently adopted provision codified at section 24-232. *See* NEB. REV. STAT. § 24-232 (requiring the Supreme Court to generate eviction reports describing “the numbers of orders granting restitution of the premises entered, broken down by the specific statutory authority under which possession was sought”).

## F. Appearances<sup>97</sup>

For cases filed during the EP, tenants appeared<sup>98</sup> in 851 out of 2,309, or 36.9% of the cases analyzed. The data indicated that tenants appear most often when personal service is used (48.2%),<sup>99</sup> and least when constructive service is used (27.3%). The data also revealed that tenants were more prone to appear during the TP (43.1%)<sup>100</sup> than during the PTP (18.3%).<sup>101</sup> This increase may be attributed to the outreach efforts conducted as a component of TAP.<sup>102</sup>

As discussed in more detail below, the most significant factor impacting the outcome of the eviction action was whether the tenant appeared for the hearing, particularly when legal representation was available.<sup>103</sup> If the tenant did not appear, regardless of the lawfulness of the eviction, the tenant was ultimately evicted in 77.8% of the cases across the EP.<sup>104</sup> In cases where the tenant appeared, the tenant was ultimately evicted in only 56.5% of the cases (85% during the PTP, compared to 52.4% during the TP). And, of those who appeared but were ultimately evicted, only 34% during the PTP were ordered from their homes that same day, a number that dropped to 5.1% during the TP.<sup>105</sup>

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<sup>97</sup> To determine the period in which the relevant reporting applied to appearances, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

<sup>98</sup> A tenant was deemed to have *appeared* if they personally or through legal counsel appeared at any scheduled hearing; it also includes instances where there is evidence indicating the tenant appeared at the courthouse for their eviction hearing and obtained legal counsel, but the official court record did not log their appearance. Additionally, there were many instances where the case was dismissed prior to the initial hearing, and thus the tenant had no opportunity to appear. *See infra*, notes 131–132, and accompanying text (discussing the percentage of cases dismissed prior to a scheduled hearing).

<sup>99</sup> Actually, tenants were *most* likely to appear in matters where the service was coded as “multiple.” *See supra* note 46. However, those coded as “multiple” represented such a small sample size (fewer than 20 total) that it was not statistically reliable. Notable, however, is that in every instance coded as “multiple,” at least one of the forms of service utilized was *personal service*.

<sup>100</sup> If served by constructive service, 32%; if served by personal service, 55%.

<sup>101</sup> If served by constructive service, 15.6%; if served by personal service 23.4%.

<sup>102</sup> Beginning shortly after the start of the TP, TAP collaborators—including the City of Lincoln, the South of Downtown Community Development Organization, and the University of Nebraska College of Law—began conducting outreach to all tenants who had a pending eviction hearing. The outreach encompassed door-to-door visits to each home of tenants facing eviction to notify them of their pending hearing, provide resources for legal services and rental assistance, and advise them of the need to attend their hearing and the consequences if they do not. TAP collaborators also called the tenants on the telephone in any cases where the tenant’s phone number could be extracted from voter registration records.

<sup>103</sup> *See infra*, section H. Outcomes.

<sup>104</sup> These numbers, however, do not reveal the total number of non-appearing tenants who were displaced. Of the approximate 22.2% of cases where the tenant failed to appear and was not ordered evicted by the *court*, it is presumed that many were still displaced. This is primarily because the notice tenants receive directs them to vacate, so many likely did just that and, thus, had no reason to appear at the hearing and the landlord had no reason to move forward with the eviction. In some of these instances, the landlord will inexplicably proceed with the eviction action and obtain an unnecessary order of restitution, but in most others, the landlord will move to dismiss.

<sup>105</sup> Since the start of the Tenant Assistance Project, only 20 tenants who *appeared* were ordered from their home on the day of their initial eviction hearing—about one per month. By relative comparison, when removing the variable of whether the tenant appeared, 272 tenants were ordered to be immediately evicted during the PTP—roughly 60 per month.

## G. Continuances<sup>106</sup>

When Nebraska codified the summary eviction process for residential tenancies in 1974, it included a unique law that prohibited a continuance of an eviction hearing except where “extraordinary cause” was shown.<sup>107</sup> In 2021, the law was amended to allow one continuance for good cause and additional continuances upon extraordinary cause.<sup>108</sup> The record does not always report whether the continuance was sought by the tenant, the landlord, jointly, or on the court’s own motion; accordingly, the figures below include all continuances without regard to who requested it. From those cases where this information can be gleaned from the record, it appears that the request was made at least as often by landlords as by tenants, and that joint motions were very common.

During the EP, a continuance of the initial hearing was granted in 28.7% of the cases reviewed (591 total).<sup>109</sup> Due to eviction moratoriums in effect during much of the EP, continuances were more frequent (42.9%) in cases when an effective moratorium was applicable, i.e., those matters brought on the basis of non-payment of rent that were set for hearing during the CDCP.<sup>110</sup> While continuances were most common in evictions based on non-payment of rent,<sup>111</sup> continuances were similarly prevalent in other cases as well. During the EP, continuances were granted in 27% of the cases brought under statutory grounds other than non-payment of rent.<sup>112</sup> Looking at all case types, continuances were granted in 14.5% of the cases during the PTP, compared to 33.1% during the TP. Removing the cases based on non-payment of rent, leaving only those cases where an eviction moratorium would *not* apply,<sup>113</sup> continuances were granted in 17.9% of the cases during the PTP compared to 28.2% during the TP. Across the EP, hearings were continued<sup>114</sup> more often when the tenant had representation (47.9%) than when the tenant did not (14.7%). Continuances were

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<sup>106</sup> To determine the period in which the relevant reporting applied to continuances, the analysis used the *first* recorded entry for that case (first scheduled hearing date) and pulled data from the first recorded entry (first scheduled hearing date).

<sup>107</sup> See L.B. 293 § 43 (enacted) (codified as NEB. REV. STAT. § 76-1443 (Cum. Supp 1974)).

<sup>108</sup> See L.B. 320 § 9, 107th Leg., 1st Reg. Sess. (Neb. 2021) (enacted).

<sup>109</sup> This includes any case that was continued for one day or more from the initially scheduled hearing date. Several cases were continued more than once, particularly during the period that the CDC Moratorium was in effect due to it being extended several times. It was not uncommon for a case effected by the CDC Moratorium to be continued to the day after the CDC Moratorium was set to expire, only for the moratorium to be extended for an additional period, and the case continued again to the end of that period.

<sup>110</sup> During the CDCP, in addition to approximately a quarter of these cases being continued, another 20.2% were dismissed outright at the hearing.

<sup>111</sup> During the EP, 29.4% of the cases brought for non-payment of rent were continued at least once.

<sup>112</sup> Among these, continuances were most prevalent in matters brought as no-fault evictions (27.1%). Continuances were least prevalent in cases brought under NEB. REV. STAT. § 76-1431(4) (alleged criminal behavior or drug possession) (20.2%).

<sup>113</sup> The eviction moratoria in place in Nebraska provided protection only for those being evicted for non-payment of rent. See *supra* note 9. The only *effective* moratorium was the CDC Moratorium. See *supra* note 10 and accompanying text.

<sup>114</sup> Note, this is the percentage of *hearings* continued, rather than the percentage of *cases* that were continued; some cases were continued more than once.

granted for various lengths of time, ranging from one day to several months.<sup>115</sup> The average length of continuances appeared to be longer when the tenant had representation.<sup>116</sup>

Nebraska law provides that the eviction trial must be held within 14 days of issuance of summons. Although the explicit right to a continuance of the trial appears to be in conflict with this mandate, Lancaster County courts seem to interpret the mandate only to require that the trial date be *initially set* for a date falling within the statutorily prescribed time period, and that in light of the right to a continuance (even if limited), such trial could be continued to a later date beyond this period.<sup>117</sup> Notably, during the EP, a total of 560 cases were continued beyond the 14-day period within which the initial hearing date must be *held*.<sup>118</sup> During the PTP, 12.7% of the cases filed were continued beyond 14 days, compared to 31.8% during the TP. During the CDCP, 36.5% of the cases were continued at least once, and during the ACDP, 35.1% of the cases were continued at least once.<sup>119</sup>

The association between whether a continuance was granted and the ultimate outcome of the case was also notable. If no continuance was granted, the tenant was immediately evicted at a rate of 78.2%. If a continuance was granted, the tenant was obviously not immediately evicted; moreover,

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<sup>115</sup> Continuances of several months were rare but were most prevalent during the CDCP where evictions for non-payment of rent could not lawfully proceed if the tenant affirmatively sought protections under the moratorium. Many of these were ultimately dismissed, as the effect of the CDC Moratorium—in addition to limiting the spread of COVID by curbing evictions—delayed the eviction until the period in which rental assistance programs received Emergency Rental Assistance allocations.

<sup>116</sup> Largely due to the CDC Moratorium being in place during much of the EP, and several outlier cases that were continued indefinitely (there was simply no action on the matter after the initial hearing), it was not possible to determine an average continuance length with any reliable precision. However, in reviewing the raw data, it appeared that when a tenant had representation, the continuance was most often longer than when the tenant did not have representation.

<sup>117</sup> This seems to be the correct interpretation. Support for this interpretation can be found later within the continuance statute wherethrough the Nebraska Legislature apparently anticipated elongated proceedings by providing that if a continuance is granted, the tenant shall “deposit with the clerk such rental payments as accrue during the pendency of the suit.” NEB. REV. STAT. § 76-1443 (amended 2021). Notably here, the legislature used the plural “payments,” evidencing that it anticipated a continuance could span multiple rental periods, when appropriate. *Id.* The language within section 76-1433, as revised by LB 320, and the legislative testimony on the bill further confirm that the time limitations set out in section 76-1446 must be interpreted flexibly to account for the right to a continuance prescribed by section 76-1443. *See* L.B. 320 § 9, 107th Leg., 1st Reg. Sess. (Neb. 2021) (enacted).

<sup>118</sup> *See* NEB. REV. STAT. § 76-1441. Concise figures reporting the date the summons was issued were not available for this study. However, a review of a sample of 200 filings revealed that the summons is typically issued the same day that the matter is filed, but that on occasion it will be issued the following day. To account for those instances where the summons was issued the next day, for purposes of determining the number and percentage of cases where the trial was continued to a date beyond 14 days from the issuance of the summons, an additional day was added beyond the filing date. Thus, because most summonses were issued on the day of filing, the reporting on this item is quite conservative.

<sup>119</sup> Many, if not most, of the lengthy continuances during the ACDP were granted by joint motion to allow time for the rental assistance funds to be received by the landlord—which typically took between approximately seven and ten days—but could be delayed if there were challenges in processing the paperwork. Many of these were continued for “status hearings” (rather than for trial), and were often dismissed prior to the hearing because the rental assistance funds had been received.

the longer the total duration of the continuance,<sup>120</sup> the less often the tenant was ultimately evicted.<sup>121</sup>

1–3 day continuance: 60.6% ultimately evicted  
4–7 day continuance: 51.9% ultimately evicted  
8–14 day continuance: 42% ultimately evicted  
15–30 day continuance: 35.7% ultimately evicted  
31+ days or more continuance: 18.2% ultimately evicted<sup>122</sup>

## H. Outcomes<sup>123</sup>

For this study, two primary outcomes were analyzed: 1) whether the tenant was evicted, and 2) if evicted, the length of time afforded to find replacement housing. As for whether the tenant was evicted, the study distinguished “immediately evicted” from “ultimately evicted.” Immediately evicted means a judgment was entered on the day of the initial hearing, and the court authorized the writ of restitution to be immediately executed. If the eviction action was dismissed, continued, or resulted in a court ordered or agreed upon delay in the execution of the writ, the tenant was deemed not immediately evicted. Ultimately evicted is broadly defined to include any instance where—on the record or through supplemental evidence—it is confirmed that the tenant was ultimately displaced from the premises either voluntarily, by agreement, or as the result of a judgment and writ of restitution. It does not include those matters in which the case was dismissed prior to the hearing because the tenant had already vacated, nor does it include those unfiled matters where the tenant vacated pursuant to the notice to vacate they received from the landlord. Thus, the number of families ultimately displaced from their homes is likely much greater than those that can be derived from the record.<sup>124</sup>

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<sup>120</sup> The length of the continuance was determined by calculating the number of days from the initial hearing date to the final hearing date. In some instances, a matter will involve more than one continuance; the figures reported here include the total days for which the matter was continued, accounting for all continuances granted subsequent to the initial hearing.

<sup>121</sup> It appeared from the record and supplemental information that landlords who exhibited patience were most often rewarded financially for their patience. In contrast, landlords who pushed forward with an expedient eviction were often left with a vacant unit and months of unpaid rent unlikely to ever be collected. In many instances, tenants not ultimately evicted remained housed for an indefinite period and the landlord was made whole (i.e., recovered all past due rent and late fees, and received rent going forward, often directly from rental assistance, which was frequently paid three months in advance).

<sup>122</sup> Even continuances of 15 or more days resulted in a much lower rate of ultimate eviction (25.5%) as compared to shorter continuances.

<sup>123</sup> To determine the period in which the relevant reporting applied to outcomes, the analysis used the *last* recorded entry for that case (the last hearing date) and pulled data from that entry.

<sup>124</sup> See Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52:5 DEMOGRAPHY 1751, 1760–1761 (2015) (discussing the prevalence of forced displacement by means other than formal eviction, including informal eviction, unlawful lockout, landlord foreclosure and building condemnation); Safia Samee Ali, *Some Landlords Are Using Harassment, Threats to Force Out Tenants During COVID-19 Crisis*, NBC NEWS (June 14, 2020, 5:10 AM), <https://www.nbcnews.com/news/us-news/some-landlords-are-using-harassment-threats-force-out-tenants-during-n1218216> (detailing landlords’ use of “aggressive tactics” to push tenants out, such as “changing locks, cutting utilities, refusing to make essential repairs and constant harassment via phone calls and text messages”).

The table below describes the volume of households evicted and rate of eviction during each period:

**Table III. Outcomes**

<b>Period</b>	<b>Immediately Evicted</b>	<b>Immediately Evicted (Rate)</b>	<b>Ultimately Evicted</b>	<b>Ultimately Evicted (Rate)</b>
EP	821	36.8%	1,379	61.9%
PTP	271	49.2%	363	65.9%
TP	550	32.8%	1,016	60.5%
CDCP	317	33.1%	551	57.6%
RAP	371	30.7	692	57%

As the above table reveals, the percentage of tenants immediately and ultimately evicted was significantly less during the TP. The CDC Moratorium also appears to have impacted the outcomes. Although the presence of legal advocacy during the TP most certainly played a significant role in the reduction in evictions, the success of the volunteer attorneys was amplified by the abundant availability of rental assistance, and the placement of rental assistance agents at the courthouse on the mornings eviction hearings were held.<sup>125</sup> This is affirmed by the fact that both immediate and ultimate evictions were at their lowest rate when tenants had access to both legal representation *and* rental assistance.

*Immediately Evicted/Not Immediately Evicted*

In cases where a tenant was immediately evicted, it was often the result of a “default eviction.” A default eviction is where a judgment is entered in favor of the landlord for the reason that the tenant did not appear at the scheduled hearing. During the EP, 729 evictions were entered by default.<sup>126</sup> Default evictions were more prevalent during the PTP (37.7% of all evictions entered) compared to the TP (31% of all evictions entered). As discussed above, default evictions occurred most frequently when the tenant was alleged to have been served by constructive service.<sup>127</sup>

For those matters where the tenant was not immediately evicted, the result was either a continuance of the hearing to a later date,<sup>128</sup> a dismissal of the eviction action, or an agreed upon date of departure. As for dismissals, across the EP, 42.7%<sup>129</sup> of the eviction actions filed were

<sup>125</sup> Through December 31, 2021, the City of Lincoln was able to distribute over \$9 million as a direct result of tenant advocacy at the courthouse. *See* E-mail from Mindy Rush Chipman, Dir., Lincoln Comm’n on Hum. Rts. (Jan. 4, 2022, 5:22 PM) (on file with author). Housing advocates involved in the program shared that, if not for TAP and its partnering with the City to offer rental assistance on site, nearly every one of those tenants facing eviction would have been evicted, and their landlords would have received none of those millions of dollars made available.

<sup>126</sup> This equates to about 32.7% of all final hearings occurring during the EP. During the EP, there were several instances where the tenant appeared at their initial hearing in some form but did not appear at a subsequent hearing. At the subsequent hearing, even though the tenant had appeared in the case, the matter nonetheless proceeded as if the tenant was in default for failing to appear.

<sup>127</sup> *See supra*, subsection C. Service of Process.

<sup>128</sup> For analysis of matters that were continued, see *supra* subsection G. Continuances.

<sup>129</sup> For a total 952 cases.

dismissed.<sup>130</sup> About half of those dismissals (47.6%) occurred in matters where either the case was dismissed prior to the hearing<sup>131</sup> or the tenant did not appear<sup>132</sup>—presumably because the landlord and tenant had resolved the matter prior to the hearing.<sup>133</sup> A comparable proportion of the dismissals (43.7%) occurred in cases where the tenant appeared and obtained legal representation.<sup>134</sup>

For matters where the parties stipulated that the tenant would vacate the premises within an agreed upon period of time,<sup>135</sup> the average period of time agreed to vacate was 16.3 days during the EP. The average number of days varied noticeably across different periods: PTP (11.1); TP (17.4); CDCP (17.5 days); ACDCP (14.4); and RAP (16.5).

### *Ultimately Evicted/Not Ultimately Evicted*

For matters where the tenant was ultimately evicted, the data was analyzed to determine the proportion of those cases that resulted in a “peaceful transition.” A peaceful transition occurs where the tenant vacated on their own volition, either by agreement or by moving out before use of force was necessary.<sup>136</sup> During the EP, of the matters where the tenant was ultimately evicted, peaceful transitions were identified in 60.6% of the cases.<sup>137</sup> Whether the tenant had legal representation meaningfully impacted the frequency of peaceful transitions observed. When a tenant was represented, 67.7% of evictions resulted in peaceful transitions, compared to 58% when the tenant had no representation. Whether a tenant appeared at the hearing also seemed to positively bear upon this outcome. In cases where the tenant appeared, 65.1% resulted in peaceful

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<sup>130</sup> In some of these instances, the eviction action was dismissed, but the remaining causes (for damages and past due rent) were continued for a later hearing.

<sup>131</sup> Dismissed prior to hearing (191 total; 20.1%).

<sup>132</sup> Dismissed and tenant did not appear (262 total; 27.5%).

<sup>133</sup> It is common for an eviction action to be filed and then subsequently dismissed at the landlord’s request. This often occurs in situations where the landlord and tenant have resolved the matter outside of court. As an example, the tenant receives the eviction summons and immediately moves out and returns the keys, so a hearing is no longer necessary. Another example that has increased in frequency with the influx in available rental assistance are situations where the tenant is able to become current on rent prior to the initial eviction hearing, eliminating the need to move forward with the eviction.

<sup>134</sup> 416 of 952 total dismissals. This dismissal rate is comparable to the findings of a study that analyzed evictions in Douglas County, Nebraska from 2016 to 2019. See Pierce Greenberg et al., *Evictions in Nebraska During the COVID-19 Pandemic*, NAT. HAZARDS CTR. QUICK RESPONSE GRANT REP. SERIES (2021), <https://hazards.colorado.edu/quick-response-report/evictions-in-nebraska-during-the-covid-19-pandemic>. The study found a dismissal rate of 45.99% when the tenant had legal representation—compared to 27.24% for all eviction cases, regardless of the presence of legal representation. *Id.*

<sup>135</sup> This includes any outcome where there was a stipulation, *and* the tenant was ultimately evicted. In many instances, the parties would stipulate that the tenant would vacate by an agreed upon date, and if they did not, a judgment could be entered and a writ issued without further notice or hearing. In others, the parties would stipulate that a judgment could be entered that day, but the writ could not be executed until a specified date. In this instance, it is also often agreed that if the tenant vacates by the date agreed to, the judgment would be vacated, though the data indicates that the landlord would rarely follow through on the promise to vacate the judgment.

<sup>136</sup> More specifically, a transition is deemed peaceful in any case where the tenant was ultimately evicted, but a writ of restitution did not need to be *executed* by law enforcement.

<sup>137</sup> In the remaining 39.4% of the cases resulting in eviction, the writ of restitution was executed by law enforcement, meaning the tenant was forcibly removed from the home and the locks were changed. This rate remained reasonably consistent across the EP.

transition, compared to 58.2% when the tenant did not appear. Related, in matters where the tenant entered into a stipulation to vacate on a specified date, the tenant followed through<sup>138</sup> with the agreement at a rate of 68.6% when represented, compared to 55.3% when the tenant was unrepresented. It also appears that the longer the tenant is provided to vacate,<sup>139</sup> the less often law enforcement is needed to carry out the eviction:

Law Enforcement Involvement	
1–7 days to vacate	43.4%
8–14 days to vacate	42.5%
15+ days to vacate	37.5%
21+ days to vacate	35.1%
28+ days to vacate	30.5%

Under Nebraska law, a court can provide a tenant anywhere between zero and ten days to transition, following the entry of a judgment for restitution.<sup>140</sup> Of the 1,379 evictions ordered during the EP, in 978 (70.9%) the writ was ordered to be executed *immediately*. Providing zero days to vacate resulted in significantly greater reliance on law enforcement: law enforcement was engaged in some form in 90.2% of the cases where zero days was ordered.<sup>141</sup> By comparison, when the court provided a tenant seven days or more before the writ could be executed, law enforcement involvement in the facilitation of the eviction dropped by nearly 20 percentage points to 71.7%.

## I. Lawfulness<sup>142</sup>

For each case filed during the EP, the pleadings and extraneous documents were reviewed and analyzed to identify whether the eviction was brought lawfully. This analysis did not include a review of the case on the merits, but only examined whether the case should have been subject to dismissal under Rule 12 of the Nebraska Rules of Civil Procedure. In summary, the study analyzed whether: there was compliance with the requisite notice provisions; the defendant had been properly served with process; the court had subject matter jurisdiction to hear the matter (often turning on whether the plaintiff had standing); and the plaintiff sufficiently pled a claim for relief. The case file was also reviewed to determine whether the complaint included all necessary parties.

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<sup>138</sup> The tenant is deemed to have followed through with the agreement if there is no indication law enforcement was necessary to remove the tenant from the unit (i.e., a writ was never *executed*).

<sup>139</sup> The number of days from the initial hearing date to the date the tenants are presumed to have been displaced, either voluntarily or by force. The date they are presumed to be displaced is either the date that was agreed upon, the date the court ordered that the writ may be issued and executed, or the date the writ was executed, if applicable.

<sup>140</sup> See NEB. REV. STAT. § 76-1446. See Ryan P. Sullivan, *Nebraska's Anything-But-Uniform Residential Landlord and Tenant Act*, 100 NEB. L. REV. 101 (forthcoming 2022) (examining the equity and constitutionality of permitting the writ to be executed immediately).

<sup>141</sup> In this instance, “engaged in some form” means that a sheriff or constable was retained to *serve* the writ of restitution. This is distinguished from the above analysis which takes into account only those instances where the writ was both served *and* executed, i.e., the tenants were removed by force.

<sup>142</sup> To determine the period in which the relevant reporting applied to lawfulness, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

During the EP, it was determined that only 6.8% of cases filed were compliant with all requirements<sup>143</sup> for bringing an action for possession under Nebraska’s Residential Landlord and Tenant Act.<sup>144</sup> In some instances, the case was deficient in only one or two areas; however, in the majority of cases, there were failures in several areas. The chart below describes where most deficiencies were found:

**Table IV. Deficiencies**

<b>Deficiency</b>	<b>Count</b>
Improper Notice	284
Record Confirmed No Service of Summons	27
Summons Untimely Served	31
Summons Untimely Returned	34
No Diligent Effort Before Constructive Service	143
No Service Affidavit Filed	1,034
Service Affidavit Filed, but Defective	359
No Standing on the Pleadings	504
No Actual Standing	798
Complaint Failed to Properly State a Claim	1,438
Complaint Failed to Plead Specific Statute	260
Complaint Filed Prematurely	98
Improper Defendant	56
Hearing Scheduled Too Soon	71
Plaintiff Engaged in UPL	19

Despite these eviction actions failing to comply with the pertinent statutory requirements and court rules, the eviction was permitted to proceed in nearly every case, and ultimately resulted in a tenant being displaced from their home in 60.8% of the cases where the filing was deficient in one or more ways.

<sup>143</sup> Each case was analyzed for compliance with the following requirements for bringing an eviction action: proper notice; standing on the pleadings; actual standing; whether the complaint was filed after the requisite notice period had expired; whether the complaint properly pled a claim for relief; whether the complaint pled the specific statute upon which the eviction was based (when required); whether the summons was timely served and returned; whether diligent efforts were made before resorting to constructive service; whether a proper service affidavit was filed; whether the named defendant was a proper party; whether the complaint failed to include a necessary party (plaintiff or defendant); whether the trial was scheduled for a date sooner than ten days after the summons was issued; and whether the plaintiff was engaging in unauthorized practice of law. *See also* Table IV.

<sup>144</sup> Note, this analysis includes only what could be reviewed within the court filings or public records and does not account for other reasons the eviction may be deemed unlawful; that is, it does not account for those evictions that are unlawful on the merits. Examples of evictions that are unlawful on the merits often observed in Nebraska courts include: proceeding with the eviction for non-payment of rent despite having agreed to not evict upon acceptance of rental assistance; having accepted a partial payment after notice of default or having been paid in full; bringing an eviction for reasons based on retaliation; evictions premised upon housing discrimination; and evictions based on false or unsubstantiated claims of lease violations or criminal activity on the premises.

## J. Legal Representation<sup>145</sup>

Historically, tenants in Nebraska rarely have legal representation at eviction proceedings, while landlords are almost always represented.<sup>146</sup> This aligns with the apportionment of legal representation observed nationally.<sup>147</sup> After TAP launched in Lancaster County, tenant representation increased dramatically: during the PTP, tenants had legal representation at only 2.2%<sup>148</sup> of the hearings, compared to 54.2% during the TP.<sup>149</sup> The above includes the percentage of *all* hearings scheduled, including those where tenants did not appear and, therefore, could not seek representation from the Tenant Assistance Project. For hearings in which the tenant appeared, tenants had representation at 11.2% of the hearings during the PTP, compared to 95.8% during the TP.<sup>150</sup> During the EP, landlords had representation on the record at a rate of 93.5%.<sup>151</sup>

## K. Impact of Legal Representation on Outcomes<sup>152</sup>

Although much of the examined period included extrinsic factors beyond the existence of advocacy and representation, a comparison of the outcomes occurring during the PTP—as compared to during the TP—reveals that tenant advocacy contributed to fewer evictions overall,

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<sup>145</sup> To determine the period in which the relevant reporting applied to legal representation, the analysis used the case hearing date occurring during the relevant period and pulled data from that entry.

<sup>146</sup> See Pierce Greenberg & Gary Fischer, *Understanding Evictions in Omaha*, SOC. SCI. DATA LAB AT CREIGHTON UNIV. & FAM. HOUS. ADVIS. SERVS., INC. (July 23, 2020), <https://storymaps.arcgis.com/stories/b839374e031d4ecfa21cb1fbaebbf31e> (reporting that from 2012 to 2019, tenants had documented legal representation in less than 1% of the eviction cases filed); Greenberg et al., *supra* note 134 (reporting that from 2016 to 2019, tenants had representation in eviction court in only 1.66% of the cases, and that in the author’s “analysis of unlawful evictions, 100% of landlords had legal representation”).

<sup>147</sup> See John Pollock, *Using Right to Counsel as an Eviction Diversion Strategy*, NAT’L LEAGUE OF CITIES, <https://www.nlc.org/article/2021/10/26/using-right-to-counsel-as-an-eviction-diversion-strategy/> (last visited Mar. 10, 2022) (reporting that “only 3 percent of tenants have legal representation when facing eviction proceedings, compared to over 80% for landlords”); Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, UNIVERSITY OF WISCONSIN INSTITUTE FOR RESEARCH ON POVERTY, 5 (2015) (reporting that in many housing courts around the country 90 percent of landlords have attorneys, and 90 percent of tenants do not”).

<sup>148</sup> Of the 650 eviction hearings occurring during the PTP, in only 14 did the tenant have legal representation.

<sup>149</sup> During the TP, legal representation was provided either by TAP volunteers (49.1%, or 487), Legal Aid of Nebraska attorneys (24.6%, or 244), students and faculty from the University of Nebraska College of Law (24.5%, or 243), or by a private attorney (1.7%, or 17). This apportionment excludes matters coded as “prior” representation, i.e., those matters in which an attorney represented the tenant at a prior hearing, but there was no representation on record for the subsequent hearing.

<sup>150</sup> During the initial few weeks of the TP, there were a few days when there were insufficient volunteers to immediately assist all tenants seeking representation. In some of these instances, the tenant would opt to proceed without representation and work directly with the landlord or their attorney. The remainder of tenants who appeared during the TP but did not have legal representation were those who declined services.

<sup>151</sup> The actual rate of representation of landlords is higher than what is reflected here. In reviewing the case filings and comparing them with notes from court observations, it appears there were several cases filed by a landlord *without* the assistance of an attorney, but at the hearing the landlord had legal representation. The attorney’s involvement was not always noted in the court record, and therefore could not be accounted for in the calculations.

<sup>152</sup> To determine the period in which the relevant reporting applied to the impact of legal representation, the analysis used the case filing date (i.e., the cases filed during the relevant period), and then pulled the data from the *last* recorded entry for that case (last scheduled hearing date).

and to fewer unlawful evictions. When legal representation was available, tenants were afforded additional time to find and transition to replacement housing, increasing the likelihood the transition will be peaceful, and presumably decreasing the likelihood the transition will lead to homelessness. The impact of legal representation is interwoven within several of the above sections analyzing the various aspects of the eviction process. The below focuses primarily on the immediate and ultimate outcome of the eviction proceeding, and whether a peaceful transition could be obtained.

During the TP, every tenant who appeared at their hearing was offered free legal representation, but not every tenant appeared. If the tenant appeared and received legal representation, they were both immediately and ultimately evicted far less frequently than if they did not appear or did not have legal representation. Tenants received legal representation in 728 of 1,726 (42.2%) of the eviction cases filed during the TP. Of those receiving legal representation, only 2.3% were immediately evicted,<sup>153</sup> and only 50.8% were ultimately evicted. During this same period, 998 tenants did *not* receive representation;<sup>154</sup> of those, 55.3% were immediately evicted, and 66.1% were ultimately evicted.

In addition to reducing the overall number of immediate and ultimate evictions, in those matters where an eviction was inevitable, tenant attorneys were often successful in obtaining additional time for tenants to peacefully transition into new housing, which in turn resulted in diminished use of law enforcement in the process.<sup>155</sup> During the EP, the average number of days from the initial hearing date to the date the represented tenant was presumed to be displaced<sup>156</sup> was 24 days, as compared to 6.4 days for those tenants without representation. In matters where the tenant was ultimately displaced, law enforcement was used to carry out the eviction in only 32.1%<sup>157</sup> of the cases when the tenant had an attorney, compared to 41.9%<sup>158</sup> when the tenant had no legal representation.

Another related finding was that the availability of legal representation impacted the number of days a court would order the writ to be executed following a judgment. As previously discussed, Nebraska law provides that, following a judgment for restitution of premises, the court must issue

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<sup>153</sup> Similar results were observed in Douglas County, Nebraska after TAP expanded to that county beginning in August of 2021. A report produced by the Volunteer Lawyers Project, which facilitates TAP in Douglas County, depicted outcomes similar to what is reported here. *See* Tenants Assist. Project, Douglas County Report: August 2021 – January 2022 (Mar. 2022) (unpublished report) (on file with author). From August 2021 through January 2022, 38.5% of tenants facing eviction in Douglas County had legal representation, and those with representation were immediately evicted at a rate of 2.7%. *Id.*

<sup>154</sup> The vast majority (96.5%) of those tenants not receiving representation were tenants who did not appear, and therefore were not present to seek representation through the Tenant Assistance Project. Notably, in 55.9% of those cases where a tenant did not appear and did not have representation, the landlord utilized constructive service. Furthermore, of those cases, the required affidavit went unfiled at a rate of 25.7%.

<sup>155</sup> *See supra* note 136 and accompanying text (discussing peaceful transitions).

<sup>156</sup> The date the tenant is presumed to be displaced is gleaned from the record and from supplemental information provided. *See supra* note 139 (describing when a tenant is deemed displaced).

<sup>157</sup> The writ was executed in only 122 out of 380 cases.

<sup>158</sup> The writ was executed in 432 out of 1,030 cases.

a writ of restitution to be executed “not more than ten days” from the entry of the judgment.<sup>159</sup> The statute appears to be aimed at providing tenants a reasonable amount of time to transition following the trial (if they lost), but no more than ten days. However, in practice, rather than a reasonable amount of time to move, most judgments entered during the EP permitted the writ to be issued and executed immediately, i.e., *zero* days.<sup>160</sup> This is likely the result of decades of eviction hearings where only the landlords’ interests were being presented in court, as landlords have an understandable interest in the writ being executed as soon as possible. Over time, rather than providing tenants a reasonable opportunity to transition (up to ten days), zero days became the default. In fact, across the EP, in matters where the tenant had no legal representation, the court ordered that the writ be executed immediately in 88.2% of the cases reviewed.<sup>161</sup> During the TP, judgments permitting the immediate execution of the writ were less prevalent, occurring at a rate of 67.9%; the rate decreased further to 41% when narrowing the review to only those cases where the tenant appeared and had legal representation. And, across this same period, the amount of time afforded a tenant to transition was more likely to be closer to the ten days contemplated by the legislature when a tenant was represented (average days: 7.0), than when unrepresented (average days: 0.5).

See Appendix B for a table consolidating the impact of legal advocacy in the various aspects of the eviction process.

#### IV. CONCLUSION

This examination of Lancaster County eviction filings revealed that tenants were often not properly served with summons, that most eviction actions were unlawful in some way, and that cases were frequently allowed to proceed to judgment despite these deficiencies. The analysis also found that proper service upon a tenant impacts the chance that they will appear, and their ability to appear is critical to the outcome of the proceeding. A tenant is most likely to appear when personal service is used and least likely to appear when constructive service is used. The analysis also revealed that when a tenant has legal representation, the overall rate of evictions decreases, as does the rate of unlawful evictions. Moreover, in those matters where a tenant was ultimately displaced, those with an attorney were provided more time to transition than those without. Finally, when tenants had an attorney, they more consistently followed through with an agreement to vacate by an agreed upon date, and the use of law enforcement to carry out the eviction was far less frequent. In that vein, peaceful transitions were found to be most common in matters where the tenant had legal representation.

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<sup>159</sup> NEB. REV. STAT. § 76-1446.

<sup>160</sup> *See supra*, notes 140–141 and accompanying text (reporting that writs were issued to be executed immediately in 70.9% of the cases concluded during the EP).

<sup>161</sup> During this same period, in matters where the tenant had legal representation, the writ was ordered to be executed immediately in only 25.5% (97 total) of the cases reviewed. Nearly half (42) of these instances occurred in situations where the parties had entered into a stipulation wherein the tenant agreed to vacate by a specified date, the tenant did not vacate by that date, and the landlord moved for an immediate writ without notice or hearing, per the stipulated agreement.

Overall, the data revealed that during the periods in which tenants had access to legal representation, the eviction process was slowed by an effective moratorium, and rental assistance funds were made available, fewer unlawful evictions were carried out, tenants were afforded more time to transition, more tenants were able to remain in their home by becoming current on rent, more landlords were made whole, and law enforcement was involved less frequently.

The study also confirmed that it is critical that eviction proceedings be more closely monitored, regularly examined, and better regulated. Judicial proceedings are typically self-regulated as adversarial proceedings where each party is holding the other to compliance with the law. In eviction proceedings—where one side rarely has legal representation—these prophylactic mechanisms are virtually nonexistent. To ensure a just process before forcibly removing a family from their home through government action, courts need to take a more active role in policing both the pleadings and the proceedings, and tenants need to be guaranteed legal counsel when their housing rights are in peril.

## **APPENDICES**

Appendix A. Summary of Key Fundings

Appendix B. Table, Impact of the Presence of Legal Advocacy

Appendix C. Lancaster County Data Report

## Summary of Key Findings

### Examination of Eviction Filings in Lancaster County, Nebraska *December 1, 2019 through October 31, 2021*

#### Volume

- From 2012 through 2019, eviction filings averaged 1,847 per year
- Eviction filings averaged 35 per week across the EP,<sup>1</sup> dropping to 21 per week during TP<sup>2</sup>
- There was a 36% decrease in eviction filings during the first three months of the TP<sup>3</sup>

#### Grounds for Eviction

- The most common basis for bringing an eviction action is non-payment of rent (71%)
- The proportion of evictions for non-payment of rent *decreased* during the CDC Eviction Moratorium, which restricted evictions for non-payment of rent; however, the proportion of no-fault evictions, which were not covered by the moratorium, *increased nearly threefold*, highlighting the glaring loophole in the CDC Moratorium
- Eviction filings spiked during each period in which the CDC Moratorium was set to expire

#### Service of Process

- In 62.3% of the cases, service was defective in one or more ways (70.1% when constructive service was utilized)
- The most common method for service of process was constructive service, used in 49.2% of the cases reviewed; tenants were personally served with summons in only 37.8% of the cases
- The required service affidavit was filed at a rate of 2.4% during the PTP,<sup>4</sup> and 72.5% during the TP
- In matters where a service affidavit had not been filed, the case was still allowed to proceed in most instances (73%), and of these matters, 84.6% resulted in the tenant being displaced
- During the EP, 401 default evictions were entered against tenants where the landlord had sought to utilize constructive service but failed to follow the statutorily required procedures for service of process

#### Notice

- 12.3% of the statutorily required notices reviewed were objectively defective in one or more ways
- Improper notices were most common in cases brought for non-payment of rent
- Of the cases in which notice was improper, nearly every case was allowed to proceed, and 65.3% resulted in the tenant being evicted from their home; this was more common during the PTP than during the TP

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<sup>1</sup> The Examined period (EP): December 1, 2019 – October 31, 2021.

<sup>2</sup> The TAP Period (TP). The period within the EP that the Tenant Assistance Project (TAP) was in operation: April 9, 2020 – October 31, 2021. TAP is a courthouse-based eviction prevention program.

<sup>3</sup> This occurred prior to the implementation of an effective eviction moratorium, and prior to rental assistance funds being made available and accessible.

<sup>4</sup> The Pre-TAP Period (PTP). The period within the EP prior to TAP coming into existence: December 21, 2019 – April 8, 2020.

## Pleadings

- Plaintiffs lacked standing to bring the eviction action in 38.6% of the cases reviewed
- In cases where the plaintiff lacked standing, in most instances (88.2%) the matter was allowed to proceed, often displacing the rights of the actual owner of the rental unit
- Of the 2,309 complaints examined, 62.4% failed to state a claim under the heightened pleading standard required in eviction matters
- Plaintiffs rarely cited to proper statutory authority for the eviction; even after this requirement was codified by statute, only 7.6% of the filings were found to be in compliance

## Appearances

- Tenants appeared in only 36.9% of the cases examined
- Tenants most often appeared when personal service was used (48.2%) and least often when constructive service was used (27.3%)
- Tenants were more prone to appear during the TP (43.1%) than during the PTP (18.3%)
- If the tenant *did not appear*, the tenant was ultimately evicted at a rate of 77.8%
- In cases where the tenant *appeared*, the tenant was ultimately evicted at a rate of 56.5% (85% during the PTP, compared to 52.4% during the TP)
- Of those who appeared but were ultimately evicted, 34% during the PTP were ordered from their homes that same day, a number that dropped to 5.1% during the TP

## Continuances

- A continuance of an initial eviction hearing occurred in 28.7% of the cases reviewed
- Hearings were more often continued when a tenant had representation (47.9%) than when the tenant did not (14.7%)
- The longer the continuance, the less often the tenant was ultimately evicted<sup>5</sup> from their home

## Outcomes

- Tenants were *immediately* evicted<sup>6</sup> from the home less often during the TP (32.8%) than during the PTP (49.2%)
- Tenants were also *ultimately* evicted from the home less often during the TP (60.5%) than during the PTP (65.9%)
- 32.7% of all cases resulted in a default judgment against the tenant; default evictions were less common during the TP (31%) than during the PTP (37.7%)
- When a tenant had legal representation, 43.7% of the cases were dismissed
- In 70.9% of the cases resulting in judgment, the tenant was ordered to vacate the day of the hearing (even though the law provides for up to 10 days to transition)
- The longer the tenant was provided to transition to new housing, the less often law enforcement was needed to carry out the eviction

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<sup>5</sup> Ultimately evicted is broadly defined to include any instance where—on the record or through supplemental evidence—it is confirmed that the tenant was ultimately displaced from the premises either voluntarily, by agreement, or as the result of a judgment and writ of restitution.

<sup>6</sup> Immediately evicted means the court entered an order at the initial hearing subjecting the tenant to immediate removal from the premises. If the eviction action was dismissed, continued, or resulted in a court ordered or agreed upon delay in the execution of the writ, the tenant was deemed not immediately evicted.

### Lawfulness

- Only 6.8% of the cases filed during the period examined were compliant with all statutorily mandated requirements for bringing an eviction action in Nebraska
- Unlawful eviction actions were allowed to proceed in nearly every instance, and resulted in the tenant being displaced from their home in 60.8% of the cases in which the filing was deficient in one or more ways

### Legal Representation

- For hearings occurring during the PTP, only 2.2% of the tenants facing eviction had legal representation; during the TP, this rose to 54.2%
- Of tenants who appeared for their hearing, 11.2% had representation during the PTP, compared to 95.8% during the TP
- During the examined period, at least 93.5% of landlords had legal representation

### Impact of Legal Representation on Outcome

- During the TP, in cases where tenants *had* legal representation, only 2.3% were ordered to be evicted from their home the day of the hearing; those who *did not have* legal representation were immediately evicted at a rate of 55.3%
- During the TP, in cases where tenants *had* legal representation, only 50.8% were ultimately displaced; for those *without* representation, 66.1% were displaced
- In matters where the tenant was ultimately displaced, law enforcement was used to carry out the eviction in only 32.1% of cases when the tenant had an attorney, compared to 41.9% when the tenant was without an attorney
- In matters where the tenant had no legal representation, the eviction judgment was ordered to be executed immediately in 88.2% of the cases across the EP; by comparison, during the TP when a tenant had representation, the judgment was ordered to be immediately executed in only 41% of the cases
- In matters where an eviction judgment was entered, the tenant was provided 7 days on average to peacefully transition when represented by counsel, compared to only 0.5 days on average when unrepresented

**Impact of the Presence of Legal Advocacy**

<b><i>Representation</i></b>	Legal Representation Across the EP	% of Cases in Which a Continuance Was Granted	Tenant Followed Through with Move-Out Agreement	Tenant was Immediately Evicted	Tenant Was Ultimately Evicted	Average Total Time to Transition <sup>1</sup>	% of Writs Issued to Be Executed Immediately	Average # of Days Provided to Transition After Judgment <sup>2</sup>	Peaceful Transition Occurred
<b>Unrepresented</b>	78.9%	14.5%	55.3%	55.3%	66.1%	6.4 days	88.2%	0.5 days	58%
<b>Represented</b>	21.1%	47.9%	68.6%	2.3%	50.8%	24 days	41% <sup>3</sup>	7 days	67.7%

<b><i>Period</i></b>	% of Tenants Ultimately Evicted Despite Defective Service	% of Service Affidavits Filed	% of Tenants Ultimately Evicted Despite Improper Notice	Tenant Appearance Rate	Average # of Tenants ordered from their home the day of the hearing <sup>4</sup>	% of Cases in Which a Continuance Was Granted	% of Cases Where Trial Occurred Beyond 14 days from Issuance of Summons
<b>PTP</b>	65%	2.4%	74.2%	18.3%	60 per month	14.5%	12.7%
<b>TP</b>	53.4%	72.5%	62.8%	43.1%	1 per month	33.1%	31.8%

<b><i>Period</i></b>	Tenant Was Immediately Evicted	Tenant Was Ultimately Evicted	% of Evictions Entered by Default	If Stipulation, Average # of Days to Vacate	% of Tenants Having Legal Representation (all hearings)	% of Tenants Having Legal Representation (hearings where tenant appeared)
<b>PTP</b>	49.2%	65.9%	37.7%	11.1 days	2.2%	11.2%
<b>TP</b>	32.8%	60.5%	31%	17.4 days	54.2%	95.8%

<sup>1</sup> This is the total time from the initial hearing to the date on which the tenant was deemed to have been ultimately displaced from the home.

<sup>2</sup> This is the period of time set forth in the eviction judgment determining how quickly the writ can be executed by the sheriff, forcing the tenant from their home. These figures are taken from the TP only.

<sup>3</sup> This figure is the percentage of cases in which the writ was executed immediately during the TP, wherein 95.8% of appearing tenants had legal representation.

<sup>4</sup> For the PTP, this includes all cases; for the TP, this includes only cases where a tenant appeared and had access to legal representation.

**Lancaster County Data Report**  
 Examination of Eviction Filings in Lancaster County, Nebraska  
*December 1, 2019 through October 31, 2021*

**A. Volume/Patterns**

Average number of weekly filings during the TP:

Total
21.04878

Total number of filings in 2020:

Total
1163

Number of filings in 2021, throughout the EP:

Total
993

Filings For May, June, and July 2020:

Total
267

Filings For May, June, and July 2021:

Total
253

Total number of cases during the EP:

Total
2309

Total number of filings during the PTP:

Total
583

Total number of filings during the TP:

Total
1726

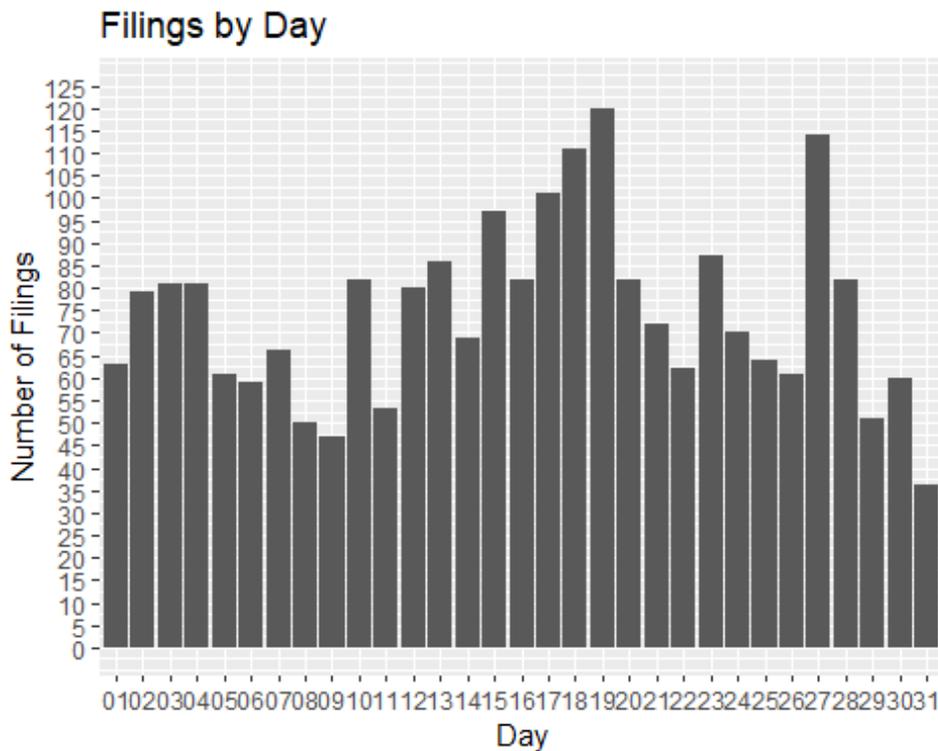
Percent of volume of hearings by day of the week:

Hearings by Day of the Week	Percent
Monday	21.6422661
Tuesday	37.7466582
Wednesday	13.2081477
Thursday	27.3392743
Friday	0.0636537

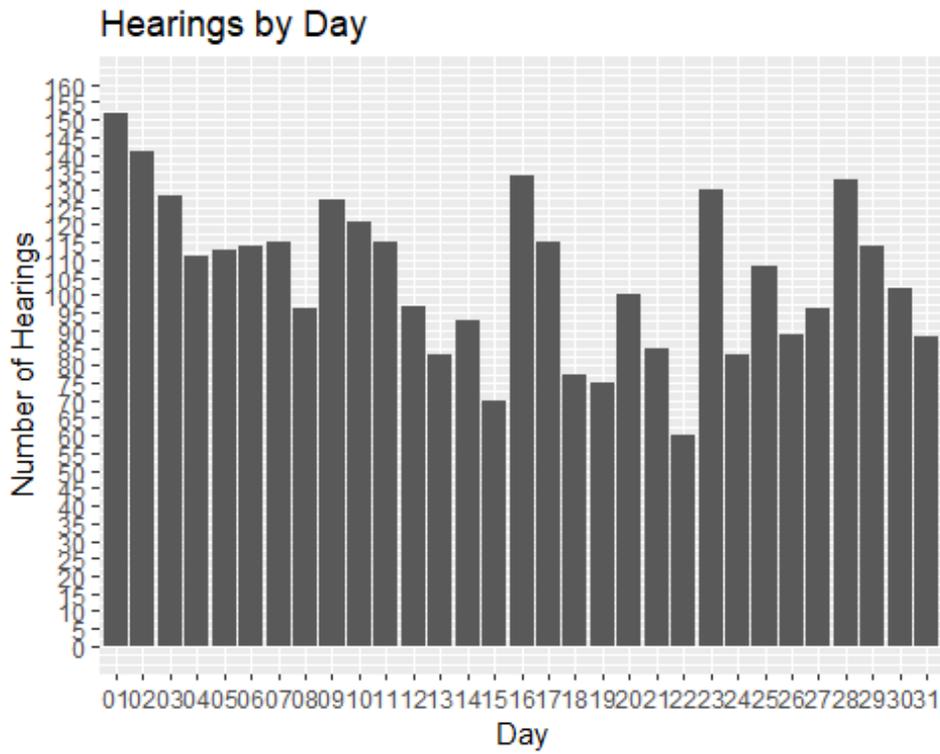
Percent of volume of filings by day of the week:

Filings by Day of the Week	Percent
Sunday	0.3464703
Monday	12.7327848
Tuesday	28.4105673
Wednesday	18.3629277
Thursday	22.6071893
Friday	17.4101343
Saturday	0.1299264

**Graph: Daily count of filings over a month**



*Graph: Daily count of hearings over a month*



**Table I. Volume Across Relevant Periods**

## Filings (Column One)

Total number of cases during the EP:

$$\frac{\text{Total}}{2309}$$

Total number of filings during the PTP:

$$\frac{\text{Total}}{583}$$

Total number of filings during the TP:

$$\frac{\text{Total}}{1726}$$

Total number of filings during the CDCP:

$$\frac{\text{Total}}{981}$$

Total number of filings during the ACDCP:

$$\frac{\text{Total}}{297}$$

Total number of filings during the RAP:

$$\frac{\text{Total}}{1257}$$

## Initial Hearings (Column Two)

Total number of initial hearings during the EP:

$$\frac{\text{Total}}{2059}$$

Total number of initial hearings during the PTP:

$$\frac{\text{Total}}{490}$$

Total number of initial hearings during the TP:

$$\frac{\text{Total}}{1569}$$

Total number of initial hearings during the CDCP:

Total  
915

Total number of initial hearings during the ACDP:

Total  
245

Total number of initial hearings during the RAP:

Total  
1104

Final Hearings (Column Three)

Total number of final hearings during the EP:

Total  
2229

Total number of final hearings during the PTP:

Total  
551

Total number of initial hearings during the TP:

Total  
1678

Total number of initial hearings during the CDCP:

Total  
957

Total number of initial hearings during the ACDP:

Total  
298

Total number of initial hearings during the RAP:

Total  
1206

Total Hearings (Column Four)

EP:

Total  
3142

PTP:

Total  
650

TP:

Total  
2492

CDCP:

Total  
1499

ACDCP:

Total  
432

RAP:

Total  
1867

**B. Grounds for Eviction**

No-fault evictions 3 months prior to CDC Moratorium:

<u>Grounds for Eviction</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
No-Fault	28	340	8.235294

Portion of these no-faults as non-renewal, month-to-month (Footnote 32):

<u>Grounds for Eviction</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Nonrenewal, month-to-month	24	28	85.71429

No-fault evictions during CDC:

<u>Grounds for Eviction</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
No-Fault	236	981	24.05708

Portion of these no-faults as non-renewal, month-to-month (Footnote 33):

<u>Type of Eviction</u>	<u>Count</u>	<u>Percent</u>
Non-renewal, month-to-month	180	76.27119

Percent of evictions due to misconduct 3 months prior to CDC Moratorium:

<u>Percent</u>
9.411765

Percent of evictions due to misconduct during to CDC Moratorium:

<u>Percent</u>
14.78084

Non-payment evictions during the 3 months prior to CDC Moratorium:

<u>Count</u>	<u>Percent</u>
277	81.47059

Non-payment evictions during the CDC:

<u>Count</u>	<u>Percent</u>
558	56.88073

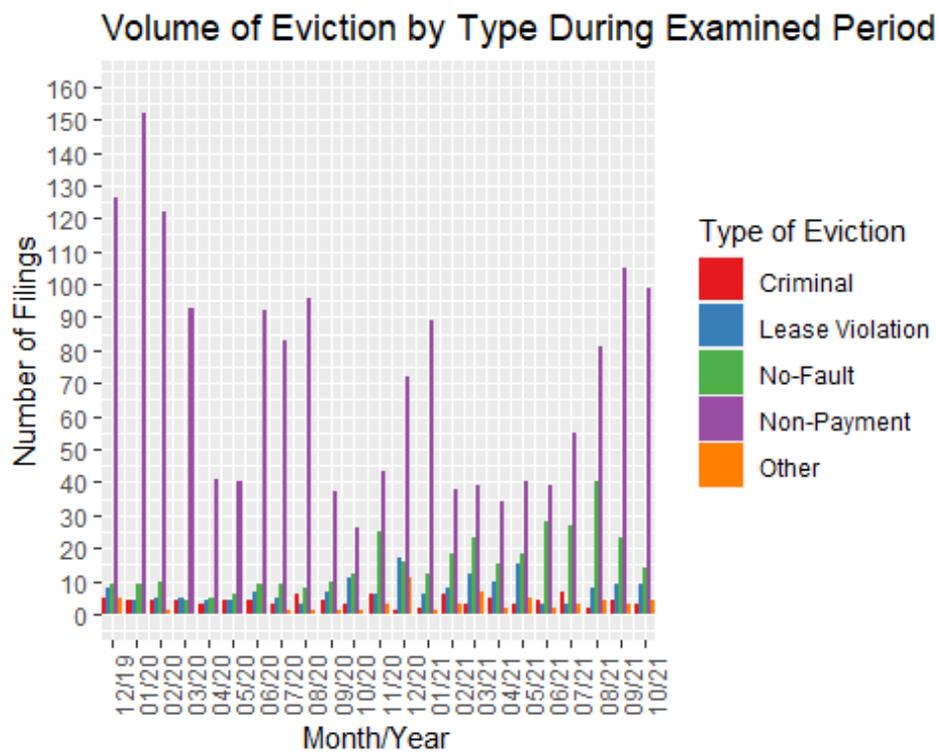
Non-payment evictions during the ACDCP:

<u>Count</u>	<u>Percent</u>
226	76.09428

**Table II. Grounds for Eviction During the EP**

Grounds for Eviction	Count	Percent
Criminal	90	3.897791
Lease Violation	169	7.319186
No-Fault	350	15.158077
Non-Payment	1642	71.113036
Other	58	2.511910

**Bar Chart: Type of eviction by month over EP**



**C. Service of Process**

Methods of service:

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive Service	1135	49.1554786
Multiple	12	0.5197055
None	27	1.1693374
Personal Service	873	37.8085751
Residential	262	11.3469034

Constructive service types (Footnote 44):

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive	1042	45.127761
Substitute	93	4.027718

Constructive service during the PTP:

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive Service	326	55.91767

Constructive service during the TP:

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive Service	809	46.87138

Service by sheriff or constable, volume, and percent during the EP:

<u>Summons Issued</u>	<u>Count</u>	<u>Percent</u>
Constable	2005	86.83413
Sheriff	301	13.03595

Service by sheriff by type of service:

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive Service	148	49.0066225
Multiple	2	0.6622517
None	18	5.9602649
Personal Service	114	37.7483444
Residential	20	6.6225166

Service by constable by type of service:

<u>Service of Process</u>	<u>Count</u>	<u>Percent</u>
Constructive Service	987	49.2269327
Multiple	10	0.4987531
None	7	0.3491272
Personal Service	759	37.8553616
Residential	242	12.0698254

Served in timely manner:

<u>Timely Served</u>	<u>Count</u>	<u>Percent</u>
No	31	1.342572

Service return timely returned:

<u>Timely Returned</u>	<u>Count</u>	<u>Percent</u>
No	34	1.472499

Percent of cases where affidavits were filed during the PTP:

<u>Percent</u>
2.401372

Percent of cases where affidavits were filed during the TP:

<u>Percent</u>
72.47972

Percent of cases where affidavits were not filed during the TP:

<u>Percent</u>
27.52028

Number of cases during the EP where the affidavit was not filed (Footnote 56):

<u>Count</u>
1,034

Defective affidavits filed during the EP (Footnote 57):

<u>Affidavit Filed</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Defective	359	1265	28.37945

Total number of cases where the affidavit was either not filed or filed but defective:

<u>Total</u>
1393

Cases not dismissed despite affidavit being unfiled or filed but defective:

Dismissed	Count	Total	Percent
No	1023	1401	73.01927

Total evicted when affidavit was not filed or filed but defective during the EP (Footnote 58):

Ultimate Outcome	Total
Evicted	818

Evicted during the TP:

Ultimate Outcome	Total
Evicted	442

Evicted during the CDCP:

Ultimate Outcome	Total
Evicted	188

Cases where affidavit was not filed or defective and an order of restitution was entered against the tenant during the EP:

Order of Restitution	Count	Percent
No	623	26.98138
Yes	770	33.34777

Cases where affidavit was unfiled or defective and an order of restitution was entered against the tenant during the PTP:

Order of Restitution	Count	Percent
No	195	33.44768
Yes	376	64.49400

Cases where affidavit filed was defective, tenant did not appear, and tenant was ultimately evicted during the EP:

Order of Restitution	Count
Yes	550

Cases where affidavit filed was defective, tenant did not appear, and was ultimately evicted during the PTP (encompassing approximately 4 months) (Footnote 64):

Order of Restitution	Count	Percent
Yes	284	12.2997

Cases where affidavit filed was defective, tenant appeared, and tenant was ultimately evicted during the TP (encompassing approximately 19 months) (Footnote 64):

Order of Restitution	Count	Percent
Yes	266	11.52014

Service was defective:

Defective Service	Count	Total	Percent
Yes	1439	2309	62.32135

Diligent effort:

Diligent Effort	Count	Total	Percent
No	143	2309	6.193157

Service Affidavit:

Affidavit Filed	Count	Percent
Defective	359	15.54786
No	1034	44.78129

Service Type:

Service of Process	Count	Percent
None	27	1.169337

Timely served:

Timely Served	Count	Percent
No	31	1.342572

Timely returned:

Timely Returned	Count	Percent
No	34	1.472499

Service was defective – Constructive Service (Footnote 65):

Defective Service	Count	Total	Percent
Yes	730	1042	70.05758

Tenant ultimately evicted when service was defective during the PTP:

Defective Service	Ultimate Outcome	Count	Total	Percent
Yes	Evicted	378	581	65.06024

Tenant ultimately evicted when service was defective during the TP:

<u>Defective Service</u>	<u>Ultimate Outcome</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Yes	Evicted	458	858	53.37995

Constructive service, default evictions during the EP:

<u>Total</u>
401

**D. Notice**

Percent of notices reviewed deemed objectively improper:

<u>Percent</u>
12.34301

Cases where notice was filed (Footnote 82):

<u>Percent</u>
90.38545

Percent of cases where notice was proper that were brought on the grounds of non-payment of rent:

<u>Percent</u>
51.92982

Notice was not filed, and the tenant was ultimately evicted during the EP:

<u>Ultimate Outcome</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Evicted	186	285	65.26316

Notice was not filed, and the tenant was ultimately evicted during the PTP:

<u>Ultimate Outcome</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Evicted	46	62	74.19355

Notice was not filed, and the tenant was ultimately evicted during the TP:

<u>Ultimate Outcome</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Evicted	140	223	62.78027

**E. Pleadings****1. Standing**

Plaintiff lacked standing:

Count	Percent
892	38.63144

Lacked standing on the pleadings (Footnote 86):

Standing on the Pleadings	Count	Percent
No	94	4.071026

Lacked actual standing (Footnote 86):

Standing on the Pleadings	Count	Percent
No	388	16.80381

Lacked both standing on the pleadings and actual standing (Footnote 86):

Standing on the Pleadings	Actual Standing	Count	Percent
No	No	410	17.7566

Plaintiff lacked standing, and the case was allowed to proceed, i.e., not dismissed:

Percent
88.22001

**2. Properly Stating a Claim**

Complaints that failed to properly state a claim:

Percent
62.36466

Complaints that pled specific statute after August 28, 2021 when new law went into effect:

Specific Statute Plead	Count	Total	Percent
Yes	22	289	7.612457

**F. Appearances**

Appearances during the EP:

Tenant Appeared	Count	Total	Percent
Yes	851	2309	36.85578

Appearances by service type during the EP:

Service of Process	Count	Total	Percent
Constructive Service	310	1135	27.312775
Multiple	10	12	83.333333
None	2	27	7.407407
Personal Service	421	873	48.224513
Residential	108	262	41.221374

Appearances during the TP:

Tenant Appeared	Count	Total	Percent
Yes	744	1726	43.10545

Appearances during the TP by service type (Footnote 100):

Service of Process	Count	Total	Percent
Constructive Service	259	809	32.01483
Multiple	10	12	83.33333
None	2	9	22.22222
Personal Service	377	685	55.03650
Residential	96	211	45.49763

Appearances during the PTP:

Tenant Appeared	Count	Total	Percent
Yes	107	583	18.35334

Appearances during the PTP by service type:

Service of Process	Count	Total	Percent
Constructive Service	51	326	15.64417
Personal Service	44	188	23.40426
Residential	12	51	23.52941

Tenant did not appear and was ultimately evicted during the EP:

Tenant Appeared	Ultimate Outcome	Count	Total	Percent
No	Evicted	923	1186	77.82462

Tenant appeared and was ultimately evicted during the EP:

Tenant Appeared	Ultimate Outcome	Count	Total	Percent
Yes	Evicted	481	851	56.52174

Tenant appeared and was ultimately evicted during the PTP:

Tenant Appeared	Ultimate Outcome	Count	Total	Percent
Yes	Evicted	91	107	85.04673

Tenant appeared and was ultimately evicted during the TP:

Tenant Appeared	Ultimate Outcome	Count	Total	Percent
Yes	Evicted	390	744	52.41935

Tenant appeared, was ultimately evicted, and was ordered to immediately vacate during the PTP:

Immediate Outcome	Count	Total	Percent
Evicted	31	91	34.06593

Tenant appeared, was ultimately evicted, and was ordered to immediately vacate during the TP:

Immediate Outcome	Count	Total	Percent
Evicted	20	390	5.128205

**G. Continuances**

Continuances of initial hearings during the EP:

Outcome	Count	Total	Percent
Continued	591	2059	28.70325

Continuances of initial hearings for non-payment evictions during the CDCP:

Non-Payment	Outcome	Count	Total	Percent
Yes	Continued	215	501	42.91417

Percent of continuances during the CDCP that were dismissed (Footnote 110):

20.15968

Continuances in nonpayment cases during the EP (Footnote 111):

Non-Payment	Outcome	Count	Total	Percent
Yes	Continued	423	1438	29.41586

Continuances during the EP in cases that were brought for a reason other than non-payment:

Non-Payment	Outcome	Count	Total	Percent
No	Continued	168	621	27.05314

Continuances by grounds for eviction during the EP (Footnote 112):

Grounds for Eviction	Count	Total	Percent
Criminal	17	84	20.23810
Lease Violation	55	155	35.48387
No-Fault	89	329	27.05167
Non-Payment	423	1438	29.415
Other	7	53	13.20755

Continuances during the PTP:

Outcome	Count	Total	Percent
Continued	71	490	14.4898

Continuances during the TP:

Outcome	Count	Total	Percent
Continued	520	1569	33.14213

Removing non-payment cases, continuances during the PTP:

Outcome	Count	Total	Percent
Continued	12	67	17.91045

Removing non-payment cases, continuances during the TP:

Outcome	Count	Total	Percent
Continued	156	554	28.15884

Continuances by representation during the EP:

Tenant had representation:

Tenant had an Attorney	Outcome	Count	Total	Percent
Yes	Continued	654	1364	47.94721

Tenant had no representation:

Tenant had an Attorney	Outcome	Count	Total	Percent
No	Continued	262	1778	14.73566

During EP, number of cases continued to a date more than 15 days after filing date:

*See footnote 118 for explanation of why 15 and not 14 days was used for this calculation.*

Count
560

During PTP, number of cases continued to a date more than 15 days after filing date:

Continuance over 15 days	Count	Total	Percent
Yes	62	489	12.67894

During TP, number of cases continued to a date more than 15 days after filing date:

Continuance over 15 days	Count	Total	Percent
Yes	498	1569	31.7602

Cases continued at least once during the CDCP:

Outcomes	Count	Total	Percent
Continued	334	915	36.50273

Cases continued at least once during the ACDCP:

Outcomes	Count	Total	Percent
Continued	86	245	35.10204

During the EP, immediate outcome when no continuance was granted:

Immediate Outcome	Count	Total	Percent
Evicted	1137	1454	78.19807

Eviction volume and rate by length of continuance:

Length of Continuance	Count	Total	Percent
No Continuance	1148	1467	78.25494
1–3 Days	20	33	60.60606
4–7 Days	68	131	51.90840
8–14 Days	50	119	42.01681
15 + Days	77	302	25.49669

Continuances between 15–30 days:

Length of Continuance	Count	Total	Percent
15–30 Days	45	126	35.71428

Over 31 days:

Length of Continuance	Count	Total	Percent
31 + Days	32	176	18.18181

15 + days (Footnote 122):

Length of Continuance	Count	Total	Percent
15 + Days	77	302	25.49668

**H. Outcomes****Table III. Outcomes**

Immediate outcomes during the EP:

Immediate Outcome	Count	Total	Percent
Evicted	821	2229	36.83266

Ultimate outcomes during the EP:

Ultimate Outcome	Count	Total	Percent
Evicted	1379	2229	61.86631

Immediate outcomes during the PTP:

Immediate Outcome	Count	Total	Percent
Evicted	271	551	49.1833

Ultimate outcomes during the PTP:

Ultimate Outcome	Count	Total	Percent
Evicted	363	551	65.88022

Immediate outcomes during the TP:

Immediate Outcome	Count	Total	Percent
Evicted	550	1678	32.77712

Ultimate outcomes during the TP:

Ultimate Outcome	Count	Total	Percent
Evicted	1016	1678	60.54827

Immediate outcomes during the CDCP:

Immediate Outcome	Count	Total	Percent
Evicted	317	957	33.12435

Ultimate outcomes during the CDCP:

Ultimate Outcome	Count	Total	Percent
Evicted	551	957	57.57576

Immediate outcomes during the RAP:

Immediate Outcome	Count	Total	Percent
Evicted	371	1206	30.76285

Ultimate outcomes during the RAP:

<u>Ultimate Outcome</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
Evicted	692	1206	57.37977

Default evictions during the EP:

<u>Count</u>	<u>Percent</u>
729	32.70525

Default evictions during the PTP:

<u>Count</u>	<u>Percent</u>
208	37.74955

Default evictions during the TP:

<u>Count</u>	<u>Percent</u>
521	31.04887

Percent dismissed outright during the EP:

<u>Percent</u>
42.70974

Count dismissed outright during the EP (Footnote 129):

<u>Count</u>
952

Dismissed prior to hearing during the EP:

<u>Count</u>	<u>Total</u>	<u>Percent</u>
191	952	20.06303

Dismissed and did not appear during the EP:

<u>Tenant Appeared</u>	<u>Count</u>	<u>Total</u>	<u>Percent</u>
No	262	952	27.52101

Percent dismissed prior to hearing or when the tenant did not appear:

<u>Percent</u>
47.58403

Dismissed when the tenant appeared and had representation during the EP:

<u>Tenant Appeared</u>	<u>Count</u>	<u>Percent</u>
Yes	416	43.69748

Stipulation—Average time to vacate during the EP:

Mean  
16.2542 days

Stipulation—Average time to vacate during the PTP:

Mean  
11.12987 days

Stipulation—Average time to vacate during the TP:

Mean  
17.41471 days

Stipulation—Average time to vacate during the CDCP:

Mean  
17.52353 days

Stipulation—Average time to vacate during the ACDCP:

Mean  
14.43284 days

Stipulation—Average time to vacate during the RAP:

Mean  
16.49345 days

Peaceful transitions during the EP, all:

Percent  
60.62364

Peaceful transitions during the EP for tenant with representation:

Percent  
67.65499

Peaceful transitions during the EP for tenant without representation:

Percent  
58.03571

Peaceful transitions during the EP, tenant appeared:

Percent  
65.11628

Peaceful transitions during the EP, tenant did not appear:

Percent  
58.1576

Tenant followed through with stipulation to vacate when they had representation during the EP:

Percent  
68.58108

Tenants followed through with stipulation to vacate when they did not have representation during the EP:

Percent  
55.28455

Law enforcement involvement by number of days provided to vacate premises:

1–7 days to vacate:

Days to Vacate	Writ Outcome	Count	Percent
1–7 days	Executed	353	43.41943

8–14 days to vacate:

Days to Vacate	Writ Outcome	Count	Percent
8–14 days	Executed	82	42.48705

15+ days to vacate:

Days to Vacate	Writ Outcome	Count	Percent
15 + days	Executed	104	37.54513

21+ days to vacate:

Days to Vacate	Writ Outcome	Count	Percent
21 + days	Executed	71	35.14851

28+ days to vacate:

Days to Vacate	Writ Outcome	Count	Percent
28 + days	Executed	40	30.53435

Total evictions ordered during the EP:

Count  
1379

Evictions ordered during the EP where tenant was ordered to immediately vacate:

Count  
978

Evictions ordered during the EP where tenant was ordered to immediately vacate:

Percent  
70.92096

During the EP, rate that law enforcement was necessary to carry out the eviction when tenant was ordered to immediately vacate:

Percent  
90.18405

During the EP, rate that law enforcement was necessary to carry out the eviction when tenant was provided 7+ days:

Percent  
71.66667

**I. Lawfulness**

Count and percentage of unlawful evictions:

Unlawful	Count	Total	Percent
Yes	2152	2309	93.20052

**Table IV. Deficiencies**

Improper notice:

<u>Count</u>
284

No Service:

<u>Count</u>
27

Summons untimely served:

<u>Count</u>
31

Summons untimely returned:

<u>Count</u>
34

No diligent effort:

<u>Count</u>
143

Affidavit not filed, or filed but defective:

Affidavit Filed	Count
Defective	359
No	1034

No standing on the pleadings:

<u>Count</u>
504

No actual standing:

<u>Count</u>
798

Complaint failed to properly state a claim:

Count  
1438

Complaint failed to plead specific statute providing authority for the eviction:

Count  
260

Complaint filed prematurely:

Count  
98

Improper defendant:

Count  
56

Hearing scheduled for a date prior to 10 days from issuance of operative summons:

Count  
71

Plaintiff engaged in UPL:

Count  
19

Unlawful evictions where tenant was ultimately evicted:

Unlawful	Ultimate Outcome	Count	Total	Percent
Yes	Evicted	1308	2152	60.78067

**J. Legal Representation**

*\*Legal representation figures in this section are by individual hearing*

Tenants had legal representation during the PTP:

Count	Total	Percent
14	650	2.153846

Tenants did not have legal representation during the PTP:

Count	Total	Percent
636	650	97.84615

Tenants had legal representation during the TP:

Count	Total	Percent
1350	2492	54.17335

Tenants did not have legal representation during the TP:

Count	Total	Percent
1142	2492	45.82665

Legal representation by program during the TP (Footnote 149): (*Clinic, Joint-Clinic and Joint-Student combined to encompass "College of Law"*)

Program	Count	Total	Percent
Clinic	140	991	14.127144
Joint-Clinic	93	991	9.384460
Joint-Student	10	991	1.009082
LAN	244	991	24.621594
Private	17	991	1.715439
TAP	487	991	49.142280

Tenant appeared and had legal representation during the PTP:

Tenant Appeared	Count	Total	Percent
Yes	13	116	11.2069

Tenant appeared and had legal representation during the TP:

Tenant Appeared	Count	Total	Percent
Yes	1246	1301	95.77248

Landlord had legal representation during the EP:

Count	Total	Percent
2937	3142	93.47549

**K. Impact of Legal Representation**

*\*Legal representation figures in this section are by case*

Legal representation during the TP:

Count	Total	Percent
728	1726	42.17845

Immediate evictions occurring during the TP for tenants with legal representation:

Tenant had an Attorney	Count	Total	Percent
Yes	17	728	2.335165

Ultimate evictions occurring during the TP for tenants with legal representation:

Tenant had an Attorney	Count	Total	Percent
Yes	370	728	50.82418

Immediate evictions occurring during the TP for tenants without legal representation:

Tenant had an Attorney	Count	Total	Percent
No	552	998	55.31062

Ultimate evictions occurring during the TP for tenants with legal representation:

Tenant had an Attorney	Count	Total	Percent
No	660	998	66.13226

Percent of tenants without representation who did not appear (Footnote 154):

96.49299

Tenants without representation who did not appear and who were served via constructive service:

Service of Process	Count	Total	Percent
Constructive Service	538	963	55.86708

Constructive service with a defective affidavit:

Affidavit Filed	Count	Total	Percent
No	138	538	25.65056

Immediate evictions occurring during the TP in cases where tenants had no legal representation:

Tenant had an Attorney	Immediate Outcome	Count	Total	Percent
No	Evicted	552	998	55.31062

Ultimate evictions occurring during the TP in cases where tenants had no legal representation

Tenant had an Attorney	Ultimate Outcome	Count	Total	Percent
No	Evicted	660	998	66.13226

Average number of days from initial hearing to date vacated/displaced, with legal representation during the EP:

Tenant had an Attorney	Mean
Yes	24.00539

Average number of days from initial hearing to date vacated/displaced, without legal representation during the EP:

Tenant had an Attorney	Mean
No	6.399602

Law Enforcement necessary to carry out the eviction in cases where tenant did not have legal representation during the EP:

Tenant had an Attorney	Writ Outcome	Count	Total	Percent
No	Executed	432	1030	41.94175

Law Enforcement necessary to carry out the eviction in cases where tenant had an attorney during the EP:

Tenant had an Attorney	Writ Outcome	Count	Total	Percent
Yes	Executed	122	380	32.10526

Writ ordered to be executed immediately when the tenant did not have legal representation during the EP:

Percent
87.86408

Writ ordered to be executed immediately when the tenant had legal representation (Footnote 161):

Number of Days to Execute Writ	Count	Total	Percent
Immediately	97	380	25.52632

Writ ordered to be executed immediately when the tenant had legal representation, but the tenant failed to adhere to stipulation to vacate by a specific date and order was entered without a hearing (Footnote 161):

Number of Days to Execute Writ	Count
Immediately	42

Writ ordered to be executed immediately during the TP:

Percent
67.86408

Writ ordered to be executed immediately when the tenant had legal representation during the TP:

Number of Days to Execute Writ	Count	Total	Percent
Immediately	707	1726	40.96176

Average number of days to vacate during the TP, with legal representation:

7.008065
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Average number of days to vacate during the TP, without legal representation:

0.5224806
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