NORTH DAKOTA CASE STUDY:
THE EVICTION MILL’S FAST TRACK TO HOMELESSNESS

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“Eviction is a cause, not just a condition, of poverty.”
- Matthew Desmond

ABSTRACT

Eviction has become a serious issue in the United States that must be addressed. North Dakota is no exception. The high rate of evictions is rooted in the application of archaic laws to modern landlord-tenant relationships. Part I of this Article will introduce the social and economic factors that contribute to injustices in the application of landlord-tenant laws. Parts II and III of this Article will review the origins and evolution of eviction laws in England, the United States, and North Dakota. Part IV will fully discuss sociological and economic issues in modern landlord-tenant relationships generally and in North Dakota. Part V of this Article will analyze evictions in North Dakota. Part VI will explore solutions to eviction problems in North Dakota. Part VII will summarize how archaic laws applied to modern landlord-tenant relationships has caused serious socio-economic problems that are best resolved by substantial shifts in fundamental policies underlying the law and firm enforcement of the law.

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I. INTRODUCTION

In years past, eviction issues were ignored by social scientists, journalists, policymakers, and attorneys.\(^1\) Eviction has been “one of the least studied processes affecting the lives of poor families.”\(^2\) The recent development of electronic court record databases has allowed researchers access to measure the prevalence of evictions.\(^3\) Experts have recently found that “[e]very year in this country, people are evicted\(^4\) from their homes not by the tens of thousands or even the hundreds of thousands but by the millions.”\(^5\) Eviction has become an epidemic in the United States.

Experts have recently researched the effects of eviction on individuals.\(^6\) Experts have determined that eviction profoundly impacts individuals in every aspect of their lives.\(^7\) Eviction may affect individuals’ employment,
emotional and mental health, physical health, and it may also affect children’s education and ability to learn.\(^8\) Eviction is a leading cause of poverty and homelessness. The eviction epidemic is disrupting the foundation of our society.

Tenants had little to no protections against eviction under early English common law.\(^9\) Codification of the common law has allowed legislatures to add tenant protections into the law.\(^10\) However, tenant protections remain inadequate. Tenants continue to endure substantial injustices that pose a serious risk of eviction.

In North Dakota, non-payment of rent is the most common ground claimed against tenants for eviction.\(^11\) There is no defense to non-payment of rent.\(^12\) During the most recent economic boom in North Dakota, rental costs increased faster than the rate of pay.\(^13\) Tenants are unable to pay the excessive rental costs.\(^14\)

Tenants who cannot afford to pay the rent most likely cannot afford to pay eviction court costs either. A tenant cannot file a written answer to an eviction complaint unless the filing fee is paid or waived by a court order.\(^15\) The summary eviction process does not provide tenants the necessary time to petition a court for an order waiving the filing fee.\(^16\) Thus, tenants may be unable to provide the court a written response to a landlord’s complaint.

In addition, tenants do not have a right to representation in eviction actions.\(^17\) Landlords are nearly always represented by legal counsel in eviction actions, but tenants are rarely represented.\(^18\) Current summary eviction laws do not allow tenants sufficient time to seek and obtain representation.\(^19\) It is difficult to find an attorney to represent a tenant.\(^20\) Few private attorneys represent tenants.\(^21\) Access to legal aid organizations has been diminishing due to steady federal funding cuts over the years.\(^22\)

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8. Id. at 296-97.
9. See infra Part II.
10. See infra Parts II & III.
11. See infra Part IV.
13. See infra Part IV.
14. See infra Part IV.
16. Eviction hearings must be held within three to fifteen days after service upon a tenant. N.D. CENT. CODE § 47-32-02 (2015). As a practical matter, it may difficult, if not impossible, to receive an order waiving filing fees prior to the eviction hearing.
17. See infra Part V.
18. See infra Part V.
20. See infra Part V.
21. See infra Part V.
22. DESMOND, supra note 1, at 303.
With so many obstacles stacked against them, many tenants feel they do not stand a chance at avoiding eviction and choose not to appear at the hearing.\textsuperscript{23} The high rate of default judgments against tenants has created an eviction mill. Eviction court has often become a cattle call with an assembly line stamping eviction orders in favor of landlords.\textsuperscript{24}

If tenants do show up to court, they face an uphill battle.\textsuperscript{25} Tenants’ ability to present defenses and counterclaims to landlords’ claims for eviction are substantially limited by statute.\textsuperscript{26} In addition, eviction hearings are usually scheduled for a short block of time, usually thirty minutes. As a result, tenants are often unable to thoroughly present evidence in support of their defense. Tenants’ due process rights in eviction actions are greatly constricted in favor of a summary process for the benefit of landlords.

Solutions to the eviction epidemic must focus on the root causes giving rise to the problem. This Article argues the root cause of the eviction epidemic is archaic eviction laws. Archaic eviction laws are not fit for application to modern residential tenancies.\textsuperscript{27}

\section*{II. ORIGINS OF EVICTION LAWS}

Modern eviction laws are rooted in English common law and early forcible entry and detainer statutes.\textsuperscript{28} Part II will begin by discussing the development of eviction through the English common law. It will then explain the codification of English common law. Lastly, Part II will discuss the application of English common law in forming and codifying American common law.\textsuperscript{29}

\subsection*{A. ENGLISH COMMON LAW}

Eviction laws began to develop in England during feudalism dating back to the Norman Conquest in 1066.\textsuperscript{30} Feudalism was a type of land
ownership system. The king owned the land, which he granted to lords as his tenants. Lords granted land to lesser tenants. At the bottom of the hierarchy were peasants, known as serfs, who tilled the land. Each tenant owed obligations to the immediately superior tenant or lord. A tenant’s landholding position within the hierarchy determined the tenant’s social status.

Eviction law originated as a hodgepodge of personal and real property law. The landlord-tenant relationship was based on a conveyance of a right to possess property. The landlord had two obligations. First, the landlord had to deliver possession of the property to the tenant. Second, the landlord had to provide the tenant quiet enjoyment of the property. The tenant was obligated to pay rent.

Unlike modern contractual notions of mutual covenants, the landlord’s obligations were independent of the tenant’s obligations. A tenant was required to pay rent regardless of the condition of the property. For example, the tenant’s obligation to pay rent continued even if the tenant lived with rats, roaches, raw sewage, or the domicile burned down. Similarly, if a tenant signed a lease and moved out during the term, the landlord could leave the property vacant and continue to recover rent from the tenant during the term. The landlord had no duty to mitigate the damages incurred by the tenant’s abandonment during the term. Essentially, “at common law the tenant had but one right – the right to pay rent.”

31. Sullivan, supra note 30, at 1291 n.25.
32. Id.
33. Id. “The word ‘estate’ is of feudal origin and derived from the Latin word ‘status.’” Id. at 1292 n.31 (quoting CORNELIUS J. MOYNIHAN & SHELDON F. KURTZ, INTRODUCTION TO THE LAW OF REAL PROPERTY 33 (3d ed. 2002)).
34. It is disputed among practitioners when contract law became a part of landlord-tenant law. Glendon, supra note 28, at 504.
35. Sullivan, supra note 30, at 1293.
36. Id. at 1294.
37. Id.
38. Id.
39. Id.
40. Id.
41. Sullivan, supra note 30, at 1294-95. A tenant could enforce the right to quiet enjoyment of the property regardless of whether rent had been paid on time and the landlord had no automatic right to recover possession of the property. Id. at 1294 n.49 (citing 1 MILTON R. FRIEDMAN, FRIEDMAN ON LEASES § 1.1, at 3 (4th ed. 1997)).
42. Id. at 1294-95.
43. Id. at 1287 (citing MOYNIHAN & KURTZ, supra note 33, at 94; FRIEDMAN, supra note 41).
44. Id. at 1295 (quoting MOYNIHAN & KURTZ, supra note 33, at 94).
B. CODIFICATION OF ENGLISH COMMON LAW

Prior to 1381, it was common for a person’s possession of real property to be taken forcibly by another person. In fact, up until 1166, no legal protection of possession of property existed. In 1166, King Henry II created a summary remedy for possession of real property, known as “assize of novel disseisin.” The purpose of the law was to prevent violence between a party in possession and the party seeking possession of real property. The law allowed, but did not require, a party who had been dispossessed of his tenement to regain possession by judgment of the court.

By the late fourteenth century, the remedy had become complicated and lengthy with highly formalized and technical pleading requirements. As a result, parties began bypassing the law and reverting back to self-help measures to regain possession of the property and violence ensued. In response, King Richard II adopted a statute titled the Forcible Entry Act of 1381. The Act made it a crime for a person to forcibly enter another’s property. However, the law did not create a civil right of action for tenants wrongfully deprived of possession of the property.


47. Gerchick, supra note 46; see also Spector, supra note 30, at 141-42 & n.14 -15 (citing Plucknett, supra note 30, at 358-59); see also Nogues Jr., supra note 45, at 1068. The remedy of novel disseisin did not require personal service or formal pleadings. Nogues Jr., supra note 45, at 1068 n.10. The only question before the jury was “whether the complaining party was dispossessed” or dispossessed of the property unjustly. Id. The remedy allowed recovery of both damages and possession. Id.

48. Gerchick, supra note 46; Nogues Jr., supra note 45, at 1068 (citing Pike, supra note 45, at 247-51).

49. Gerchick, supra note 46, at 773-74.


51. Gerchick, supra note 46, at 774.

52. Id.; Spector, supra note 30, at 150-51; see also Nogues Jr., supra note 45, at 1070. The Act provided:

And also the King defendeth, That none from henceforth make any entry into any lands and tenements but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. (2) And if any man from henceforth do to the contrary and therefore be duly convect, he shall be punished by imprisonment of the body, and thereof be ransomed at the King’s will.

Nogues Jr., supra note 45, at 1070 n.13 (quoting Forcible Entry Act 1381, 5 Rich. II, c. 7 (Eng.)). Many have considered the Act key to protection of possession, giving rise to the old saying that “possession is nine points of the law.” Id. (quoting Goffin v. McCall, 108 So. 556, 558 (Fla. 1926)).

53. Gerchick, supra note 46, at 774-75.
A series of forcible entry statutes were passed in 1391, 1402, 1429, and 1623. These statutes attempted to fill in gaps in the law.\(^{54}\) The Forcible Entry Act of 1429 provided a civil remedy in all cases of forcible entry and/or forcible detainer to restore the aggrieved party to possession.\(^{55}\) However, the Act was only applicable if the complainant claimed a freehold interest in the real property.\(^{56}\)

In the 1490s, England made its first tentative steps toward establishing a presence across the ocean.\(^{57}\) In 1607, a colony was founded at Jamestown, Virginia.\(^{58}\) English common law was applied in British colonies.\(^{59}\)

\section*{C. Codification of American Common Law}

In 1776, the United States declared its independence from Great Britain.\(^{60}\) The states and territories largely adopted English common law.\(^{61}\) Territories settled by other countries, such as France or Spain, adopted laws of their countries of origin.\(^{62}\) Upon acquisition of territories by the United States, the common law was substituted.\(^{63}\) However, elements of civil law remain in some states.\(^{64}\)

Pursuant to English common law, landlords were allowed to use self-help to forcibly enter and remove a tenant from real property.\(^{65}\) Landlords’ use of the self-help remedy led to disputes and violence between landlords and tenants.\(^{66}\) The application of the English common law in the United States created the same problems sought to be remedied by previously codified English statutes.\(^{67}\)

Initially, landlord-tenant common law developed mostly through case law. In the nineteenth century, states began enacting statutes to supplement

\(^{54}\) Nogues Jr., supra note 45, at 1070, 1070 n.14 (citing Forcible Entry Act 1391, 15 Rich. II, c. 2 (Eng.); Forcible Entry Act 1402, 4 Hen. IV, c. 8 (Eng.)).

\(^{55}\) Id. (citing Forcible Entry Act 1429, 8 Hen. VI, c. 9 (Eng.)).

\(^{56}\) Id.


\(^{58}\) Id.

\(^{59}\) Richard C. Dale, The Adoption of the Common Law by the American Colonies, 30 AM. L. REG. 553, 553-54 (1882).

\(^{60}\) THE DECLARATION OF INDEPENDENCE para. 31 (U.S. 1776).

\(^{61}\) Dale, supra note 59, at 572-73.

\(^{62}\) Id. at 570.

\(^{63}\) Id.

\(^{64}\) Id. at 571.

\(^{65}\) Gerchick, supra note 46, at 776.

\(^{66}\) Id. at 775 n.69, 776 (citing Lindsey v. Normet, 405 U.S. 56, 71 (1972) (quoting Entelm v. Hagood, 22 S.E. 545, 545 (Ga. 1895)); see also Spector, supra note 30, at 155.

\(^{67}\) See supra Part II.B.
the common law.\textsuperscript{68} Common law remains the bedrock of eviction. In the absence of statutory authority, courts adopt common law principles and apply them to modern landlord-tenant leases.\textsuperscript{69}

A majority of states, either by case law or statute, prohibit a landlord from using self-help, and they require a landlord to invoke the judicial process to evict a tenant.\textsuperscript{70} Most statutes are called forcible entry, forcible detainer, or forcible entry and detainer.\textsuperscript{71} Most state statutes only provide a civil remedy.\textsuperscript{72}

Today, landlord-tenant law “has matured into a ‘complex multidisciplinary’” area of law.\textsuperscript{73} Laws have been implemented at local, state, and federal levels.\textsuperscript{74} Landlord-tenant law now encompasses health and safety regulations, consumer law, fair debt collection practices, contract law, fair credit reporting laws, business law, and protections from discrimination.\textsuperscript{75} The New York Supreme Court has described landlord-tenant law as a “‘patchwork’ of legislation that has responded to decades of social, economic and political pressure . . . an ‘impenetrable thicket confusing not only to laymen but to lawyers.’”\textsuperscript{76}

III. HISTORY OF NORTH DAKOTA EVICTION LAW

North Dakota law originated from a civil code written by David Dudley Field.\textsuperscript{77} The civil code is known as the Field Code.\textsuperscript{78} Part III will begin by discussing the development of the Field Code. Next, it will review the Field Code’s application to North Dakota. Part III will then analyze the evolution of the Field Code in North Dakota since the 1800s.\textsuperscript{79}

\textsuperscript{68} Glendon, supra note 28, at 504.
\textsuperscript{69} Sullivan, supra note 30, at 1295.
\textsuperscript{70} Gerchick, supra note 46, at 777.
\textsuperscript{71} Nogues Jr., supra note 45, at 1076 n.45. Some state statutes are called unlawful entry or unlawful detainer acts. \textit{Id.}
\textsuperscript{72} Id. at 1077. Prior to 1973, North Dakota provided both criminal and civil remedies. \textit{Id.} at n.50. Currently, North Dakota only provides a civil remedy. \textit{Id.}
\textsuperscript{73} Gerchick, supra note 46, at 762.
\textsuperscript{74} Andrew Scherer, Gideon’s Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings, 23 HARV. C.R.-C.L. L. REV. 557, 570 (1988).
\textsuperscript{75} Gerchick, supra note 46, at 762; Scherer, supra note 74, at 569-70.
\textsuperscript{76} Scherer, supra note 74, at 571 n.58 (citing La Guardia v. Cavanaugh, 423 N.E.2d 9, 10 (N.Y. 1981) (quoting In re 89 Christopher, Inc. v. Joy, 318 N.E.2d 776, 780 (N.Y. 1974))).
\textsuperscript{77} Maurice E. Harrison, First Half-Century of the California Civil Code, 10 CALIF. L. REV. 185, 186 (1922).
\textsuperscript{78} Id.
\textsuperscript{79} See infra Part III.
A. ENACTMENT OF THE CIVIL CODE

In 1839, Field began lobbying to adopt a “systematic and accessible form of the common law” modified to fit American conditions. In 1850, the New York Legislature appointed a commission to draft a substantive civil code. The commission reported to the legislature that it opposed the project. In 1857, the legislature appointed a new commission, including Field. The commission presented a final draft of a civil code to the New York Legislature in 1865. The legislature took no action on it at that time. Thirteen years later, in 1878, Field persuaded the New York Legislature to pass the drafted civil code. However, the governor vetoed it because of state bar leaders’ strong opposition. Field continued to advocate for the adoption of the civil code. In 1887, New York finally rejected the proposed civil code.

The Field Code was rejected by older states that developed under different conditions, but was welcomed and adopted by frontier communities and young states without settled local legal traditions. Before 1900, the Field Code had been adopted by five western states. The Dakota Territory adopted nearly an exact copy of the Field Code in 1865.

B. EVOLUTION OF THE FIELD CODE

The Field Code codified eviction common law. Since its adoption in the Territory of Dakota, it has been amended and re-enacted numerous times. The law has undergone several important changes since 1865. In 1895, the law was expanded to provide a claim for rents, profits, and damages. The statutory language has been updated to be more easily under-

80. Harrison, supra note 77, at 186.
81. Id.
82. Id.
83. Id. at 186-87.
84. Id. at 187.
85. Id.
86. Harrison, supra note 77, at 187.
87. Id.
88. Id.
89. Id.
90. Id.
91. Id.
92. CLEMENT A. LOUNSBERRY, EARLY HISTORY OF NORTH DAKOTA 448 (2d ed. 1919); see also R.C. TERR. D. 1877 iv (1883).
94. See infra Part III.B.
95. See infra Part III.B.-C.
96. N.D. REV. CODE §§ 6677-6680 (1895).
stood. The hearing timeframes have been lengthened. The service requirements have been amended on more than one occasion. Additional eviction grounds have been added. The timeframe for restitution of the property has been shortened.97

1. Revised Code of the Territory of Dakota of 1877

In 1875, a commission was appointed in the Dakota Territory to revise the Code.98 The commission relied heavily on California’s amendments to the Code in 1874.99 The revisions adopted in 1877 were in large part from California.100 Accordingly, California Supreme Court decisions construing the provisions of the Code are highly persuasive.101

The eviction statute codified in the Revised Code of 1877 stated a justice of the peace within the proper county had power to hear all cases of forcible entry and detainer.102 An eviction action could be commenced under any of six statutory grounds:

1. Where a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property of another, and detains the same; or,

2. Where a party, after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in possession; or,

3. Where he by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

4. Where a lessee in person or by sub-tenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due; or,

5. Where a party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed; or,

97. See infra Part III.B.-C.
98. LOUNSBERY, supra note 92, at 448; see also TERR. D. REV. CODE 1877 iv (1877).
99. LOUNSBERY, supra note 92, at 448.
100. Id.
101. Id. at 449.
102. TERR. D. REV. CODE 1877, JUSTICES’ CODE, Ch. 1, Art. VII, § 33, p. 617 (1877).
6. Where a party continues in possession after a judgment in partition, or after a sale under an order or decree of a probate court.\textsuperscript{103}

In all cases arising under subsections 4, 5, or 6, including holdover after termination of lease and nonpayment of rent, a landlord was required to provide a tenant three days’ written notice to quit before proceedings could be instituted.\textsuperscript{104} The notice could, but was not required to, be served and returned like a summons.\textsuperscript{105} A hearing was required to be held no less than two and no more than four days from the date the summons was served on the defendant.\textsuperscript{106} No continuances were allowed for longer than five days, unless the defendant paid the plaintiff a surety for the payment of rent and costs in the event a judgment was rendered against the defendant.\textsuperscript{107}

An action could not be brought in connection with any other action.\textsuperscript{108} The only relief available in an eviction judgment was possession and costs.\textsuperscript{109} A writ of execution to take repossession of the property could only be served in the daytime.\textsuperscript{110}

2. \textit{Revised Code of North Dakota of 1895}

In 1889, the Dakota Territory was divided into two states, North and South Dakota.\textsuperscript{111} The North Dakota Legislative Assembly determined it was necessary to revise the code a second time to harmonize it with the newly adopted North Dakota Constitution.\textsuperscript{112} The Revised Code of 1895 amended the statutory provision prohibiting joinder of claims to allow claims for possession to be accompanied with claims for rents and profits or damages accruing by the defendant’s possession.\textsuperscript{113} The amendment allowed counterclaims to set-off claims for rents, profits, or damages.\textsuperscript{114}

\begin{flushright}
\textsuperscript{103} \textit{Id.} § 34.  \\
\textsuperscript{104} \textit{Id.}  \\
\textsuperscript{105} \textit{Id.} § 35.  \\
\textsuperscript{106} \textit{Id.}  \\
\textsuperscript{107} \textit{Id.} § 38.  \\
\textsuperscript{108} \textit{See} \textit{Terr. D. Rev. Code 1877, supra} note 103, § 40.  \\
\textsuperscript{109} \textit{Id.} § 39.  \\
\textsuperscript{110} \textit{Id.} § 40.  \\
\textsuperscript{111} \textit{Lounsberry, supra} note 92, at 449-50.  \\
\textsuperscript{112} \textit{Id.}  \\
\textsuperscript{113} \textit{N.D. Rev. Code, supra} note 96.  \\
\textsuperscript{114} \textit{Id.}  \\
\end{flushright}
3. 1983 North Dakota Century Code Amendments

Eviction law remained substantively unchanged until 1983. At that time, the Legislative Assembly made three important amendments to the eviction law. The first amendment changed the language of the forcible detainer statute to be more easily understood. The term forcible detainer was changed to eviction. The term notice to quit was changed to notice of intention to evict.

Second, the time frame within which a hearing must be held was lengthened. The amendment required the defendant to be served at least three, as opposed to two, days prior to the date of the required hearing. In addition, the amendment increased the allowable length of time between the date of service and the hearing. The amendment allowed a hearing to be held up to a maximum of fifteen, as opposed to four, days after service.

Third, the Legislative Assembly added a provision stating the time limit for service upon a tenant was based on the tenant’s location within or outside the county. The amendment stated a summons served to a defendant in person within the county must be made at least three days before the time fixed for the hearing. Service outside the county or in any other mode must be made at least seven days before the time fixed for the hearing.

4. 1991 North Dakota Century Code Amendments

In 1991, House Bill 1481 was introduced in the House Judiciary Committee seeking to add a provision to the eviction law allowing a sheriff to post the notice of intention to evict if the tenant could not be found. Joe Farrell of the North Dakota Apartment Association spoke in support of the bill. Farrell stated tenants do not always pick up certified mail or are delib-
erately unavailable for service.\textsuperscript{125} At the time, the eviction process took up to sixty days.\textsuperscript{126} It was thought that a sheriff’s posting of the notice would speed up the process.\textsuperscript{127} The Sheriff and Deputy Association of Fargo also testified in support of the bill stating it is hard to serve the notices because people are hard to find.\textsuperscript{128} House Bill 1481 overwhelmingly passed the Legislative Assembly.\textsuperscript{129}

The same year, House Bill 1486 was introduced to add a statutory ground allowing landlords to commence eviction actions against tenants for disturbing other tenants’ peaceful enjoyment of the premises.\textsuperscript{130} Representative Rick Berg introduced the bill on the basis that it protects tenants’ rights.\textsuperscript{131} Originally, the bill did not limit the scope of what constituted disturbances to tenants’ peaceful enjoyment of the premises.\textsuperscript{132} The original bill was defeated in the House.\textsuperscript{133}

However, the bill was amended to require the disturbance to be unreasonable, and it was then passed.\textsuperscript{134} As codified, a landlord could commence an eviction action to recover possession of the property when “[a] lessee or a person on the premises with the lessee’s consent acts in a manner that unreasonably disturbs other tenants’ peaceful enjoyment of the premises.”\textsuperscript{135}

\section{5. 1995 North Dakota Century Code Amendments}

In 1995, House Bill 1340 was introduced to add a statutory ground allowing a landlord to commence an eviction action for material breach of lease.\textsuperscript{136} Mary Larson, with the North Dakota Apartment Association, testified that landlords have problems with tenants who materially breach the lease for reasons such as drugs or unauthorized pets, but are unable to evict for such reasons.\textsuperscript{137} Legal Assistance of North Dakota (LAND) testified in opposition to the bill. LAND argued the bill would escalate the number of

\begin{footnotesize}
\begin{enumerate}
\item 126. Id.
\item 127. Id.
\item 128. Id.
\item 130. 1991 N.D. LAWS 1150.
\item 131. \textit{Hearing on H.R. 1481 Before the H. Jud. Comm.}, supra note 125.
\item 132. Id.
\item 133. Id.; \textit{Hearing on H.R. 1481 Before the S. Jud. Comm.}, supra note 129.
\item 135. 1991 N.D. LAWS 1150.
\item 136. 1995 N.D. LAWS 1015.
\end{enumerate}
\end{footnotesize}
landlord-tenant disputes and evictions over whether tenants actually violated a “material” term of a lease agreement.\textsuperscript{138}

The bill passed the House Committee unanimously.\textsuperscript{139} The bill passed the Senate with three votes in favor and two votes opposed.\textsuperscript{140} The added provision allowed a landlord to commence an eviction action to recover possession of the property when “[t]he lessee violates a material term of the written lease agreement between the lessor and lessee.”\textsuperscript{141}

When an eviction was commenced for material breach of lease, a notice of intention to evict was required to be given to a tenant before proceedings could be instituted.\textsuperscript{142} The notice of intention to evict requirement replaced the common law requirement of demand for payment and tender of rent due by a tenant within three days after service of the notice.\textsuperscript{143} Payment within three days abated the landlord’s forcible detainer action for failure to pay rent.\textsuperscript{144} A court acquired jurisdiction to determine an eviction action by service of the notice.\textsuperscript{145}

House Bill 1340 also proposed to allow a process server to post the notice of intention to evict upon the premises.\textsuperscript{146} Dick Peck, with the Peace Officers Association, testified in support of the amendment. Peck stated officers generally do not work after five or six in the evening making it difficult to serve people.\textsuperscript{147} He indicated it would be helpful to peace officers to allow notices to be served by process servers.\textsuperscript{148} The bill passed the Legislative Assembly.\textsuperscript{149}

\textbf{6. 1997 North Dakota Century Code Amendments}

In 1997, House Bill 1345 was introduced to broaden service requirements of a summons in an eviction action.\textsuperscript{150} The language of the proposed

\begin{flushleft}
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.; Hearing on H.R. 1340 Before the S. Jud. Comm., 1995 Leg., 54th Assemb. (N.D. 1995).
\textsuperscript{141} N.D. CENT. CODE § 33-06-01(7), (8) (1996).
\textsuperscript{142} Id., see also N.D. CENT. CODE § 33-06-02.
\textsuperscript{143} Goodman Inv., Inc. v. Swanston Equip. Co., 299 N.W.2d 786, 789 (N.D. 1980).
\textsuperscript{144} Id. at 789-90.
\textsuperscript{145} McLain v. Nurnberg, 16 N.D. 144, 147, 112 N.W. 243, 244 (1907) (The filing of the notice is not a jurisdictional pre-requisite to commencement of an eviction action); Cary v. Kautzman, 78 N.D. 875, 879, 53 N.W.2d 99, 101 (1952).
\textsuperscript{146} 1995 N.D. LAWS 1015.
\textsuperscript{147} Hearing on H.R. 1340 Before the H. Jud. Comm., supra note 137.
\textsuperscript{148} Id.
\textsuperscript{149} See 1995 N.D. LAWS 1015.
\end{flushleft}
provision was based on Minnesota law. The proposed provision, known as Nail and Mail, allowed a summons to be served by posting when a defendant could not be found. Gregory Thompson, President of the North Dakota Apartment Association, testified in support of the bill. Mr. Thompson testified, “people are getting smart to the process and when they know they are going to be evicted, they purposely hide.” There was no testimony on behalf of tenants. There was very little committee discussion on the topic. The provision passed both the House and Senate unanimously. The provision as implemented read:

If the person cannot be found in the county, of which the return of the sheriff or process server is prima facie proof, and service has been attempted at least once between the hours of 6:00 p.m. and 10:00 p.m. upon the filing of an affidavit of the plaintiff or the plaintiff’s attorney stating that the defendant cannot be found or on belief that the defendant is not in this state and a copy of the summons has been mailed to the defendant’s last known address if any is known to the plaintiff, service of the summons may be made upon the defendant by the sheriff or process server posting the summons upon the door of the residential unit.

Another bill, House Bill 1343, was introduced to amend the time in which a landlord received restitution of possession of the property. At that time, courts could order the eviction be stayed for up to ten days. Thompson testified “the 10 day stay does not benefit anyone,” and “there is no reason that the resident should be allowed to remain for an additional ten

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151. Id.
152. Id.
day period,” even though he admitted that thirty to forty percent of eviction cases were contested. There was no testimony on behalf of tenants. There was very little committee discussion on the topic. House Bill 1343 was passed unanimously. The new provision read:

If the court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship on the defendant or the defendant’s family, except in cases in which the eviction judgment is based in whole or in part on a disturbance of the peace, the court may stay the special execution for a reasonable period, not to exceed five days.

C. CURRENT NORTH DAKOTA CENTURY CODE

Eviction law today is substantially similar to the code as it was adopted in 1877, with the exception of a handful of important additions and amendments over the last 150 years. For example, the provision requiring a landlord to provide the tenant a three-day notice of intention to evict before proceedings can be instituted has been in effect since 1877. In addition, the limit on claims and counterclaims has remained unchanged since 1895.

The law underwent most of its substantive amendments in the 1990s. The service of the notice of intention to evict by the sheriff has been in effect since 1991 and a process server since 1995. The sheriff or process server has been able to post the summons and complaint since 1997. The

168. Eviction law was codified in Century Code Chapter 33-06, but effective August 1, 2009, the eviction law has been re-codified in Chapter 47-32 without substantial change. See 2009 N.D. LAWS 1-6.
immediate possession requirement and hardship exception has been in place since 1997.\textsuperscript{171}

Even though North Dakota eviction law is substantially similar to the code adopted in 1877, landlord-tenant relationships and social and economic circumstances have materially changed.\textsuperscript{172} Eviction law amendments have failed to protect tenants from landlords’ health and safety violations, substandard conditions, and excessive cost. Eviction law amendments have not only failed to protect tenants, but may have also exacerbated due process violations of tenants’ rights and procedural and substantive bias in the law.\textsuperscript{173}

IV. UNINTENDED CONSEQUENCES: APPLICATION OF ARCHAIC LAWS TO MODERN LANDLORD-TENANT RELATIONSHIPS

Laws are implemented to provide relief from a wrong as it is recognized at the time. Society is continually changing and evolving. Therefore, a law may no longer properly apply to changed circumstances. Changes to the law are often spurred by movements arising out of egregious societal problems, such as health and safety, excessive cost, the eviction mill funnel, other far reaching effects, and North Dakota’s economic environment.\textsuperscript{174}

A. HEALTH AND SAFETY

Historically, landlords did not have a duty to provide services and maintain and repair rental property.\textsuperscript{175} The purpose of a lease was not related to subsistence or shelter.\textsuperscript{176} Rather, at that time, most leases were for the purpose of cultivating farmland.\textsuperscript{177} Tenants did not expect services from landlords.\textsuperscript{178} Tenants had the necessary skills to make repairs themselves.\textsuperscript{179} Thus, the common law was likely appropriate for landlord-tenant relationships at the time.\textsuperscript{180}

\textsuperscript{172} See infra Part IV.
\textsuperscript{173} See infra Part IV.
\textsuperscript{174} See infra Part IV.A.
\textsuperscript{175} Sullivan, supra note 30, at 1294.
\textsuperscript{176} Glendon, supra note 28, at 505.
\textsuperscript{177} Sullivan, supra note 30; see also Glendon, supra note 28, at 506.
\textsuperscript{178} Sullivan, supra note 30.
\textsuperscript{179} Id.
\textsuperscript{180} Id. at 1295.
The Industrial Revolution led to an unprecedented movement of people from rural areas to cities.\footnote{181 LIBRARY OF CONGRESS, THE INDUSTRIAL REVOLUTION IN THE UNITED STATES – TEACHER’S GUIDE, https://www.loc.gov/search?new=true&q=industrialrevolution.} In cities, tenants would rent a portion of a building in which to reside, rather than a lot of land to farm.\footnote{182 Sullivan, supra note 30, at 1295.} The tremendous influx of people into cities for manufacturing employment created a housing shortage. Many people lived in slums with sewage in the streets and contaminated water, resulting in widespread disease.\footnote{183 LIBRARY OF CONGRESS, supra note 181.}

Courts applied the outdated eviction law to urban leases.\footnote{184 Sullivan, supra note 30.} Court decisions created unfair and sometimes absurd results, which in part led to the Progressive Movement to create health and safety laws to protect people through legislation.\footnote{185 Id.} In turn, landlords became obligated to provide hot water, garbage removal, and property repair and maintenance.\footnote{186 Id. at 519.}

Over time, public involvement in landlord-tenant law increased beyond health and safety regulations.\footnote{187 Id. at 510.} In the 1930s, the federal government began becoming actively involved in housing.\footnote{188 Id. at 510.} In 1949, Congress adopted a housing act founded on the national policy that “every American family” should have a “decent home and suitable living environment.”\footnote{189 Id. at 519.} In the 1960s, state governments followed suit.\footnote{190 Id. at 510.} Today, numerous laws exist on local, state, and federal levels to regulate housing.

The law provides more tenant protections than ever before. In turn, the law requires landlords to comply with more regulations than ever before. Even so, the law overlooks key aspects of modern landlord-tenant relationships and socio-economic factors that are major contributors to eviction.\footnote{191 See DESMOND, supra note 1, at 296-308.}

B. EXCESSIVE COST

Today, “the primary housing problem in the United States . . . is not substandard conditions, but inadequate income” and excessive cost.\footnote{192 Glendon, supra note 28, at 564, 566, 567.} According to one economic policy editor, “[i]t’s the worst time in 36 years to
be a renter in America.”193 The average cost of rental housing continues to increase.194 On the other hand, the average tenant household income has decreased.195 High rental costs were once a problem thought to be specific to low-income tenants.196 Now, the problem seems to be a “mainstream tenant experience.”197

In 2014, nearly half of all tenants spent more than thirty percent of their income on housing.198 The number of tenants who are cost-burdened nation-wide increased to a new high of 21.3 million.199 Nearly eighty-four percent of tenants with incomes below $15,000 were cost-burdened.200 Over seventy-seven percent of tenants with incomes between $15,000 and $30,000 were cost-burdened.201 Over half of tenants with incomes between $30,000 and $45,000 were cost-burdened.202

There is not enough affordable housing available for low-income tenants, especially in the private market.203 From 2007 to 2013, the number of very low-income households nation-wide increased eighteen percent.204 In 2013, there were 7.2 million affordable units to house 11.1 million extremely low-income tenants.205 Despite the obvious need for affordable housing, the largest subsidized housing programs are funded below 2008 levels.206 Rent burdened and low-income families must often accept substandard housing.207 Housing quality issues are more prevalent in lower cost units.208

195. Id.
196. Pyke, supra note 193.
197. Id.
198. JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, supra note 194, at 4.
199. Id. Tenants are considered cost-burdened if they pay more than thirty percent of their income for rent.
200. Id. at 5.
201. Id.
202. Id.
203. Id. at 31.
204. JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, supra note 194, at 31.
205. Id. at 29.
206. Id. at 31.
207. DESMOND, supra note 1, at 297.
208. JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, supra note 194, at 27.
Low-income families are living in apartments they cannot afford. The crux of the problem is that “those apartments are already at the bottom of the market.” Housing has become unaffordable leading to evictions at unprecedented rates.

C. EVICTION MILL FUNNEL

Tenants are funneled through eviction court like a factory mill. It is often described as a one-sided process in favor of landlords. A judge who has observed housing courts around the country determined if “fairness, effectiveness and sensitivity are equated with justice, then injustice is the norm.” Tenant attorneys often perceive eviction court as “a standing wave [sic] of due process violations.”

United States Supreme Court Justice, William Douglas, aptly described eviction by stating:

Summary eviction proceedings are the order of the day. Default judgments in eviction proceedings are obtained in machinegun rapidity, since the indigent cannot afford counsel to defend. Housing laws often have a built-in bias against the poor. Slumlords have a tight hold on the Nation.

Problems in eviction are many. Eviction is procedurally and substantively biased against tenants. Pro se court forms intended to help unrepresented litigants are only available for landlords. Hearings are brief, perhaps only a few minutes. Eviction cases are often lumped together in one time slot to be heard and signed off like a cattle call. Many courts simply fail to apply the law. “Landlords are not required to bear the burden of proof.” Tenant defenses are not recognized. Federal protections for tenants in subsidized housing are overlooked.

209. DESMOND, supra note 1, at 299.
210. See infra Part IV.C.
211. Hartman, supra note 4, at 478.
212. Id. (citing Scherer, supra note 74, at 573).
216. Hartman, supra note 4, at 480.
217. DESMOND, supra note 1, at 304.
218. Hartman, supra note 4, at 479, 480.
219. Id. at 479.
A majority of tenants are not represented by legal counsel in eviction actions. A 1993 study in New York City found that 11.9 percent of tenants were represented in eviction actions as opposed to 97.6 percent of landlords. A 2003 study of New York City found similar results. A 1997 Los Angeles study found only 4 percent of tenants were represented. In 1996, a Chicago study found 5 percent of tenants and 69 percent of landlords were represented in court. A 1991 Berkeley California study found 20.4 percent of tenants as opposed to 83.4 percent of landlords were represented by counsel. Lastly, a 1995 Hartford Connecticut study found 16 percent of tenants, in contrast to 85 percent of landlords, were represented.

Many studies have shown that tenants who have representation fare better in court than those without representation. Unrepresented tenants are no match against landlords’ attorneys in court and are generally unsuccessful. Without legal representation, tenants do not have meaningful access to courts. Tenants need legal representation in order to navigate complex landlord-tenant laws.

The effects of imbalanced landlord-tenant relationships, excessive housing costs, and unfair eviction procedures are alarming. However, those effects are just the tip of the iceberg. The effects of eviction have devastating consequences for individuals and children, causing damage to the intricate fabric of our society.

220. Id. at 480.
221. Id. at 479.
222. Id. at 476.
223. Id. at 477 (citing COMMUNITY TRAINING AND RESOURCE CENTER AND CITY-WIDE TASK FORCE ON HOUSING COURT, INC., HOUSING COURT, EVICTIONS, AND HOMELESSNESS: THE COSTS AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL (N.Y. 1993)).
225. Id. (citing BLUE RIBBON CITIZENS’ COMMITTEE ON SLUM HOUSING, THE SLUM HOUSING PROBLEM IN LOS ANGELES AND THE DEPARTMENT OF BUILDING AND SAFETY (1997)).
226. Id. (citing LISA PARSONS CHADHA, LAWYERS COMMITTEE FOR BETTER HOUSING, INC., TIME TO MOVE: THE DENIAL OF TENANTS’ RIGHTS IN CHICAGO’S EVICTION COURT (1996)).
227. Id. (citing REBECCA HALL, EAST BAY COMMUNITY LAW CENTER, EVICTION PREVENTION AS HOMELESSNESS PREVENTION: THE NEED FOR ACCESS TO LEGAL REPRESENTATION FOR LOW-INCOME TENANTS (1991)).
228. Id. at 477-78 (citing RAPHAEL L. PODOLSKY & STEVEN O’BRIEN, A STUDY OF EVICTION CASES IN HARTFORD: A FOLLOW-UP REVIEW OF THE HARTFORD HOUSING COURT, HARTFORD, CT: LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, INC. (1995)).
229. Id. at 477 (citing Scherer, supra note 74, at 557).
230. Hartman, supra note 4, at 477.
231. Id.
232. Id.
233. See infra Part IV.D.
D. FAR REACHING EFFECTS

The effects of eviction have been consistently overlooked because society has, and continues to, fixate on what low-income individuals lack, rather than external factors that contribute to poverty. Society conveniently ignores the fact that landlords financially exploit tenants, particularly rent burdened and low-income tenants. Exploitation thrives off of individuals’ necessities, such as housing and food.

Studies show low-income families tend to move often. Previously, experts could not discern the cause of such frequent moves. Recent studies of eviction data indicate low-income families most likely move frequently because they are involuntarily displaced through eviction or self-help methods. Studies have found that absent involuntary displacement, low-income families move at a similar rate to others. Eviction or involuntary displacement is a leading cause of homelessness. “[E]viction proceedings threaten not only a tenant’s ability to remain in the same dwelling or community, but often his access to any shelter at all.”

Congress has recognized homelessness as a national problem and attempted to ameliorate the issue with federally-subsidized housing programs. However, eviction may affect tenants’ eligibility for federal housing assistance. Public housing authorities consider a tenant’s rental history and unpaid debts owed to landlords in considering housing applications. The eligibility rules and policies may have the effect of denying rental assistance to those who need it the most. Those tenants must find low cost private housing that likely does not comply with health and safety standards, live on the street, enter a homeless shelter if any beds are available, or temporarily stay with friends or family.

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234. DESMOND, supra note 1, at 306.
235. Id.
236. Id.
237. Id. at 296.
238. Id.
239. Id. at 296; ENTERPRISE COMMUNITY PARTNERS, INC., RESEARCH SUMMARY: IMPACT OF AFFORDABLE HOUSING (2014).
240. DESMOND, supra note 1, at 296.
241. Hartman, supra note 4, at 468; see also Scherer, supra note 74, at 564-65.
242. Scherer, supra note 74, at 565.
243. Id. at 566 (citing HOMELESS PERSONS’ SURVIVAL ACT, H.R. 5048, 99th Cong., 2d Sess. (1986)).
244. DESMOND, supra note 1, at 297; see Hartman, supra note 4, at 469, 474.
245. DESMOND, supra note 1, at 297.
246. Id.
247. See generally id.; see Scherer, supra note 74, at 582.
Eviction profoundly impacts individuals in every aspect of their lives. Eviction may affect an individual’s employment, physical health, emotional and mental health, and their children’s education and ability to learn. Tenants who are evicted are fifteen percent more likely to be laid off from work. The stress and time consumption associated with involuntary displacement negatively affects tenants’ work performance.

Tenants who are evicted are more likely to experience other forms of hardship. They are more likely to experience hunger because they cannot afford to purchase food after they pay the rent and after they have used their allotted food stamps and monthly food pantry allowances. In addition, tenants are more likely to experience sickness because they cannot afford or access medical care. Moreover, tenants are more likely to live in a unit without heat, electricity, or telephone services because they cannot afford utilities in addition to rent or food.

Eviction is a traumatic experience that also affects an individual’s mental health. Psychiatrists have described eviction as a rejection or denial of an individual’s basic human need for housing and a shameful experience. Eviction can cause depression and is considered a “significant precursor to suicide.”

Low-income families who are involuntarily displaced frequently lose possession of their personal property, such as furniture, clothing, and household goods because they are unable to physically move their property, pay to store it, or they have no new home in which to place it. Landlords often dispose of tenants’ belongings by putting them on the curb for garbage pickup, selling them, or keeping them. Meanwhile, the tenants may lose everything they own every time they are evicted or involuntarily displaced.

248. DESMOND, supra note 1, at 295; Hartman, supra note 4, at 468.
249. DESMOND, supra note 1, at 296-97; see also ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
250. DESMOND, supra note 1, at 296; see Hartman, supra note 4, at 469.
251. DESMOND, supra note 1, at 297.
252. Id.
253. Id.; ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
254. DESMOND, supra note 1; see also ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240; Scherer, supra note 74, at 568.
255. DESMOND, supra note 1, at 297; see also Hartman, supra note 4, at 466.
256. DESMOND, supra note 1, at 298.
257. Id. at 298-99.
258. Id.; Hartman, supra note 4, at 470.
259. DESMOND, supra note 1, at 296.
260. Hartman, supra note 4, at 470.
261. DESMOND, supra note 1, at 296.
The Press Secretary for former Senator Bob Dole described the emotional affects of his experience by stating:

By the time I was 17, my family and I had been evicted 34 times . . . Worst of all, imagine hearing the knock on the door when the officers come to throw you out of your home and pile all your worldly possessions on the sidewalk for passersby to see. Now imagine the shame and pain that come with that experience.

Eviction can also directly and indirectly affect children’s “health, ability to learn, and sense of self-worth.” It is difficult for children to concentrate at school when they have lost their clothes and toys and do not know where they will sleep that night. Eviction and homelessness make regular school attendance difficult. Children suffer from the effects of eviction on their parents. Parents’ emotions and mental health affects children’s mood and relationship with their parents. Parents, who are cost-burdened by rent, are unable to provide as much for their children.

Eviction negatively impacts the intricate fabric of individuals and communities that make up our society. Eviction has become an epidemic nationwide. North Dakota’s situation may be unique, but it is not an exception.

E. THE EFFECT OF NORTH DAKOTA’S ECONOMIC ENVIRONMENT ON HOUSING

North Dakota experienced a gold-rush type atmosphere during the most recent Bakken oil boom beginning around 2009. People came to North Dakota from all over the country in search of employment, leading to a tremendous population increase. It is estimated that North Dakota gained

262. Hartman, supra note 4, at 470 (citation omitted).
263. DESMOND, supra note 1, at 299; see also ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
264. See generally DESMOND, supra note 1.
265. Scherer, supra note 74, at 569.
266. DESMOND, supra note 1, at 299.
267. Id.
268. Id.
269. Id.
about 66,000 residents between April 1, 2010 and July 1, 2014. In 2013, migration to North Dakota was two times more than any other state. The largest in-migration occurred in Western North Dakota, particularly in the city of Williston.

Rapid growth as a result of the oil boom caused severe housing shortages and dramatically increased housing costs. In the spring of 2014 in Williston, new one-bedroom apartments were renting for about $2000 per month and two-bedroom apartments were renting for up to $3200 per month. It was reported that Williston had the highest average rent in the United States that year. Both Williston and Dickinson reportedly had higher rents than New York, Los Angeles, and Boston.

North Dakota had a shortage of over 12,300 affordable rental units for its poorest residents. Over 61,000 low-income North Dakota households experienced some level of housing costs burden in 2014. Affordable housing projects opted out of government programs in favor of high market rate rents. Additionally, housing needs for seniors continued to grow.

It was difficult to obtain financing to build new housing because of regulatory issues after the national housing market crash. Resources to finance the building of affordable housing were even more limited. Inadequate infrastructure and costs to build infrastructure also inhibited development of additional housing.

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272. IVERSON, KEVIN, NORTH DAKOTA CENSUS OFFICE, NORTH DAKOTA DEPARTMENT OF COMMERCE, February 20, 2015.
273. Id. These statistics are based on North Dakota residents and do not include temporary workers in the oil field.
274. Id. Despite the high rate of in-migration, an out-migration of individuals aged sixty-five and older occurred in North Dakota, with the largest out-migration being in Williston.
276. Id.
278. Id.
279. ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
280. Id.
282. Id.
283. Id.
284. Id.
285. Id.
In the spring of 2015, oil activity slowed down and rent rates slowly began to drop.\textsuperscript{286} Newspapers reported that rents dropped fifteen to twenty percent in the beginning of 2015 as a result of an increase in available housing stock\textsuperscript{287} and an increase in oil-field job layoffs.\textsuperscript{288} In addition to lower rents, the number of apartment vacancies increased.\textsuperscript{289}

Lower rents and increased apartment vacancies began to spread east across the State.\textsuperscript{290} By May 2015, rent rates decreased an average of five to ten percent in Minot.\textsuperscript{291} However, rental prices were still twenty-three to thirty-five percent higher than before the oil boom.\textsuperscript{292}

The housing crisis affected nearly twenty-five percent of North Dakota renters.\textsuperscript{293} The most severely affected were low-income households,\textsuperscript{294} families with children, senior households, households with disabled adults, and veteran households.\textsuperscript{295} In 2014, 17 percent of low-income households moved, compared to 9.9 percent of households above 150 percent of the poverty level.\textsuperscript{296} Even in 2015, unaffordable rent payments and eviction or termination were the leading causes of homelessness in Fargo.\textsuperscript{297}

V. NORTH DAKOTA EVICTION CASE STUDY

There is a lack of state generated eviction data. To determine the true extent of the eviction epidemic in North Dakota and how it compares to studies in other states, LSND set out to gather and analyze data on evictions throughout the State.\textsuperscript{298} LSND gathered data to determine the number of

\begin{itemize}
\item \textsuperscript{286} Scheyder, supra note 271.
\item \textsuperscript{287} Id.; The Associated Press, Mayor: N.D. Boomtown’s Rents Beginning to Tumble, WASHINGTON TIMES (June 5, 2015), www.washingtontimes.com/news/2015/jun/5/mayor-nd-boomtowns-rents-beginning-to-tumble/?utm_source=RSS_Feed&utm_medium=RSS.
\item \textsuperscript{289} Id.
\item \textsuperscript{290} Jill Schramm, Housing influx more home availabilities affecting Minot rents, MINOT DAILY NEWS (May 7, 2015), www.minotdailynews.com/news/local-news/2015/05/housing-influx/.
\item \textsuperscript{291} Id.
\item \textsuperscript{292} Id.
\item \textsuperscript{293} ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
\item \textsuperscript{294} Id.
\item \textsuperscript{295} MAKE ROOM LET’S BRING OPPORTUNITY HOME, THE RENTAL HOUSING CRISIS IN NORTH DAKOTA (2014).
\item \textsuperscript{296} Id.
\item \textsuperscript{297} WILDER RESEARCH, HOMELESSNESS IN FARGO, NORTH DAKOTA AND MOORHEAD, MINNESOTA: KEY FINDINGS FROM THE 2015 SURVEY OF PEOPLE EXPERIENCING HOMELESSNESS 12 (Sept. 2016). Thirty-six percent of homeless adults in Fargo left their last regular housing because they could not afford rent or house payments and thirty-five percent left because they were evicted or their lease was not renewed. Id.
\item \textsuperscript{298} See infra Part V.
\end{itemize}
eviction actions filed, the rate of representation by legal counsel, eviction
grounds, the rate of eviction orders, the rate of money judgments entered,
the amount of damages and costs, and the rate of money judgments satisfied.

The eviction case study is narrowly defined. It only includes court cases
of individuals who are involuntarily dispossessed of property through a
summary eviction process. It is important to note that individuals are fre-
quently involuntarily dispossessed of property outside of the legal pro-
cess.299

A. LACK OF STATE GENERATED DATA

Generally, systematic data on eviction is not collected on a local or na-
tional level.300 Some data is available in scattered states around the coun-
try.301 A movement is underway to gather data to generate a nation-wide
eviction database.302

Like most states, North Dakota does not collect specific data regarding
eviction actions.303 Rather, eviction cases are lumped into a catchall cate-
gory of “other civil cases,” which also includes contract/collection and civil
commitment cases.304 In 2014, other civil cases increased by 364 or 2 per-
cent.305 Evictions accounted for 8 percent of the total 18,253 other civil
cases.306 In 2015, the number of other civil cases increased by 647 or 3.5
percent.307 Evictions accounted for 9 percent of the total 18,900 other civil
cases.308 In 2016, evictions comprised 10 percent of the total 18,601 other
civil cases.309

299. Hartman, supra note 4, at 463; see also DESMOND, supra note 1, at 330. Individu-
als may be involuntarily disposed of property by: an increase in rent, a landlord’s threatening or
harassing conduct, uninhabitable or poorly maintained housing, a landlord refusing to renew the
tenant’s lease, a landlord shutting off the utilities or locking the tenant out, receiving a notice of
termination, being served a summons and complaint, or removal by sheriff. See Hartman, supra
note 4, at 463. At this time, the extent of involuntary displacement from housing in North Dakota
is unknown.

300. Hartman, supra note 4, at 461.

301. Id.

302. See e-mail from Gillian Sleec, Research Asst., Harvard University, to Breezy

303. See generally NORTH DAKOTA SUPREME COURT, 2014 NORTH DAKOTA COURT
SYSTEM ANNUAL REPORT (2014).

304. Id. at 11.

305. Id.

306. Id.

307. NORTH DAKOTA SUPREME COURT, 2015 NORTH DAKOTA COURT SYSTEM

308. Id.

309. NORTH DAKOTA SUPREME COURT, 2016 NORTH DAKOTA COURT SYSTEM
ANNUAL REPORT 11 (2016).
LSND began gathering data from the North Dakota electronic court document system to determine specific information regarding evictions in North Dakota. LSND reviewed every eviction case filed in North Dakota from January 1, 2008 through December 31, 2015. Case documents could not be viewed electronically on a statewide basis until sometime in 2011. As a result, the data from 2008 to 2011 is not as complete or accurate as the data from 2011 through 2015. LSND is currently gathering and analyzing data for 2016 and 2017. LSND gathered the following data for each eviction case:

- the case number, the names of the parties, the town where the property was located, the county where the claim was filed, the name of the judge, whether the parties were represented, representing attorneys’ names, whether case documents were accessible electronically, the stated grounds for eviction, the disposition of the eviction case, whether a money judgment was ordered, the amount of the money judgment including a breakdown of the damages and costs, and satisfaction of money judgment.

B. NUMBER OF EVICTION ACTIONS

An eviction action begins when a landlord files a summons and complaint in district court and serves the same upon a tenant. Eviction case data was compiled by year for each judicial district. The data for each year and district were then compared to one another to determine whether the number of eviction actions increased or decreased overtime, both within and between judicial districts and statewide.

The rate of eviction actions filed in district court has substantially increased statewide. In 2008, there were a total of 678 eviction actions filed in district court. By 2015, there were 1669 eviction actions filed in district court. From 2008 through 2015, the rate of eviction actions filed in North Dakota district courts increased by 246 percent.

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311. Id.
312. Id.
313. Id.
314. Id.
315. See N.D. CENT. CODE § 47-32-02; see also N.D. R. CIV. P. 3.
316. Legal Services of North Dakota, supra note 310.
317. Id.
318. Id.
319. Id.
320. Id.
The number of evictions actions filed also increased in each individual judicial district.\textsuperscript{321} Notably, between 2008 and 2015, each district experienced at least one instance in which the number of evictions filed in the immediately preceding year slightly decreased, only to rebound in the following years.\textsuperscript{322} Interestingly, the number of evictions did not fall in all districts in the same year.\textsuperscript{323} Rather, the number of evictions fell in different districts in different years.\textsuperscript{324}

<table>
<thead>
<tr>
<th>Year</th>
<th>NE</th>
<th>NW</th>
<th>SEC</th>
<th>NEC</th>
<th>SE</th>
<th>SW</th>
<th>SC</th>
<th>NC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>24</td>
<td>15</td>
<td>295</td>
<td>78</td>
<td>26</td>
<td>30</td>
<td>147</td>
<td>63</td>
<td>678</td>
</tr>
<tr>
<td>2009</td>
<td>19</td>
<td>20</td>
<td>287</td>
<td>97</td>
<td>30</td>
<td>29</td>
<td>158</td>
<td>75</td>
<td>715</td>
</tr>
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<td>2010</td>
<td>15</td>
<td>7</td>
<td>356</td>
<td>64</td>
<td>41</td>
<td>29</td>
<td>141</td>
<td>108</td>
<td>761</td>
</tr>
<tr>
<td>2011</td>
<td>19</td>
<td>34</td>
<td>373</td>
<td>112</td>
<td>30</td>
<td>49</td>
<td>178</td>
<td>87</td>
<td>882</td>
</tr>
<tr>
<td>2012</td>
<td>45</td>
<td>41</td>
<td>400</td>
<td>108</td>
<td>41</td>
<td>44</td>
<td>176</td>
<td>109</td>
<td>964</td>
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<tr>
<td>2013</td>
<td>49</td>
<td>88</td>
<td>374</td>
<td>108</td>
<td>61</td>
<td>63</td>
<td>171</td>
<td>206</td>
<td>1120</td>
</tr>
<tr>
<td>2014</td>
<td>40</td>
<td>163</td>
<td>417</td>
<td>92</td>
<td>64</td>
<td>79</td>
<td>259</td>
<td>369</td>
<td>1483</td>
</tr>
<tr>
<td>2015</td>
<td>53</td>
<td>299</td>
<td>435</td>
<td>98</td>
<td>89</td>
<td>82</td>
<td>225</td>
<td>388</td>
<td>1669</td>
</tr>
<tr>
<td>Total</td>
<td>264</td>
<td>667</td>
<td>2937</td>
<td>757</td>
<td>382</td>
<td>405</td>
<td>1455</td>
<td>1405</td>
<td>8272</td>
</tr>
</tbody>
</table>

The highest rate of evictions occurred in the districts where the most populous cities are located. The highest number of evictions occurred in the Southeast Central Judicial District, where Fargo is located, with 35 percent of total evictions from 2008 through 2015.\textsuperscript{325} The second highest number of evictions occurred in the South Central Judicial District, where

\textsuperscript{321} Id.
\textsuperscript{322} Legal Services of North Dakota, supra note 310.
\textsuperscript{323} Id.
\textsuperscript{324} Id.
\textsuperscript{325} Id.
Bismarck and Mandan are located, with 17.6 percent of evictions.\textsuperscript{326} The third highest number of evictions occurred in the North Central Judicial District, where Minot is located, with 17 percent evictions.\textsuperscript{327}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|c|c|c|}
\hline
Year & NE & NW & SEC & NEC & SE & SW & SC & NC \\
\hline
2008 & 24 & 15 & 299 & 78 & 26 & 30 & 147 & 63 \\
2015 & 53 & 299 & 435 & 98 & 89 & 82 & 225 & 388 \\
\hline
Percent & 220.8 & 1993.3 & 147.5 & 125.6 & 342.3 & 273.3 & 153.1 & 615.8 \\
\hline
Rank & 1 & 2 & 3 & 4 & 5 & 6 & 7 & 8 \\
\hline
\end{tabular}
\caption{Total Evictions by District}
\end{table}

On average, the number of evictions in each district increased by 172.4 percent between 2008 and 2015.\textsuperscript{328} In the Northwest Judicial District, the number of eviction actions filed increased exponentially more than other judicial districts, by nearly 2000 percent.\textsuperscript{329} The second highest percent increase in evictions filed occurred in the North Central Judicial District with a 615.8 percent increase.\textsuperscript{330} The third highest increase in the number of evictions filed was in the Southeast Judicial District where evictions increased 342.3 percent.\textsuperscript{331} The Southwest Judicial District trailed with a 273.3 percent increase.\textsuperscript{332} North Dakota is clearly following the national trend of increasing evictions.

\textsuperscript{326} Id.
\textsuperscript{327} Id.
\textsuperscript{328} Legal Services of North Dakota, supra note 310.
\textsuperscript{329} Id.
\textsuperscript{330} Id.
\textsuperscript{331} Id.
\textsuperscript{332} Id.
C. RATE OF REPRESENTATION BY LEGAL COUNSEL

LSND gathered and analyzed data to determine the average rate of representation for landlords and tenants in North Dakota eviction actions.\textsuperscript{333} The statistics are staggering. On average, ninety-two percent of landlords are represented by legal counsel in eviction actions statewide.\textsuperscript{334} On the contrary, only five percent of tenants are represented by legal counsel.\textsuperscript{335}

![Representation by Legal Counsel in Evictions](image)

There are at least three obvious reasons for the disparity in legal representation between landlords and tenants in North Dakota. First, there are simply not enough attorneys licensed in the State to represent both parties in each eviction action. The North Dakota State Board of Law Examiners issued 2997 law licenses in 2015, a 3.5 percent increase from 2014.\textsuperscript{336} Thirty-eight percent, over one thousand, of licensed attorneys reside out of state.\textsuperscript{337} In order to represent one party in each of the 1669 eviction actions filed in 2015, ninety percent of licensed attorneys residing in North Dakota would have to handle one eviction action.

Second, North Dakota only has one legal services organization, LSND, to serve the needs of all low-income and disadvantaged elderly individuals statewide. LSND provides services in 268 types of legal issues. LSND receives enough funding to employ eight attorneys. It is impossible for LSND to represent more than a fraction of tenants in eviction actions.

\textsuperscript{333} Id.  
\textsuperscript{334} Legal Services of North Dakota, supra note 310.  
\textsuperscript{335} Id.  
\textsuperscript{336} 2015 NORTH DAKOTA COURT SYSTEM ANNUAL REPORT, supra note 304.  
\textsuperscript{337} Id.
Third, North Dakota encourages, but does not require, attorneys to provide pro bono legal services.\(^\text{338}\) The State Bar Association of North Dakota (SBAND) received 1310 requests for assistance in its reduced fee and pro bono programs in 2016.\(^\text{339}\) Of those requests, only 149 were placed for representation.\(^\text{340}\) Accordingly, the availability of reduced fee and pro bono services in the private bar is very low.

On a similar note, LSND compiled data and analyzed the correlation between tenant representation and the rate of eviction orders entered in North Dakota.\(^\text{341}\) Due to the low number of tenants who were represented by legal counsel, there is little data regarding tenants who are represented, which may skew the accuracy of the statistical results. In addition, some data regarding representation was unknown or unavailable.\(^\text{342}\)

The data shows that tenants who were represented by legal counsel were less likely to be evicted than tenants who were not represented.\(^\text{343}\) Statewide, the rate of eviction actions dismissed, denied, or later vacated against non-represented tenants cumulatively between 2008 and 2015 averaged 27.51 percent.\(^\text{344}\) On the other hand, the rate of eviction actions granted cumulatively from 2008 through 2015 statewide against non-represented tenants averaged 69.85 percent.\(^\text{345}\) In other words, more than two out of three tenants who are not represented are evicted.

![Eviction Rates with No Representation](image)

<table>
<thead>
<tr>
<th>Region</th>
<th>NR Evicted</th>
<th>NR Not Evicted</th>
</tr>
</thead>
<tbody>
<tr>
<td>NE</td>
<td>69.02</td>
<td>27.06</td>
</tr>
<tr>
<td>NW</td>
<td>68.26</td>
<td>25.42</td>
</tr>
<tr>
<td>NE C</td>
<td>68.46</td>
<td>30.74</td>
</tr>
<tr>
<td>SE</td>
<td>76.15</td>
<td>19.51</td>
</tr>
<tr>
<td>SW</td>
<td>70.93</td>
<td>27.2</td>
</tr>
<tr>
<td>SC</td>
<td>66.96</td>
<td>28.2</td>
</tr>
<tr>
<td>NC</td>
<td>63.84</td>
<td>34.67</td>
</tr>
<tr>
<td>SEC</td>
<td>75.18</td>
<td>27.36</td>
</tr>
<tr>
<td>Avg</td>
<td>69.85</td>
<td>27.51</td>
</tr>
</tbody>
</table>

\(^{338}\) N.D.R.PROF.CONDUCT 6.1.
\(^{339}\) Legal Services of North Dakota, supra note 310.
\(^{340}\) Id.
\(^{341}\) Id.
\(^{342}\) Id.
\(^{343}\) Id.
\(^{344}\) Id.
\(^{345}\) Legal Services of North Dakota, supra note 310.
The rate of eviction actions dismissed, denied, or later vacated against tenants who were represented by legal counsel averaged 50.24 percent. Tenants with legal counsel were evicted 39.23 percent of the time on a statewide basis from 2008 through 2015. Due to the small number of tenants represented, the data may not show an accurate rate of success against eviction actions by tenants represented by legal counsel. Until more tenants are represented by legal counsel, it will be difficult to determine the accurate impact of legal representation of tenants in eviction actions.

Tenants who were without legal counsel were evicted 69.85 percent of the time while tenants with legal counsel were evicted 39.23 percent of the time. In other words, tenants who were represented by legal counsel were 30.62 percent less likely to be evicted. The results of the North Dakota eviction case study correspond with other state studies finding represented tenants fare much better than their unrepresented counterparts.

346. Id.
347. Id.
348. Id.
349. Id.
350. Id.
D. EVICTION GROUNDS

LSND compiled data to determine the grounds upon which landlords were commencing eviction actions against tenants in North Dakota from 2008 to 2015. The North Dakota electronic court document system does not include easily extractable data on eviction grounds. Accordingly, LSND reviewed complaints filed in every eviction action. Since court documents could not be viewed electronically until 2011, data for eviction grounds was either incomplete or unavailable between 2008 and 2011.

LSND compiled the available data for five eviction grounds: nonpayment of rent, material breach of lease, hold over after termination of lease, possession, and other/unknown. The grounds were added and averaged by year for each judicial district. The years were then added and averaged to determine the average rate of eviction grounds relied upon on a statewide basis.

351. Legal Services of North Dakota, supra note 310.
352. Id.
353. Id.
354. Id.
355. Id.
356. Id.
About seventy-five percent of all evictions filed statewide between 2008 and 2015 were for nonpayment of rent.\textsuperscript{357} Less than eight percent of evictions were filed for material breach of lease.\textsuperscript{358} Approximately fifteen percent of evictions were filed for possession of the premise, holdover after termination of lease, and other/unknown grounds.\textsuperscript{359} The results show that payment of rent is a problem for three out of every four tenants summoned to eviction court.

E. RATE OF EVICTION ORDERS

LSND gathered data on the disposition of each eviction case filed in North Dakota from 2008 from 2015.\textsuperscript{360} Specifically, LSND compiled data on whether the claims for relief in eviction actions were granted, dismissed/denied/vacated, or other/unknown.\textsuperscript{361} The disposition of cases was recorded as other/unknown if the final order and judgment were not available online, no order and judgment were filed, or other similar circumstances.\textsuperscript{362}

\textsuperscript{357} Legal Services of North Dakota, supra note 310.
\textsuperscript{358} Id.
\textsuperscript{359} Id.
\textsuperscript{360} Id.
\textsuperscript{361} Id.
\textsuperscript{362} Id.
LSND determined that an average of 68.5 percent of tenants were evicted.\textsuperscript{363} About 26.8 percent of eviction cases were dismissed, denied, or later vacated.\textsuperscript{364} The disposition of the remaining less than five percent of eviction cases was either some other result or unknown.\textsuperscript{365} Overall, the results show two out of every three tenants summoned to eviction court are evicted.

### Eviction Action Dispositions

![Eviction Action Dispositions Graph]

#### F. Rate of Eviction Money Judgments Entered

LSND gathered data to determine whether tenants who were evicted had money judgments entered against them.\textsuperscript{366} LSND determined that tenants who were evicted had a money judgment entered against them on average 88.5 percent of the time on a statewide basis from 2008 to 2015.\textsuperscript{367} The highest percent of money judgments awarded was 98 percent in the Southeast Central Judicial District.\textsuperscript{368} The second highest percent of money judgments awarded was 94 percent in the South Central Judicial District.\textsuperscript{369} The third highest percent of money judgments awarded was 92.7 percent in the North Central Judicial District.\textsuperscript{370} The lowest percent of money judgments awarded was 77.5 percent in the Northeast Judicial District.\textsuperscript{371}

\begin{enumerate}
\item\textsuperscript{363} Legal Services of North Dakota, \textit{supra} note 310.
\item\textsuperscript{364} Id.
\item\textsuperscript{365} Id.
\item\textsuperscript{366} Id.
\item\textsuperscript{367} Id.
\item\textsuperscript{368} Id.
\item\textsuperscript{369} Legal Services of North Dakota, \textit{supra} note 310.
\item\textsuperscript{370} Id.
\item\textsuperscript{371} Id.
\end{enumerate}
the two-thirds of tenants who were evicted, nearly 90 percent were ordered to pay monetary damages to the landlord.\textsuperscript{372}

G. Amount of Damages and Costs

LSND gathered data to determine the composition of money judgments.\textsuperscript{373} Specifically, LSND compiled data on the percentage of damages and costs in money judgments.\textsuperscript{374} Damages include unpaid rent and damages to property.\textsuperscript{375} Costs include attorney’s fees and court costs.\textsuperscript{376} LSND determined that damages comprised on average 78.5 percent of money judgments entered statewide between 2008 and 2015.\textsuperscript{377} Costs constituted an average of 13.3 percent of money judgments entered statewide between 2008 and 2015.\textsuperscript{378} The statistics show that evicted tenants were ordered to pay more money to the landlord than the tenant otherwise would have had to if the tenant had not been summoned to eviction court.

\textsuperscript{372} Id.
\textsuperscript{373} Id.
\textsuperscript{374} Id.
\textsuperscript{375} Legal Services of North Dakota, supra note 310.
\textsuperscript{376} Id.
\textsuperscript{377} Id.
\textsuperscript{378} Id.
H. MONEY JUDGMENT SATISFACTION

LSND gathered data to determine whether evicted tenants were paying the money judgments entered against them.\textsuperscript{379} Judgments in North Dakota are valid for a period of ten years and can be renewed for an additional ten-year period.\textsuperscript{380} Thus, the judgments may be paid at anytime during the ten-year period or renewal period. The data regarding the payment of money judgments is fluid and subject to change. The data collected reflects the status of money judgments for only a moment of time within an initial ten year or renewal period.\textsuperscript{381}

At the time LSND gathered the data, it determined that an average of 7.6 percent of money judgments entered between 2008 and 2015 are satisfied on a statewide basis.\textsuperscript{382} Money judgments were most likely to be satisfied in the Southeast Central Judicial District, followed by the South Central Judicial District, trailed by the Southwest and North Central Judicial Districts.\textsuperscript{383} Money judgments were least likely to be satisfied in the Northwest Judicial District.\textsuperscript{384}

\textsuperscript{379} Id.
\textsuperscript{380} N.D. CENT. CODE §§ 28-20-13, -23.
\textsuperscript{381} Legal Services of North Dakota, supra note 310.
\textsuperscript{382} Id.
\textsuperscript{383} Id.
\textsuperscript{384} Id.
The findings of the North Dakota eviction case study are consistent with studies conducted in other states. Evictions have reached epidemic proportions. Tenants are funneled through a narrowing pipeline into an eviction mill. While landlords are nearly always represented by legal counsel, tenants are rarely represented. 385 Three-quarters of eviction cases are commenced for nonpayment of rent. 386 Evictions are granted in over two-thirds of eviction cases filed in district court. 387 Nearly ninety percent of evictions orders will include a money judgment entered against the tenant. 388 Over thirteen percent of money judgments include additional costs above and beyond damages. 389 Yet, only seven percent of money judgments are satisfied. 390 It is clear that North Dakota tenants are severely disadvantaged by eviction.

VI. SOLUTIONS

To resolve the national eviction crisis, substantial changes must be made in tracking eviction actions, policies determining fundamental rights, and procedural and substantive eviction laws. Systematic eviction data collection and analysis is key. A fundamental right to housing would decrease the rate of evictions and homelessness. A fair and equitable eviction process would protect rights of tenants and prevent abuse of the legal process.

385. See supra Part V.C.
386. See supra Part V.D.
387. See supra Part V.E.
388. See supra Part V.F.
389. See supra Part V.G.
390. See supra Part V.H.
Administrative oversight would serve to educate and control landlords’ abusive practices.\textsuperscript{391}

\textbf{A. DATA}

Collection and analysis of data is critical to “grasping the extent and nature of th[e] under recognized social problem[s]” caused by eviction.\textsuperscript{392} Data is the “building block” to draft legislative policy to resolve eviction problems.\textsuperscript{393} Eviction information must be collected and maintained by judicial systems. Courts must track not only filings and dispositions, but also important factors such as rate of eviction actions, grounds for eviction, representation by legal counsel, rate of eviction orders and money judgments entered, the amount of damages and costs ordered, and the rate of money judgment satisfaction.\textsuperscript{394}

LSND’s collection and analysis of eviction data is the first step in addressing the problem of eviction in North Dakota. LSND’s research will inform and educate the media, policy makers, public officials, researchers, the judiciary, and the general public of the problem. The media and general public must strongly encourage policy makers, public officials, and the judiciary to acknowledge the problem. Policy makers and the judiciary must address the problem of eviction by implementing a policy of mandatory collection and analysis of eviction data. Only then can the eviction problem truly be resolved.\textsuperscript{395}

\textbf{B. RIGHT TO HOUSING}

To stop the effects of the eviction epidemic, a fundamental right to housing must be recognized.\textsuperscript{396} Affordable housing is critical for stability by preventing hyper-mobility and homelessness.\textsuperscript{397} Shelter is a basic human necessity that must be fulfilled before one can seek to fulfill other needs.\textsuperscript{398} Home is the foundation of the family unit and society.\textsuperscript{399} It is the

\begin{enumerate}
\item See infra Part VI.A-D.
\item Hartman, \textit{supra} note 4, at 471.
\item Id. at 492.
\item Id. at 472.
\item See Hartman, \textit{supra} note 4, at 489.
\item DESMOND, \textit{supra} note 1, at 305.
\item Id.
\item DESMOND, \textit{supra} note 1, at 293.
\end{enumerate}
“center of life.”

Home is a refuge from work, school, and external stressors. It is a place of safety.

In 1948, the United Nations adopted a Universal Declaration of Human Rights establishing a fundamental right to housing. “Everyone has the right to a standard of living adequate to the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services . . .” Countries around the world, including Great Britain and the Netherlands, have adopted a fundamental right to housing and successful universal housing programs.

In the United States, Congress established a national goal to ensure “a decent home and suitable living environment for every American family . . .” However, Congress has stopped short of implementing a fundamental right to housing. The United States has viewed housing as a “commodity” that “is negotiated . . . in the marketplace.” The United States allows wealth to determine a tenant’s ability to retain housing. As Martin Luther King Jr. observed, “every condition exists simply because someone profits by its existence. This economic exploitation is crystallized in the slum.” In other words, “poverty is not just a product of low incomes. It is also a product of extractive markets.”

The government must stop “legitimiz[ing] and defend[ing] landlords’ right to charge as much as they want.” Landlords who participate in the Housing Choice Voucher Program overcharge tenants who hold vouchers. Landlords charge tenants the highest contract rent allowed by HUD, even if the current market rent is lower.

The United States’ position on housing is outdated and misplaced in modern landlord-tenant relationships. “We must think differently” about

400. Id. at 293-95.
401. Id. at 293.
402. Id.
403. Hartman, supra note 4, at 474.
404. Id.
405. DESMOND, supra note 1, at 309.
407. Id.
408. Id. at 559.
409. Id.
410. DESMOND, supra note 1, at 305.
411. Id.
412. Id. at 307.
413. See id. at 311.
414. Id.
415. Scherer, supra note 74, at 560.
the “right to make as much money as possible by providing families with housing – and especially to profit excessively from the less fortunate.” 416 America must place the well being of individuals above the almighty dollar.417

The Constitution may be easily construed to recognize a right to housing.418 The Constitution provides individuals a fundamental right to life, liberty, and pursuit of happiness.419 It is nearly impossible to live without a home. Happiness necessitates the fulfillment of basic needs.420

A universal housing program would require regulating costs and mandating participation by landlords, even in the private sector.421 It is more cost effective to prevent homelessness with housing assistance and legal services than to pay for services for homelessness.422 For example, in 1990, a New York study found that “every dollar on homelessness prevention services saved $4 in services for homeless people.”423 In fact, the government determined as early as the 1970s “it is cheaper to spend thousands of dollars to pay rent arrears than tens of thousands to pay for the care of families in shelters.”424

A universal right to housing would strengthen the core of our society. Individuals who “have a place to live” are more likely to be “better parents, workers, and citizens.”425 People could focus their time and energy on enriching their lives through beneficial societal functions such as attending college, managing their physical health with exercise, engaging in employment, and fostering healthy personal and community relationships.426 Supporting individuals and communities will provide society the means to combat crime and promote civic engagement.427

However, a right to housing alone is not sufficient to control the eviction crisis. The epidemic is driven by continuous dispossession of housing.

416. DESMOND, supra note 1, at 305.
417. Id.
418. Id. at 300.
419. Id.
420. Id.
421. Id. at 310.
422. Hartman, supra note 4, at 493.
423. Id. In 1995, a New York advocacy group compared the costs between institutional room and board and permanent housing assistance: a psychiatric facility bed was $113,000, a prison cell was $60,000, a shelter cot was $20,000, and a permanent home was a mere $12,500. Id.
424. Id. (quotation omitted).
425. DESMOND, supra note 1, at 295; see ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240.
426. DESMOND, supra note 1; see also ENTERPRISE COMMUNITY PARTNERS, INC., supra note 240; see Scherer, supra note 74, at 569.
427. DESMOND, supra note 1, at 298.
To further curtail the problem, the eviction process must be fair and equitable to tenants based on modern rental practices.

C. FAIR AND EQUITABLE EVICTION PROCESS

To ensure justice is served, tenants must have an opportunity to receive sufficient notice, obtain legal representation, and receive a full and fair hearing. A right to counsel is critical in actions pertaining to the loss of one’s home. A full and fair hearing will ensure tenants’ due process rights are protected and fulfilled, and will prevent arbitrary eviction decisions.428

1. Right to Counsel

A right to counsel in eviction actions would greatly serve to lessen the extent of the eviction epidemic. The principle of a right to counsel in civil matters is not a new phenomenon. Many European countries long ago adopted the idea that in order for low-income individuals to have meaningful access to the judicial system, they must have a right to counsel.429 England has provided a civil right to counsel since 1495.430 Germany has provided a civil right to counsel since 1871, Sweden since 1919, Italy since 1923, and France since 1871.431 Even countries thought to be less developed than the United States, such as Azerbaijan, India, and Zambia, have established the right to counsel in civil matters.432

The United States has adopted a limited right to counsel for indigent defendants in criminal cases, cases affecting individuals’ parental rights, and cases involving denial or termination of certain types of government benefits.433 In 1932, the United States Supreme Court recognized that “the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”434 In 1969, the Supreme Court reaffirmed its position that the “'opportunity’ to be heard is deficient if it is

428. Gerchick, supra note 46, at 770.
429. Scherer, supra note 74, at 560.
430. Id. (citing Statute of Henry VII 1495, 11 Hen. 7, c. 7; 2 Statutes of the Realm 578 (repealed in 46 & 47 Vict. c. 49 (1883))).
431. Id.
432. DESMOND, supra note 1, at 305 (citing Martha Davis, Participation, Equality, and the Civil Right to Counsel: Lessons from Domestic and International Law, 122 YALE L. J. 2260 (2013); see also Raven Lidman, Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World?, 15 TEMP. POL. AND C.R. L. REV. 769 (2006); see also Hartman, supra note 4, at 477.
433. Scherer, supra note 74, at 561, 563, 564.
434. Id. at 574 (quoting Powell v. Alabama, 287 U.S. 45, 68-69 (1932)).
not ‘tailored to the capacity and circumstances of those who are to be heard.’”\footnote{435}

However, procedural protections in eviction actions are “virtually meaningless” for tenants who are not represented by counsel.\footnote{436} The administration of justice is best served when both parties are represented by counsel in the judicial process because it is “most likely to lead to accurate and just results.”\footnote{437} “A legal community that is committed to the fair administration of justice should take steps to improve the resources available to tenants, from increasing representation to providing an advice service at the courthouse to educate tenants about their rights.”\footnote{438} A right to counsel in eviction actions would assist to prevent homelessness, increase housing stability, decrease evictions, and provide a fair judicial process.\footnote{439} Attorneys would guide tenants through the legal process, raise defenses, stop frivolous evictions, and prevent abuses of power.\footnote{440}

At this time, low-income tenants’ only options for legal representation in eviction actions are publicly-funded legal services programs or volunteer attorneys.\footnote{441} These options are extremely limited. Generally, legal services programs have encountered hostility from private interests and elected officials, resulting in inadequate funding and limited services.\footnote{442}

To ensure tenants are able to obtain legal representation pursuant to a right to counsel, legal services organizations must be adequately funded.\footnote{443} As Supreme Court Justice Learned Hand once stated, “[i]f we are to keep our democracy there must be one commandment: thou shall not ration justice.”\footnote{444} The government has subsidized the legal costs for corporations and affluent individuals by allowing them to deduct legal fees in determining taxable income.\footnote{445} In cases as dire as the loss of housing and risk of homelessness, it is incumbent upon our judicial system to ensure tenants have a right to counsel. Adequate funding of legal services organizations

would ensure a supply of attorneys exist to fulfill tenants right to counsel in eviction actions.\footnote{DESMOND, supra note 1, at 303; see also Hartman, supra note 4, at 486.}

Moreover, reduced fee and pro bono programs must be expanded to ensure tenants are able to secure legal representation. Currently, few private attorneys participate in reduced fee and pro bono programs. To offset the high demand for counsel and the overbearing burden on legal services organizations in eviction actions, state bar associations should mandate private attorneys either provide reduced fee or pro bono services or, in the alternative, pay a fee to support legal services organizations to provide representation of low-income individuals in eviction actions.

2. Full and Fair Hearing

In addition to a right to housing and right to counsel, tenants must have an adequate and meaningful opportunity to defend against eviction\footnote{Gerchick, supra note 46, at 769.} “In an age characterized by diminishing availability of housing for low-income households and a marked growth in homelessness, the need for assuring the fairness of the eviction process has become manifest.”\footnote{Id. (quotation omitted).} To ensure tenants receive a full and fair hearing, courts must be adequately funded to ensure eviction cases receive proper attention and cases are not pushed through like an assembly line in a mill.\footnote{DESMOND, supra note 1, at 304.} “Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a [person] is evicted from his home.”\footnote{Gerchick, supra note 46, at 768 (quoting Pernell v. Southall Realty, 416 U.S. 363, 385 (1974)).}

Similarly, tenants must be provided adequate time to obtain counsel and prepare their case.\footnote{Scherer, supra note 74, at 573.} Courts must consider tenants’ defenses.\footnote{Id.} Courts must do more than cursorily review landlords’ documentation. Courts must ensure landlords have met their burden of proof.\footnote{Id.} Courts must abstain from pushing tenants to settle with landlords’ attorneys in the courthouse hallway in order to prevent “imbalanced, unsupervised settlements.”\footnote{Id.}

Evictions are a two party, adversarial process. It is important for courts to increasingly concentrate on protecting tenants’ rights. However, courts
must also concentrate attention on landlords to prevent the commencement of improper evictions and stop unfair or unjust practices.

D. ADMINISTRATIVE OVERSIGHT OF LANDLORDS

Landlords must be required to obtain proper education and training to own and manage rental property. North Dakota law does not require landlords to receive any education in landlord-tenant law. North Dakota law does not require landlords to receive any training on landlord-tenant law. As a result, landlords are often uninformed of their obligations under landlord-tenant law and frequently violate the law.

North Dakota law provides no government oversight of landlords. North Dakota tenant remedies for landlord violations are nonexistent or weak at best. Few or no attorneys in North Dakota will provide free or reduced legal services to assist tenants in asserting claims for relief against landlords. LSND is prohibited by federal law from assisting tenants in certain types of actions. As a result, landlords often think they are able to do whatever they want and are not held accountable for their actions.

Government oversight would require landlords to receive education and training on the law. Government oversight would ensure landlords comply with the law and will be held accountable for their conduct. Proper oversight would reduce the number of flagrant violations of law and frivolous evictions. It would ensure balanced landlord-tenant relationships.

VII. CONCLUSION

Eviction is a serious problem in the United States. Uncontrolled excessive housing costs without increasing wages and archaic laws are the driving force behind the eviction crisis. Eviction causes devastating effects on individuals and families and is negatively impacting the intricate fabric of our society.

Landlord-tenant relationships have changed substantially since the codification of the common law. However, the law has not kept pace with advances in society. The application of unfit landlord-tenant law has allowed
the eviction problem to rage out of control. Tenants are funneled through a
narrowing pipeline into an eviction mill from which there is little chance
they can successfully escape.461

The eviction epidemic is a problem nationwide. LSND’s eviction case
study confirms that evictions in North Dakota have increased substantially
since 2008. Most evictions are commenced for nonpayment of excessive
rental costs. Tenants are nearly always unable to secure legal representa-
tion. Two out of every three tenants summoned to eviction court will be
evicted. Almost all tenants who have an eviction order entered against
them will also have a money judgment entered against them. The money
judgments will usually include charges above and beyond that tenants
would have had to pay if they were not summoned to court. Yet, few mon-
ney judgments are ever satisfied.462

Complex problems require complex solutions. The eviction epidemic
cannot be resolved easily, but viable solutions are available. The first step
to resolving the eviction problem is to systematically collect eviction data.
Eviction data is critical to legislative reform of eviction law. Legislative
reform must include a fundamental right to housing. The judicial system
must take measures to ensure tenants are provided a full and fair eviction
process. The process must include the right to counsel. Tenants must be
provided a full and fair hearing. Evictions cannot be pushed through court
like an assembly line. Landlords must receive education and training of
landlord-tenant law. The state must provide administrative oversight to
landlords to ensure compliance with the law.463 Unless, and until, solutions
are implemented, the eviction problem will continue to grow.

461. See supra Parts II, III, IV.
462. See supra Part V.
463. See supra Part VI.