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THE NEW YORK CITY HOUSING PART: NEW REMEDY FOR AN OLD DILEMMA

I. Introduction

The Housing Part of the Civil Court of the City of New York began its operation on October 1, 1973.¹ It represents an innovative approach to solving the problems of landlords and tenants and is particularly intended to stem the tide of housing decay and improve overall landlord-tenant relationships.² This Comment will describe the practical operation of the Housing Part in its first year of existence.³ The jurisdiction of the court as well as the remedies and penalties provided in the enabling legislation will be outlined. The duties of its personnel will be examined, and several cases affecting the operation of the Housing Part analyzed. Settlement procedures and the influence of administrative agencies upon the operation of the Housing Part will also be examined.

II. Housing Part Jurisdiction

Prior to October 1, 1973, jurisdiction over prosecutions, actions, and proceedings to compel compliance with New York City housing standards was dispersed among the criminal court, the landlord-

1. N.Y.C. CIVIL CT. ACT § 110 (McKinney Supp. 1974) [hereinafter cited as CCA].

2. For discussions of the innovative attempts of other cities to deal with the problems of housing decay and abandonment, see McNamara, *The District of Columbia Landlord and Tenant Court: An Obsolete Structure in Need of Reform*, 23 CATHOLIC U.L. REV. 275 (1973); Mosier & Sable, *Modern Legislation, Metropolitan Court, Minuscule Results: A Study of Detroit's Landlord-Tenant Court*, 7 U. MICH. J.L. REFORM 1, 8 (1973).

3. The focus of this Comment will not be statistical. The records kept by the Housing Part do not lend themselves to such analysis. The clerk of the court is required merely to "maintain a cross-index number system indicating by building address all actions and proceedings which have been brought in connection with each building." CCA § 110(j). However, a report issued by the Administrative Judge of the Civil Court indicates that from Oct. 1, 1973, through Feb. 28, 1975, the efforts of the Housing Part have resulted in the rehabilitation of 21,789 units in 15,260 buildings, conversion into cooperative form of 30 units in one building, trial of 14,864 cases, and settlement of 53,092 cases. E. THOMPSON, *A PRIMER: THE "HOUSING COURT"* 7 (1975).

tenant court, and the state's supreme court.⁴ Consequently, no single court was able to deal consistently with all of the factual and legal problems presented by the continuing existence of housing violations in any one building.⁵ The statute creating the Housing Part amended existing legislation⁶ and removed the essentially non-criminal cases from the overburdened criminal courts.⁷ The New York legislature had found the prosecution of owners totally ineffective in forcing housing code compliance within the City of New York.⁸ The creation of the Housing Part for the enforcement of housing standards was therefore deemed "a necessity in the public interest" if further deterioration and abandonment of residential buildings were to be halted.⁹

The jurisdiction conferred upon the Housing Part was designed to be sufficiently broad to enable it to consolidate all actions related to effective building maintenance and operation; to recommend or employ any remedy, program, procedure, or sanction authorized by law; and to retain continuing jurisdiction until all violations had been removed and it was satisfied their immediate recurrence was unlikely.¹⁰

4. Law of June 8, 1972, ch. 982, § 1(a), [1972] N.Y. Laws 3852 (legislative findings). See also N.Y. Times, Oct. 2, 1973, at 1, col. 2.

5. Law of June 8, 1972, ch. 982, § 1(a), [1972] N.Y. Laws 3852. In his memorandum of approval, Governor Rockefeller echoed the findings of the legislature: "Under the present antiquated system, the criminal courts have become burdened with an inappropriate jurisdiction, and corrective action is hindered by the brief involvement of the courts with problem buildings and the unfortunate tendency of a minority of irresponsible owners to treat fines as a cost of doing business." *Governor's Memorandum Approval of Bill*, N.Y. Sess. Law. 3410 (McKinney 1972).

6. Law of June 8, 1972, ch. 982, §§ 1-15, [1972] N.Y. Laws 3852, amending CCA §§ 203, 209 (McKinney 1963); N.Y. MULT. DWELL. LAW §§ 306(2), 309(1)(f), 309(2)(d), 309(5)(a), 309(5)(c)(1), (3) (McKinney 1974); New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, §§ D26-50.09, D26-52.01 (Supp. 1974), and enacting CCA § 110; New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-51.01 to 51.05 (Supp. 1974).

7. Law of June 8, 1972, ch. 982, § 1(a), [1972] N.Y. Laws 3852 (legislative findings).

8. *Id.*

9. *Id.*

10. *Id.* § 1(b). CCA § 110(a) provides that the Housing Part has juris-

diction over: "(1) Actions for the imposition and collection of civil penalties for the violation of the multiple dwelling law or the housing maintenance code of the administrative code of the city of New York. (2) Actions for the collection of costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of the multiple dwelling law or such housing maintenance code, or of other state or local law, or in the removal or demolition of any dwelling pursuant to such law or code. (3) Actions and proceedings for the establishment, enforcement or foreclosure of liens upon real property and upon the rents therefrom for civil penalties, or for costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of the multiple dwelling law or such housing maintenance code or other applicable state or local law, or in the removal or demolition of any building pursuant to such law or code. (4) Proceedings for the issuance of injunctions and restraining orders or other orders for the enforcement of housing standards under the multiple dwelling law or the housing maintenance code as presently constituted. (5) Actions and proceedings under article seven-A of the real property actions and proceedings law, and all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges a defense under section seven hundred fifty-five of the real property actions and proceedings law, relating to stay or proceedings or action for rent upon failure to make repairs, section three hundred two-a of the multiple dwelling law, relating to the abatement of rent in case of certain violations of section D26-41.21 of such housing maintenance code. (6) Proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under the multiple dwelling law or such housing maintenance code. (7) Actions and proceedings for the removal of housing violations recorded pursuant to the multiple dwelling law or such housing maintenance code or other state or local law, or for the imposition of such violation or for the stay of any penalty thereunder. (8) Special proceedings to vest title in the city of New York to abandoned multiple dwellings." The Housing Part is also given jurisdiction over actions by tenants to secure enforcement where the city either fails to place a violation, or, having placed it, fails to enforce its correction. NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-51.01 (Supp. 1974). Parties to a landlord-tenant dispute can defeat the jurisdiction of the Housing Part by instituting either an Article 78 or an *in rem* proceeding in the state supreme court. *Witherspoon v. 2103 Amsterdam Realty Corp.*, 173 N.Y.L.J. 15, col. 8 (Civ. Ct. March 5, 1975). The court in *Witherspoon* noted that "the Housing Part has no power to stay a Supreme Court proceeding or action even though such proceeding or action affects a building which is the subject of a Housing Court proceeding." *Id.* at 16, col. 2. To remedy this problem, the court proposed an

This change in the enforcement of housing maintenance codes was intended to assist in the conservation and improvement of existing housing and encourage new housing investment "by meting out justice to *both* tenants and owners."¹¹ New remedies were therefore made available to both parties under the enabling statute.

Of particular interest to tenants desiring to compel compliance with housing regulations are the new provisions which permit the tenant to petition the Housing Part to compel such compliance by the owner and to direct the Housing and Development Administration (HDA) to commence an action for civil penalties where the HDA fails to act within thirty days after filing of the tenant's complaint.¹² As supplementary remedies, the tenant may also apply to the Housing Part for an order for compliance where the owner both fails to correct a violation and fails to file a certificate of that correction within thirty days¹³ or where the owner certifies falsely as to the correction of a violation.¹⁴ These new procedures were made available through 1974 amendments to existing legislation and for the first time make the Housing Part a forum for tenant initiated proceedings aimed directly at securing compliance with housing code requirements. The very considerable potentials for tenants represented by these amendments were not available during the 1973-74

amendment to CCA § 110 providing power to the Housing Part to consolidate or even stay a proceeding in the supreme court where such action is deemed necessary to effectuate the purposes of the Housing Court Act. *Id.* at 16, col. 1. A substantial omission from the Housing Part's broad jurisdictional potential are actions by tenants to recover damages for breaches of contracts or torts by the landlord. If the tenant has a claim for damages arising from a landlord's breach or tort, he must bring that action in the Small Claims Part of the New York City Civil Court, or the New York State Supreme Court. The claims which would be asserted in such actions can apparently be considered by the Housing Part only if raised as a counter-claim in a summary proceeding maintained by the landlord to recover possession. N.Y. REAL PROP. ACTIONS & PROCEEDINGS LAW § 743 (McKinney 1967), *as amended*, (McKinney Supp. 1974).

11. E. THOMPSON, A PRIMER: THE "HOUSING COURT" i (1975) (emphasis in original).

12. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-51.01(h) (Supp. 1974).

13. *Id.* § D26-51.01(f)(ii).

14. *Id.* § D26-51.01.

reporting period, and hence any criticism of the Housing Part's ultimate capacity to improve rental housing must take into account the fact that possibly the most powerful compliance weapon to date has only recently been unsheathed.

An owner may commence an action to contest the finding of a housing violation by the HDA, and to stay any penalty thereby ordered.¹⁵ For every notice of violation that is sustained, or uncontested, the owner has a duty to certify correction to the HDA within the specified time period.¹⁶ Upon receipt of the certification, the HDA notifies the complainant that the owner has made the mandated corrections.¹⁷ Certification becomes final and the violation is considered corrected seventy days from the receipt of the certification unless the HDA has determined from a reinspection that the violation has not been corrected.¹⁸ Upon receipt of a notice that the certification has been set aside, the owner may apply to the court for a determination that the violation has been corrected.¹⁹

All violations of the Multiple Dwelling Law and the Housing Maintenance Code are classified by the HDA in three categories, namely, nonhazardous, hazardous, and immediately hazardous, according to the effect of the violation "upon the life health or safety of the occupants of the building and upon the public."²⁰ There is a corresponding civil penalty for each violation classification.²¹ One of

15. *Id.* § D26-51.05(b).

16. *Id.* § D26-51.01(c).

17. *Id.* § D26-51.01(f).

18. *Id.* § D26-51.01(f)(ii). If the HDA does not undertake a re-inspection after notification by the tenant that the violation has not been corrected, the tenant may apply to the Housing Part for a determination that the violation still exists. *Id.*

19. *Id.* § D26-51.01(f)(iii).

20. *Id.* § D26-51.01(d).

21. Failure to correct a nonhazardous violation within ninety days of the date of notice of violation leads to a penalty of from ten to fifty dollars per violation. *Id.* §§ D26-51.01(a), (c)(1). Failure to correct a hazardous violation within thirty days of the date of notice of violation leads to a penalty of from twenty-five to one hundred dollars per violation in addition to a penalty of ten dollars per day until the violation is corrected. *Id.* §§ D26-51.01(a), (c)(2). Failure to correct an immediately hazardous violation within twenty-four hours of receipt of the notice of violation leads to a penalty of twenty-five dollars per day until the violation is corrected. *Id.*

the objectives of this structure of civil penalties was to supplant the criminal penalty structure with mandatory civil penalties in order to make the cost of allowing violations more financially onerous to the landlord.²²

The Housing Part has limited criminal jurisdiction. In addition to the civil penalty noted above, one who commits a wilful or reckless violation, or makes a wilful false statement, or causes another to do so, is guilty of a misdemeanor punishable by a fine of from ten to one thousand dollars, or by imprisonment, or both.²³

III. Housing Part Personnel and their Duties

The statute creating the Housing Part provides only the framework for housing code compliance by owners and agents. Its real impact, however, depends upon its implementation in the Housing Part. In the predecessor landlord-tenant court, all cases were heard by a judge. Actions and proceedings before the Housing Part are tried before either judges or hearing officers.²⁴ Though not a judge in the constitutional sense—they need not be elected—the hearing officers have powers which are essentially judicial. The determination made by a hearing officer is final and may be appealed

§§ D26.51.01(a), (c)(3). A person who wilfully makes a false certification of correction of the violation faces a further civil penalty of from fifty to two hundred and fifty dollars per violation so certified. *Id.* § D26-51.01(a).

22. Law of June 8, 1972, ch. 982, § 1(a), [1972] N.Y. Laws 3852 (legislative findings).

23. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-52.01(a)(1)-(3) (Supp. 1974). Violations noted prior to Oct. 1, 1973 remain within the jurisdiction of the Criminal Court, although there are provisions for rendering the violations subject to the jurisdiction of the Housing Part. Law of June 8, 1972, ch. 982, § 15, [1972] N.Y. Laws 3859.

24. CCA § 110(e). The usual procedure under the new law is for the matter to go before the presiding civil court judge when the calendar is read. If both parties are present, the case is then assigned in most instances to one of the hearing officers. Interview with Hearing Officer Richard J. Goldman, in Brooklyn, N.Y., Oct. 8, 1974 [hereinafter cited as Goldman interview]; interview with Hearing Officer John A. Milano, in New York City, Oct. 3, 1974 [hereinafter cited as Milano interview]. The procedures by which a hearing officer arrives at a settlement are discussed in the text accompanying notes 81-96 *infra*.

in the same manner as a judgment of the court.²⁵ However, the hearing officer cannot preside as a judge can over jury trials and actions in equity.²⁶

There are sixteen hearing officers serving the Housing Part in the boroughs of Manhattan, Brooklyn, Queens, and the Bronx. They were selected by the administrative judge of the civil court from a panel of applicants approved by the Advisory Council to the Housing Part as "qualified by training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs"²⁷ Reappointment of the individual hearing officer at the expiration of his three year term is at the discretion of the administrative judge.²⁸

The Advisory Council to the Housing Part is comprised of members representative of the real estate industry, tenants organizations, civic groups, bar associations, and the public at large.²⁹ The members are appointed by the administrative judge with the approval of the presiding justices of the First and Second Departments of the Appellate Division,³⁰ and serve without compensation.³¹ The Advisory Council has two principal duties: (1) to review the manner in which the Housing Part is functioning,³² and (2) to review the HDA classifications of violations by degree of hazard.³³ The Advisory Council maintains a subcommittee to consider remedies for alleged mistreatment by a hearing officer and investigates each complaint received.³⁴ In addition, members of the Council are supposed to arrange meetings between landlord and tenant groups in an effort to encourage further exchange of ideas.³⁵

25. CCA § 110(e).

26. E. THOMPSON, A PRIMER: THE "HOUSING COURT" 2 (1975).

27. CCA § 110(f).

28. *Id.* § 110(i).

29. *Id.* § 110(g).

30. *Id.*

31. *Id.* § 110(h).

32. *Id.*

33. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-51.01(d) (Supp. 1974).

34. Interview with Dr. Lorraine D. Miller, Chairman of the Advisory Council to the Housing Part, in New York City, Oct. 17, 1974 [hereinafter cited as Miller interview].

35. *Id.* There is no statutory authority setting forth such an obligation,

IV. New Case Law Affecting Housing Part Operation

During the first year of its existence, several cases have been decided concerning three significant issues raised by the creation and operation of the Housing Part: the constitutionality of the enabling statute, the possibility of impleading third parties, and the power of the Housing Part to take new initiatives.

A. Constitutional Challenges

*Glass v. Thompson*³⁶ and *Carson v. Thompson*³⁷ challenged the constitutionality of the statute authorizing hearing officers as well as duly constituted judges of the civil court to try actions and proceedings before the Housing Part.

In *Glass*, plaintiffs argued that provisions of the New York State Constitution³⁸ require that summary proceedings be tried only by elected judges of the civil court. The state supreme court upheld the constitutionality of section 110(e) of the New York City Civil Court Act³⁹ by implying a condition that any trial before a hearing officer

but Dr. Lorraine D. Miller maintained in her interview that several meetings between representatives of these groups had in fact taken place in 1973-74 and that more meetings had been planned for 1975.

36. 75 Misc. 2d 824, 349 N.Y.S.2d 57 (Sup. Ct. 1973).

37. 77 Misc. 2d 872, 355 N.Y.S.2d 65 (Sup. Ct. 1974).

38. N.Y. CONST. art. VI, § 15 reads in pertinent part: "(a) . . . The judges of the court of city-wide civil jurisdiction shall be residents of such city and shall be chosen for terms of ten years by the electors of the counties included within the City of New York(b) The court of city-wide civil jurisdiction of the City of New York shall have jurisdiction . . . over summary proceedings to recover possession of real property and to remove tenants therefrom and over such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law."

39. CCA § 110(e) reads: "Actions and proceedings before the housing part shall be tried before judges or hearing officers. Hearing officers shall be appointed pursuant to subdivision (f) of this section. Rules of evidence shall be applicable in actions and proceedings before the housing part. The determination of a hearing officer shall be final and shall be entered and may be appealed in the same manner as a judgment of the court; provided that the assignment of actions and proceedings to hearing officers, the conduct of the trial and the contents and filing of a hearing officer's decision, and all matters incidental to the operation of the housing part, shall

must be on mutual consent of the parties.⁴⁰

In *Carson*, plaintiffs sought a judgment declaring the statute unconstitutional insofar as it compelled parties in actions to recover real property to have their cases adjudicated by hearing officers not holding judicial office. Plaintiffs contended that hearing officers did not possess the qualifications constitutionally mandated for judges and could not compel parties to have proceedings tried without their consent.⁴¹ The court found the statute constitutional,⁴² and strongly rejected the contention that compelled adjudications by a hearing officer were violative of the New York State Constitution:

Civil trials were had before referees long before the first adoption of a Constitution in this State, and in the absence of a specific constitutional prohibition, parties may be compelled to submit disputed issues to a Referee. There appears to be no prohibition against having trials conducted by a Referee in the present Constitution and in the absence thereof, there is no reason why such trials cannot be so held.⁴³

This statement, however, overlooks the basic distinction between the powers of a referee and those of a hearing officer. A referee appointed by the court may have the power to determine an issue, perform an act, or inquire and report.⁴⁴ In the case of a referee empowered to inquire and report, the comparison between the powers of a referee and those of a hearing officer is inappropriate. A hearing officer in the Housing Part does not inquire and report; he determines a summary proceeding.⁴⁵ The report of a referee is merely advisory and in no way binding upon the court;⁴⁶ the decision by a hearing officer is final, and may be appealed in the same

be in accordance with rules jointly promulgated by the first and second departments of the appellate division for such part."

40. 75 Misc. 2d at 827, 349 N.Y.S.2d at 61.

41. 77 Misc. 2d at 873, 355 N.Y.S.2d at 67.

42. *Id.*

43. *Id.* (citation omitted).

44. N.Y. C.P.L.R. § 4001 (McKinney 1963). A referee with power to determine an issue has all the powers of the court in deciding an issue of fact. *Id.* § 4301; see *Hampton Bays Supply Co. v. Adler*, 3 Misc. 2d 224, 147 N.Y.S.2d 775 (Sup. Ct. 1955). A referee with power to perform an act has all the powers a court has in performing the same function. N.Y. C.P.L.R. § 4301 (McKinney 1963).

45. CCA § 110(e).

46. N.Y. C.P.L.R. § 4001; see *Gehr v. Board of Educ.*, 113 N.Y.S.2d 667 (Sup. Ct.), *rev'd*, 304 N.Y. 436, 108 N.E.2d 371 (1952).

manner as a judgment of the court.⁴⁷ The failure of the *Carson* court to perceive this distinction makes its approval of compelled adjudications by a hearing officer unpersuasive.

In *Glass*, a condition was implied from the statute in order to maintain the constitutionality of the grant of powers to the hearing officer. The *Carson* court, in discussing the similarities between the powers of a referee and those of a hearing officer, failed to perceive the basic distinction between them. The principal cause of this confusion appears to be the wording of section 110(e) of the New York City Civil Court Act.⁴⁸ This section should be amended to provide for compelled adjudications by hearing officers in all proceedings before the Housing Part, with the exceptions of jury trials and actions in equity.

B. Impleader

Since the majority of actions in the Housing Part involves non-payment and holdovers,⁴⁹ the issue often arises as to whether the respondent tenant may implead the local welfare department in a summary proceeding if he needs public assistance to pay the rent.⁵⁰ Authority now is split; in two cases the application for impleader was denied,⁵¹ whereas impleader was granted in three other cases.⁵²

When the Housing Part was created, the legislature conceded that the impleader section was a "blunderbluss statute with terminology loose enough to lend support to a wide range of conflicting judicial

47. CCA § 110(e).

48. See note 39 *supra*.

49. Goldman interview; Milano interview; Miller interview; Interview with Seymour Rabinitzky, Deputy Clerk of the Civil Court, in New York City, Sept. 13, 1974 [hereinafter cited as Rabinitzky interview].

50. CCA § 110(d) specifically provides: "In any of the actions or proceedings specified in subdivision (a) and on the application of any party, any city department or the court, on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest."

51. *Gorman v. Gorman*, 77 Misc. 2d 687, 355 N.Y.S.2d 902 (Civ. Ct. 1974); *King v. Marquez*, 171 N.Y.L.J. 19, col. 6 (Civ. Ct. June 19, 1974).

52. *Rothbaum v. Ebel*, 77 Misc. 2d 965, 354 N.Y.S.2d 545 (Civ. Ct. 1974); *Gold v. Soto*, 78 Misc. 2d 390, 356 N.Y.S.2d 489 (Civ. Ct. 1974); *Estate of Weiss v. Downing*, 171 N.Y.L.J. 20, col. 5 (Civ. Ct. May 20, 1974).

views."⁵³ Closer examination indicates that the decisions in the individual cases turned on the specific facts before the court.

In *Gorman v. Gorman*,⁵⁴ the tenant sought to vacate a default in a nonpayment proceeding and to implead the Department of Social Services as a respondent. In denying the motion, the court declared:

[Section 110(d) of the Civil Court Act] . . . applies to maintenance and repair of buildings. It is meant to give authority to the New York City Housing and Development Administration to intervene in a summary proceeding, where necessary, for the rehabilitation of the dwellings. The legislature could not have intended to establish a liability for another person's rent by this section.⁵⁵

In *King v. Marquez*,⁵⁶ the tenant was receiving public assistance and alleged that the Supplemental Security Income checks for February and March, 1974 had not been received. The Department of Social Services refused the tenant's request for emergency funds to replace the missing Supplemental Security Income checks. There was some evidence the Supplemental Security Income funds were not the sole source of rent payment.⁵⁷ The motion for impleader was denied.⁵⁸

In agreeing with the *Gorman* decision, the court in *King* noted that there were other decisions, outside New York City, which permitted joinder of the Department of Social Services.⁵⁹ But those cases were distinguished:

The Department of Social Services had been paying rent directly to the landlord and discontinued the payment of rent on behalf of the tenant solely because violations relating to the tenancy had been filed against demised premises. In such a situation, it was not proper to join the Department of Social Services because the maintenance of housing standards was involved, but essential because the Department of Social Services admittedly was the source for the payment of rent.⁶⁰

53. CCA § 204, Supplementary Practice Commentary.

54. 77 Misc. 2d 687, 355 N.Y.S.2d 902 (Civ. Ct. 1974).

55. *Id.* at 688, 355 N.Y.S.2d at 904.

56. 171 N.Y.L.J. 19, col. 6 (Civ. Ct. June 19, 1974).

57. *Id.*

58. *Id.* at col. 7.

59. *Sessa v. Blackney*, 71 Misc. 2d 432, 336 N.Y.S.2d 149 (Yonkers City Ct. 1972); *Blackman v. Walker*, 65 Misc. 2d 138, 316 N.Y.S.2d 930 (Dist. Ct. 1970).

60. 171 N.Y.L.J. 19, col. 7.

In *Rothbaum v. Ebel*,⁶¹ impleader was permitted on the ground that there was a possibility that the Department of Social Services was under the obligation to provide rent money. In accord with its argument that "it was the intent of the Legislature to end the fragmentation of jurisdiction which previously impeded the swift and final disposition of all matters affecting housing within the City of New York,"⁶² the court noted:

Rents must be paid and if one of the parties that may be charged with the duty of paying the rent is the Department of Social Services, then the Department of Social Services is a necessary party to the proceeding.⁶³

In *Estate of Weiss v. Downing*,⁶⁴ an administrator had been appointed to collect rents and apply them towards repairs. The tenant was sued for an arrearage in rent. The tenant sought assistance from the Department of Social Services under a short term emergency assistance program, solely for the purpose of meeting this debt; the tenant did not request continued public assistance.⁶⁵ The application to implead the Department of Social Services was granted:

The Housing Court is unique and it is a special court with special rules for a special purpose: i.e., to preserve, maintain and upgrade the housing stock in New York City. This express purpose can only be achieved if all necessary and responsible parties are before the court.⁶⁶

In *Gold v. Soto*,⁶⁷ the tenant conceded that she owed a total of three months rent. However, the tenant claimed that on or before the commencing of the lease she had been the recipient of a monthly shelter allowance from the Department of Social Services, and that from about March 11, 1974, the department withheld those payments without notifying her of its reasons for so doing.⁶⁸ The court noted that prior to October 1, 1973—the effective date of the Housing Court Act—such motions to implead third parties in summary proceedings were rarely granted.⁶⁹ The court found "the facts

61. 77 Misc. 2d 965, 354 N.Y.S.2d 545 (Civ. Ct. 1974).

62. *Id.* at 967, 354 N.Y.S.2d at 547-48.

63. *Id.* at 968, 354 N.Y.S.2d at 549.

64. 171 N.Y.L.J. 20, col. 5 (Civ. Ct. May 20, 1974).

65. *Id.* at col. 6.

66. *Id.* at col. 7.

67. 78 Misc. 2d 390, 356 N.Y.S.2d 489 (Civ. Ct. 1974).

68. *Id.* at 390-91, 356 N.Y.S.2d at 490.

69. *Id.* at 391, 356 N.Y.S.2d at 491.

to be [of] a sufficiently compelling nature as to leave little choice other than to grant tenant's motion" to implead the Department of Social Services.⁷⁰ The court in *Gold* held that, in the absence of a higher court ruling, "under the imperative public policy enunciated by section 110, a Housing Court judge may properly exercise broad judicial discretion and implead any governmental agency to solve any housing problems."⁷¹

None of the five Housing Part cases proposes a strict guideline for allowance of impleader. If impleader is too readily available, almost every nonpayment proceeding initiated against a welfare tenant could well become the forum for an adjudication of the tenant's claim against the welfare department. Consequently, the non-payment proceeding would lose its summary nature.

However, preclusion of impleader in the Housing Part can adversely affect a tenant's rights. If the tenant's claim for rental assistance has merit and impleader is denied the tenant would face an unwarranted eviction. The court in *Sessa v. Blackney*⁷² arrived at an equitable resolution of these conflicts; it held that a motion for impleader should be granted only when there is no genuine controversy as to whether the welfare department is obliged to make rent payments.⁷³ The application of this rule in the Housing Part would represent a prudent first step toward the eventual satisfaction of these conflicting interests.

C. Housing Part Initiative

A civil court judge has recently pointed to the rehabilitation of two West Side apartment buildings as illustrative of the Housing Part's potential.⁷⁴ He issued an order calling for weekly written reports to the court on the progress of the work ordered done;⁷⁵ these reports illustrated prompt and effective compliance with the court's order:

70. *Id.* at 392, 356 N.Y.S.2d at 492.

71. *Id.*

72. 71 Misc. 2d 432, 336 N.Y.S.2d 149 (Yonkers City Ct. 1972).

73. *Id.* at 435, 336 N.Y.S.2d at 152.

74. *In re* Housing and Dev. Admin., 171 N.Y.L.J. 17, col. 2 (Civ. Ct. Apr. 10, 1974).

75. *Id.*

An entire fire escape for one of the two buildings was completely replaced and the other was extensively repaired and put into good and safe condition. The bulging brick wall was repaired as were the brick parapets and the leaning chimney. A vast number of other violations was also corrected.⁷⁶

This action contrasted sharply with the one-year period in which all of these dangerous conditions "continued unabated while administrative agencies and courts accomplished nothing."⁷⁷ The judge concluded that "the housing court has met the critical test posed by this proceeding. It has supervised the rehabilitation of these two multiple dwellings within this short period of time."⁷⁸ In this instance the court found solid ground to support its belief that the "Housing Court Act has provided the power and tools to retard the blight destroying housing in this city."⁷⁹

The case illustrates the difference between the usual results under the old landlord-tenant court system and the methods in which such disputes are supposed to be resolved under the new law. Unfortunately, the case is noteworthy because it represents the exception, and not the rule, in the exercise of initiative in the Housing Part.

V. Settlement Procedures

One of the primary purposes of the Housing Part is to ensure the rehabilitation of existing housing units.⁸⁰ A nonpayment case is illustrative of the general pattern by which a case may proceed to settlement and a housing unit may be deemed rehabilitated. The court in *Rothbaum v. Ebel*⁸¹ noted that:

the cycle of abandonment of housing in the City of New York usually begins with . . . the inability of the landlord to collect rent. The failure of the tenant to pay rent in turn prevents the landlord from paying the bills necessary to repair and maintain the housing in question and the cycle of deterioration begins.⁸²

In a nonpayment proceeding, plaintiff landlord alleges non-

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. E. THOMPSON, A PRIMER: THE "HOUSING COURT" i (1975).

81. 77 Misc. 2d 965, 354 N.Y.S.2d 545 (Civ. Ct. 1974).

82. *Id.* at 968, 354 N.Y.S.2d at 548-49.

payment of rent;⁸³ defendant tenant may defend on the ground that the landlord has failed to make repairs.⁸⁴ If so, the hearing officer will ask the tenant or his counsel, if present, for a detailed list of needed repairs. At this juncture, there are four ways in which the case can proceed to settlement:⁸⁵ (1) Adjournment in contemplation of repairs.⁸⁶ If the landlord, upon questioning by the hearing officer, acknowledges that these conditions do in fact exist, he is ordered to make repairs.⁸⁷ The hearing officer then adjourns the case to a date

83. To obtain a judgment in a nonpayment summary proceeding, an owner must allege and prove that the party sought to be removed is a tenant in possession of real property both after a default in rent payment by an agreement under which the demised premises are held and after a demand for the rent has been made by or on behalf of the owner. N.Y. REAL PROP. ACTIONS & PROCEEDINGS LAW § 711 (McKinney 1963); J. RASCH, NEW YORK LANDLORD & TENANT SUMMARY PROCEEDINGS § 1073 (2d ed. 1971) [hereinafter cited as RASCH].

84. N.Y. REAL PROP. ACTIONS & PROCEEDINGS LAW § 743 (McKinney 1963), *as amended*, (McKinney Supp. 1974) provides that “[t]he answer may contain any legal or equitable defense, or counterclaim.” Therefore among the other defenses available to the tenant are: full payment of rent forming the basis of the proceeding; a binding agreement for the extension not having expired; a binding agreement for the reduction of the rent; a compromise of the claim of rent; existence of a rent impairing violation. RASCH §§ 1313-20.

85. Goldman interview; Milano interview.

86. *Id.*

87. There does not appear to be any statutory authority or case law to warrant this order. The mere existence of violations not involving unlawful occupancy is no defense to a claim for rent. RASCH § 1320. Existence of a rent impairing violation, however, is a valid defense. A rent impairing violation is defined as a condition in a multiple dwelling which, in the opinion of the HDA, “constitutes, or if not promptly corrected will constitute, a fire hazard or a serious threat to the life, health or safety of the occupants thereof.” N.Y. MULT. DWELL. LAW § 302-a(2)(a) (McKinney 1974). A few examples of rent impairing violations are: leaky and/or defective water supply pipes; a defective fire escape; a leaky roof; lack of adequate lighting for the public halls and stairs. For the complete list of these and other rent impairing violations, see RASCH § 1320. N.Y. MULT. DWELL. LAW § 302-a(3)(a) (McKinney 1974) further provides: “If (i) the official records of the department shall note that a rent impairing violation exists in respect to a multiple dwelling and that notice of such violation has been given by the department, by mail, to the owner last registered with the

when both parties are to appear before him with repairs having been made. If the repairs are made by that date, the unit is considered rehabilitated.⁸⁸ (2) Deposit of rent with the court.⁸⁹ The tenant is directed to deposit back rent with the court. When the landlord satisfies the hearing officer that the repairs have been made, he is entitled to the money deposited by the tenant, and the unit is considered rehabilitated.⁹⁰ (3) Payment of rent to the landlord to effect repairs.⁹¹ The tenant is directed by the hearing officer to pay the landlord back rent. The landlord, in turn, is directed to make repairs by a specified date. Provisions are made for the tenant to return to the Housing Part if repairs are not made by that time. If the hearing officer has not heard from the tenant for a reasonable period of time after the scheduled repair deadline, the unit is considered rehabilitated.⁹² The major drawback to this method of settlement is that courts seemingly have no authoritative basis for ordering such a settlement, particularly where one of the parties is clearly entitled to judgment on the law.⁹³ Another drawback is that there is no guarantee that the unit has in fact been repaired. The tenant who despairs over what he feels is a drawn out process, or who does not want to lose another day's pay may be tempted to tolerate the continuing violations and not return to the Housing

department and (ii) such note of the violation is not cancelled or removed of record within six months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said six months, no rent shall be recovered by any owner for any premises in such multiple dwelling used by a resident thereof for human habitation in which the condition constituting such rent impairing violation exists"

88. Goldman interview; Milano interview.

89. *Id.*; see N.Y. REAL PROP. ACTIONS & PROCEEDINGS LAW § 755 (McKinney 1963). In addition, when the defense of rent impairing violation is raised in any action by the owner to recover rent, the tenant upon the filing of his answer must deposit the amount of rent sought to be recovered with the clerk of the court. N.Y. MULT. DWELL. LAW § 302-a(3)(c) (McKinney 1974).

90. Goldman interview; Milano interview.

91. *Id.*

92. *Id.*

93. The mere existence of violations is no defense to a claim for rent. RASCH § 1320.

Part. (4) Promise of rent abatement if repairs are not made.⁹⁴ This method of settlement ensures that the housing unit will be rehabilitated after the landlord receives his rent. The tenant is again directed to pay the landlord back rent. However, instead of merely ordering the landlord to make repairs by a scheduled date, the hearing officer informs the landlord that there will be a rent abatement for all future months in which the mandated repairs are not effected. The landlord is thus unable to bring the tenant back into court the following month for subsequent nonpayment. The hearing officer who previously heard the case will direct the tenant not to pay rent until repairs are made.⁹⁵ The threat of rent abatement encourages the landlord to make repairs that he otherwise might not have undertaken. This method of settlement has become a "most powerful weapon" in the fight for the rehabilitation of housing units in New York.⁹⁶

In reaching a settlement under any of the methods outlined, the hearing officers are permitted to exercise an unusual degree of discretion. The only method of settlement outlined above which is authorized by law is the depositing of rent money with the court to effect repairs. In all the other cases it would appear that the hearing officers are treating all violations as rent impairing violations, in order that they might order a party to settle.

Given the desirability of rehabilitating the housing stock of New York City, the judicial acts directed toward this goal should be given explicit authoritative basis in law. In reaching settlements via these methods, the hearing officers are apparently creating a great deal of new law, either in unpublished opinions or without rendering any opinions at all clarifying the bases for their actions. If the results of these settlements are often laudable, they ought to be explicable and justifiable. By candidly requiring a doctrinal justification for these settlements, for example, an implied warrant of habitability in residential leases and dependence of lease covenants, the laudable results could be reached without simultaneously ignoring or

94. Again, there seems to be no authoritative basis for ordering such a rent abatement, at least unless the prerequisites of N.Y. MULT. DWELL. LAW § 302-a (McKinney 1974) are met. See note 87 *supra*.

95. Goldman interview.

96. *Id.*

undermining the tradition of authoritative decision upon which the rule of law is predicated.

VI. HDA Intervention in the Housing Part

Lawyers on both sides have expressed varying degrees of approval and disapproval of the Housing Part.⁹⁷ Tenant groups are concerned with the qualifications of hearing officers and the court's power to hold the tenant's money.⁹⁸ They fear that with its emphasis on reconciliation, the Part has ruled out rent strikes and other effective protest actions.⁹⁹ Representatives of landlords may applaud the generally speedier disposition of cases in court, but they complain that unnecessary delays and bureaucratic inefficiency in city agencies such as the HDA diminish the Part's effectiveness.¹⁰⁰

The statute which created the Housing Part granted to the HDA the power to commence proceedings to "effectuate proper housing maintenance standards."¹⁰¹ The HDA may now be represented in the Housing Part by its own attorneys;¹⁰² formerly the agency could be represented in court only by the office of the Corporation Counsel.¹⁰³

In HDA initiated actions, the HDA may seek injunctive relief to compel repairs.¹⁰⁴ It may also attempt to obtain reimburse-

97. See, e.g., N.Y. Times, Oct. 4, 1974, at 43, col. 7; N.Y. Post, July 8, 1974, at 11, col. 1.

98. Interview with representatives of the Manhattan Council on Housing, in New York City, Sept. 20, 1974.

99. N.Y. Times, Oct. 2, 1973, at 36, col. 1. But Dr. Lorraine Miller, then a member of the Advisory Council and now its Chairman, responded that "the idea is to foster what has to be done to save housing, not foster illegal rent strikes." *Id.*, Sept. 30, 1973, at 58, col. 3.

100. N.Y. Post, July 8, 1974, at 11, col. 5.

101 CCA § 110(d). The HDA has "the power and duty to perform all of the functions of the city of New York relating to the rehabilitation, maintenance or improvement of privately-owned housing or residential buildings . . ." NEW YORK, N.Y., CHARTER § 1803(2).

102. CCA § 110(1).

103. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-50.01(a) (1970).

104. *Id.* § D26-53.01. From March through June, 1974, 116 injunctive orders were obtained from the Housing Part. Interview with Peter Herman, Counsel, HDA Litigation Bureau, in New York City, Sept. 27, 1974 [hereinafter cited as Herman interview].

ment from landlords for funds expended for the rehabilitation of housing units under its Emergency Repair Program.¹⁰⁵ In addition, the HDA may seek the imposition and collection of civil penalties for housing violations.¹⁰⁶ Although the HDA has brought such actions for violations recorded subsequent to October 1, 1973,¹⁰⁷ the consensus among HDA counsel is that imposition of civil penalties is not an effective remedy; it is useful only when the building in question is operating at a profit.¹⁰⁸ Rather than seeking the imposition of fines, the HDA is often willing to settle for the correction of the violation plus maintenance after the fact.¹⁰⁹

This degree of flexibility in the handling of civil penalty actions displeases the Advisory Council.¹¹⁰ The Council contends that in so doing the HDA is divesting the Housing Part of its direct jurisdiction.¹¹¹ The contention is that the Housing Part has remedial powers and should be permitted to exercise them absent discretionary intervention on the part of a city administrative agency.¹¹²

105. When the HDA determines that because of any violation "any dwelling or any part of its premises is dangerous to human life and safety or detrimental to health," it may correct the violation. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-54.01(a) (Supp. 1974), amending § D26-54.01(a) (1970). All expenses incurred by the HDA in this rehabilitative effort constitute an expense recoverable from the owner. *Id.* § D26-54.05. However, the HDA has a history of a poor rate of recoupment of Emergency Repair Program expenditures; its current annual rate of recoupment has been estimated as approximately fourteen percent of all funds expended. Herman interview.

106. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-53.01(a) (Supp. 1974).

107. *Id.* The HDA is not limited to these remedies alone. According to the terms of an agreement with a realty firm, the HDA has recently arranged to manage some two hundred apartment houses. The HDA will apply the rents to correct "thousands of violations." The landlord will continue to own the buildings, but will be unable to receive any revenue from them until all violations are corrected. N.Y. Post, Dec. 23, 1974, at 9, col. 1.

108. Herman interview.

109. *Id.*

110. Miller interview.

111. *Id.*

112. *Id.*

If improvement of the housing stock in New York is one of the goals of the Advisory Council, the HDA's willingness to settle for correction of violations instead of the imposition of civil fines should not be objectionable. By not bringing an action for the imposition of civil penalties in those cases where a building is not operating at a profit, the HDA ensures that there will be money available from the landlord for repairs.

It has been acknowledged that the HDA, of all the agencies handling matters before the court, is not solely to blame for the lack of cooperation between the court and administrative agencies.¹¹³ Often, agency reports on available building information contradict other agency reports or are entirely incomprehensible.¹¹⁴

There are other factors which have prevented the HDA from achieving the full force anticipated under the Housing Court Act. Foremost among these is the size of the HDA legal staff. Only fourteen lawyers serve the boroughs of Manhattan, Brooklyn, Queens, and the Bronx.¹¹⁵

There are provisions in the enabling statute for the protection of the tenant should the HDA fail to act within thirty days after the filing of the complaint. Under these circumstances, the tenant may petition the court to compel compliance with housing regulations by the owner and to direct the HDA to enter judgment for penalties.¹¹⁶ Such tenant initiated actions are rarely brought.¹¹⁷

It is possible that during the 1973-74 reporting period tenants were unaware of their right to initiate private actions. As a result of this recent change, which was accomplished through amendments to the Housing Maintenance Code,¹¹⁸ a tenant can obtain court orders for repairs which are enforceable against the landlord by the contempt power,¹¹⁹ and a judgment for civil penalties.

113. Goldman interview.

114. *Id.*; Milano interview.

115. Herman interview.

116. New York City Housing Maintenance Code, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 26, § D26-51.01(h) (Supp. 1974).

117. Goldman interview; Milano interview; Rabinitzky interview.

118. See text accompanying notes 12-14 *supra*.

119. Although landlords have been ordered to prison on many occasions by directive of the Housing Part, it was not until Dec. 27, 1974, that an owner was actually incarcerated. The landlord was sentenced to four-

VII. Conclusion

There have been many beneficial effects from the first year of operation of the Housing Part. All landlord-tenant cases are now consolidated in one court.¹²⁰ Since the judges and hearing officers hear only landlord-tenant cases,¹²¹ they bring to the Housing Part a level of expertise heretofore lacking, and thus retain a greater degree of flexibility in their decisions.¹²²

But the Housing Part has not accomplished all its goals. There remains room for improvement in the area of tenant initiated actions. Many tenants are still unaware of their newly-obtained rights.¹²³ There is an urgent need for legislative reform in two significant areas affecting Housing Part operation. The legislature should enact further measures which give the hearing officer the power to preside over compelled adjudications in all summary proceedings not involving jury trials or actions in equity,¹²⁴ and give the hearing officer an authoritative basis in law from which to justify the flexibility of the remedies awarded.¹²⁵

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teen days for wilful criminal contempt for refusal to comply with the order of a civil court judge directing him to make repairs in one fifty-two unit building. In addition, the landlord was fined two hundred and fifty dollars for civil contempt and ordered to remain in jail until the one hundred violations on file at the city's Rent and Maintenance Department were removed. N.Y. Post, Dec. 28, 1974, at 3, col. 6.

120. See text accompanying notes 4-7 *supra*.

121. See text accompanying notes 24-27 *supra*.

122. See text accompanying notes 85-96 *supra*.

123. See text accompanying notes 12-14 & 116-19 *supra*.

124. See text accompanying note 26 *supra*.

125. See text following note 96 *supra*.

