

# Eviction and Legal Representation in Delaware – An Overview

As evictions increase nationwide, more attention has focused on equity concerns and protections for tenants in the court eviction process.

Eviction rates are particularly high in Delaware. The Princeton Eviction Lab estimates the state’s eviction rate (evictions per renter household) to be 5.1%, about 2 points higher than the national average, and the state’s annual eviction filing rate (eviction filings per renter household) to be 16%. On an average day, 14 evictions are filed in Delaware courts.

possible impacts that access to legal representation through right to counsel legislation might have on the eviction process.

*Locations of 300 eviction cases examined in this brief*

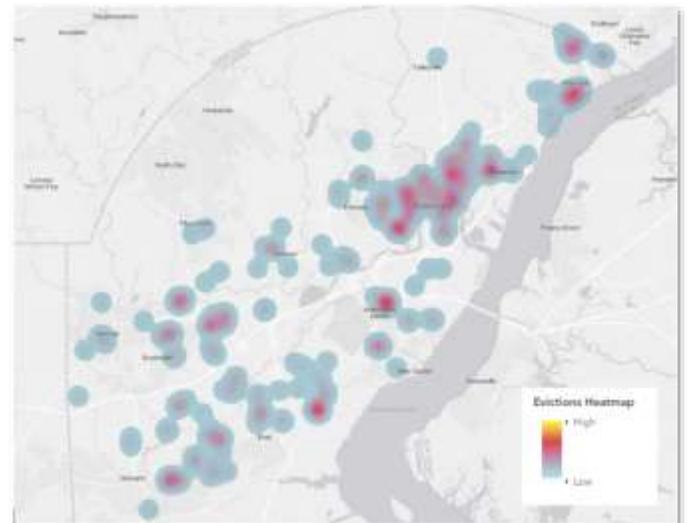


Photo Credit: Delaware Public Media

Delaware’s legal process for eviction lets landlords move against tenants with relative ease. This increases the number of families and individuals who face being displaced from their homes and communities, and the speed at which these displacements can occur. There are also major inequities with regards to representation and transaction cost that put tenants at further disadvantage.

In this brief we examine 300 eviction cases (see map) from Delaware’s Justice of the Peace Court #13 (JP13) to assess the dynamics and outcomes of the eviction process in this representative sample. We then determine

## Data & Methodology

We collected a random sample of 300 landlord/tenant cases in JP13, Delaware’s busiest eviction court, from 2017 from publicly available, online court data (<https://courtconnect.courts.delaware.gov>).

There were 10,928 landlord/tenant cases filed in JP13 in 2017. The data fields collected included defendant representation, plaintiff representation type, type of judgement, case outcome, and defendant address, and dates of court actions.

## LEGAL PRESENTATION AND THE COURT PROCESS

Several key points in Delaware’s legal process favor the ability of the landlord to evict the tenant cheaply and quickly. Many of these issues are unique to Delaware’s landlord/tenant code.

*Transaction costs for landlords to evict tenants are low.* Landlords can file to evict a tenant for a \$45 fee.

*Delaware landlords seeking eviction may be represented in Justice of the Peace (JP) Court by someone other than a licensed Delaware attorney.* Under Delaware Supreme Court Rule 57, non-attorneys may act as “Form 50” agents and stand in for landlord interests. This reduces expenses, as it allows landlords to have representation in court without hiring an attorney. As shown in the figure, landlords used Form 50 agents in almost three-quarters of the cases we reviewed, compared to only 12% who used licensed attorneys.

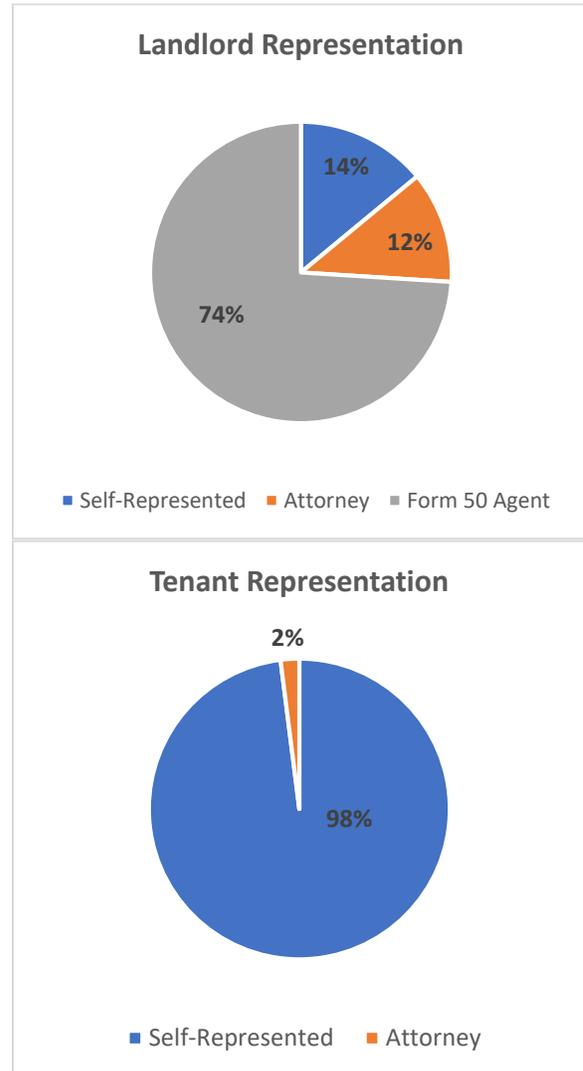
*There is no floor for money judgements.* In Delaware, landlords can file for eviction for any sum of money owed as there is no minimum amount of arrears required to bring a tenant to court. In this study, out of the 155 cases that received a money judgement for back rent and other expenses, 11% were for less than \$300 and 6 of those were for less than \$50.

Money Judgment Amount	Percent of cases (n=155)
>\$2,000	41%
\$1,000-1,999	31%
\$300-999	17%
<\$300	11%

*Tenants lack access to legal representation.* In our sample, we found that 2% (n=6) of tenants had legal representation, all of which were legal aid attorneys. There is no equivalent of Form 50 agent representation available to tenants. This leaves the remaining 98% without the means for

adequate legal representation of their case and renders them vulnerable to eviction regardless of the circumstances of their case. Of cases with tenant legal representation, 3 cases were dismissed and 1 retained their housing.

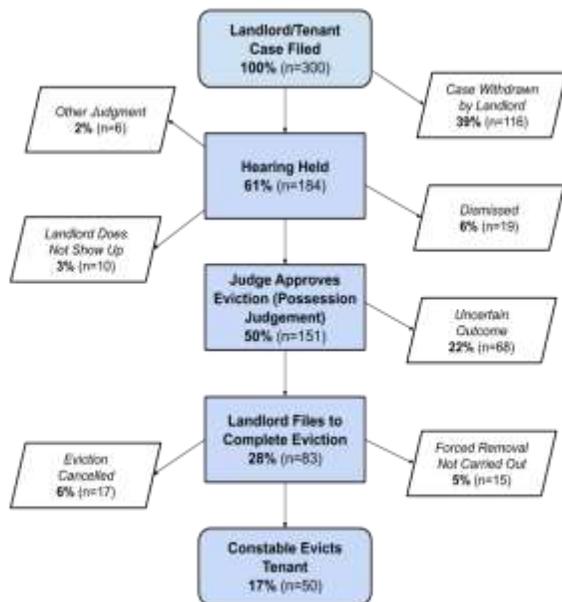
In comparison, 86% of landlords in the cases we surveyed had legal or Form 50 representation.



Finally, eviction cases move quickly through Delaware’s legal system. The court process to evict a tenant in Delaware can take as little as six weeks. This gives tenants very little time to find other housing options, compounds the disruption associated with eviction and contributes to evictions as being a common antecedent to homelessness.

## RESULTS OF CURRENT PROCESS

Of 300 landlord/tenant cases we randomly sampled, the case outcome breakdown was:



39% of the cases were withdrawn by the landlord before reaching a hearing held before a judge. This means that the landlord decided not to move forward with the case because the tenant came up with the money or left voluntarily. Alternately, a landlord may withdraw the case due to a technical error and intend to refile it.

6% of the cases were dismissed in favor of the tenant. This often comes from technical errors in filing on the part of the landlord that were caught by either the court or the tenant. In 3% of the cases the landlord failed to show up to the hearing date and thereby lost the case. 2% of cases resulted in undetermined “other” judgements.

50% of the 300 cases (82% of the 184 hearings held) resulted in a possession judgement. With this, the court permits the landlord to move forward with an eviction and regain possession of the unit from the tenant. Of these possession judgements, 72% were by default. This means that the tenant lost because they did not show up to their court date.

Of cases that received a possession judgement:

In 6% of the cases, the eviction was cancelled. This outcome indicates that a writ of possession was issued and set to be executed, and the request was subsequently withdrawn. This can mean the landlord decided to let the tenant stay, or that the tenant had already vacated and a forced removal by a constable was no longer necessary.

In 28% of the 300 total cases, a writ of possession was issued. This means the landlord filed for the New Castle County constable to physically evict the tenant.

In 17% of the cases a writ of possession was executed. Here a constable forcibly removes a tenant and their belongings from their home. This is the final step in the eviction process.

Most eviction cases that result in a possession judgement end up without a writ of possession being executed.

## IMPACT OF RIGHT TO COUNSEL

This brief has presented an overview of Delaware’s legal eviction process and an analysis of a representative set of eviction cases filed in the Delaware JP court for New Castle County. In this final section, we examine how access for tenants to a “right to counsel” might impact this eviction process.

Guaranteed right to counsel would redress the almost total lack of legal assistance for tenants in current Delaware eviction cases. Based upon our findings and extrapolating the likely effects of having legal representation and counsel for low income tenants in landlord/tenant court, we anticipate that were a right to counsel available:

Of the 300 court eviction cases that we reviewed, a substantial number would never have been filed. Tenant access to legal representation would facilitate negotiations that could settle disputes without having to file for eviction. This could benefit tenants and landlords while decreasing the number of cases on the eviction court docket.

Among the cases filed, the proportion withdrawn by the landlord (currently 39%) would increase. Legal representation would mean that tenants could continue to negotiate arrangements after a

court filing and thereby avoid formal court hearings.

*The proportion of cases that are dismissed (currently 6%) would likely increase dramatically.* Attorneys for the defendant could identify technical and procedural errors in landlord filings that currently go unnoticed unless they are egregious.

*The proportion of cases that result in a possession judgement (currently 50% of all filed cases) would decrease.* This would come as the number of alternative agreements and dismissals increase. Furthermore, the large proportion of default possession judgements, where 72% of tenants fail to show up for their hearing, would likely decrease significantly. Instead, attorneys would see that tenants show up and see that court dates are scheduled when the tenant is available.

*The number of writ of possessions that are filed would also likely decrease.* This is because arrangements between parties could be made more readily with the presence of counsel on both sides. Attorneys can facilitate arrangements where tenants leave voluntarily for other housing.

*Writ of possessions (currently 17% of all cases reviewed) that are executed would likely decrease significantly.* Attorneys could push for the negotiated terms between the two parties, thereby avoiding the last resort measure of forced removal by a constable.

Additionally, guaranteed counsel for tenants would provide tenants access to social services and other resources to either pay their rent or avoid homelessness. Tenant attorneys would provide another layer of support for desperate tenants with few options during and after an eviction.

This means the number of ugly, forced removals of tenants would decrease while deals and voluntary moves would increase. This would save county resources that are now needed to carry out these evictions.

Keeping cases out of court with more outside negotiations would have positive long-term effects for tenants. This is because interactions with landlord/tenant court, regardless of outcome, can have negative long-term consequences as eviction cases are public records that are accessible online.

In conclusion, we present findings that show how the current legal eviction process puts tenants at substantial disadvantage. Right to counsel legislation can counteract this, and our findings are the basis for some projections as to how outcomes might change in Delaware if both tenants and landlords were to go to eviction court hearings in the company of legal representation.

### **Key Findings:**

**2% of tenants** (vs 86% of landlords) had some type of third-party representation in eviction court

In cases involving money judgments, **29% were over amounts under \$1,000**

In **82% of eviction hearings**, landlords received a possession judgment to evict

In **72% of possession judgments**, tenants did not show up for the hearing

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