

THE EFFECT OF STATE & LOCAL LAWS ON EVICCTIONS

JANUARY 2021

A Common Story

The Eviction Process in Shelby County, TN

By Ranya Ahmed, Sarah Abdelhadi, Madeline Youngren, and Carlos Manjarrez

Eviction is defined as the forceful expulsion of a tenant from a rental property. This process may be resolved formally through the civil legal system or informally between the landlord and tenant(s) with no legal processes involved. Nonpayment of rent is the most common reason for eviction, although lease violations, property damage, criminal activity, and other issues can also be cause for initiating eviction proceedings.

At the beginning of November 2020, approximately 48.7% of renters in the United States reported that they were either “likely” or “somewhat likely” to have to leave their home in the next two months due to eviction.¹ Nearly 85% of these renters noted that they, or someone in their household, had recently experienced a loss of employment income.² In the coming months, many of these renters could be named in a legal suit filed by their landlords in civil court. Since the process of eviction is determined by state, county, or local laws, the steps that follow an eviction filing may vary drastically from one jurisdiction to the next.

The COVID-19 public health emergency has cast a spotlight on the patchwork nature of eviction laws. Under normal circumstances, the eviction process is already so complex that it can be difficult for landlords and tenants alike to exercise their rights without legal representation. During the pandemic, an additional layer of complexity was added as various levels of government—national, state, county, and municipal—implemented, rescinded, or modified a diverse assortment of policies related to eviction.³ Parties across the board, including landlords and court officials, have struggled to keep up with these changes.

To address concerns about the high rate of evictions before the pandemic and the variability in the process, Congress directed the Legal Services Corporation (LSC) to conduct a study focusing on the legal aspects of the eviction process in the United States (see the [Consolidated Appropriations Act, FY 2020, P.L. 116-93](#)).

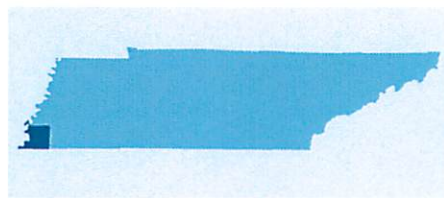
LSC will address the requirements of the congressional mandate in three key phases. First, in partnership with Temple University's [Center for Public Health Law Research](#) (CPHLR), LSC will build a comprehensive database of eviction laws at the state/territory level and explore variations at the municipal level in 30 additional sites. This eviction database will provide policymakers, advocates, researchers, media and the public with an initial framework for understanding eviction actions and how they vary by location. Second, LSC will examine how different legal frameworks affect both the quantity and the character of evictions at the local level by analyzing millions of eviction case records gathered from courts across the country. A close look at case records, from initial filing to the final disposition, across multiple jurisdictions will shed light on the challenges litigants face when navigating the complex civil legal system. The third phase will focus on the range of legal services available to low-income individuals and families facing eviction.

A Common Story The Eviction Process in Shelby County, TN

As the nation's largest funder of civil legal aid, LSC supports a broad network of civil legal aid providers in every state, the District of Columbia, Puerto Rico and the U.S. territories.⁴ The study will draw on the detailed knowledge of local providers to help catalogue the breadth of services available to people at risk of eviction and highlight innovations.

A Look at the Eviction Legal Process

This initial brief provides a high-level overview of several key steps in the legal eviction process. The steps are outlined here to provide a basic understanding of the process, and the general focus area of the LSC study. Rather than provide an abstract model, this brief will illustrate the process through a single jurisdiction: Shelby County, Tennessee. Shelby County was not selected because it is an outlier—rather because it is typical of many U.S. counties. Its population is concentrated in a major urban center (Memphis) and the cost of housing is not exorbitant. According to estimates from the U.S. Department of Housing and Urban Development (HUD), the Fair Market Rent cost for a two-bedroom apartment in 2020 is \$817 per month,



Shelby County, Tennessee

placing Shelby County in the median of the distribution for U.S. counties.⁵ In addition, Shelby's 2019 average unemployment rate of 4% placed it in the middle of the distribution for counties across the United States.⁶

Shelby County's eviction rate is 4.5%.⁷ Prior to the pandemic, monthly eviction filings averaged 2,260 in Shelby County from 2016 to 2019.⁸ While this rate dropped dramatically in Spring 2020 due to the implementation of eviction moratoria and court closures, eviction filings in Memphis are quickly moving

back to their pre-pandemic levels. In May 2020, just before the state-ordered suspension of all in-person civil hearings expired on May 31, only 664 evictions were filed in Shelby County; this represented only 28.6% of the average number of cases filed in May from 2016-2019.⁹

As in most jurisdictions, the swift legal process for evictions in Shelby County is designed to keep pace with the large volume of cases that occupy the court docket. In 2019, more than 26,000 eviction cases were filed in Shelby County's General Sessions Court. This represents approximately 41% of all civil cases filed that year.¹⁰ At minimum, it can take only 30 days to process an eviction in Shelby County, from the initial notice to a tenant to the court-ordered removal. The graphic below outlines key steps in the eviction process at three different stages: when an eviction action is initiated, during the court process and after a court hearing. The actions taken by tenants and landlords during the eviction process can be critical in determining the final outcome. Waiting periods must be observed. The appropriate forms and fees must be submitted. Timely appearance in court is required. All of these steps must be followed according to the rules and procedures of the court. Failure in any of these areas can mean the difference between winning and losing a case.

INITIATION OF EVICTION

Like most states, Tennessee requires landlords to notify tenants in advance when they intend to file an eviction action. However, the required notice period in Tennessee can vary depending on the circumstances of the case. A minimum of 14 days' notice prior to filing an eviction case is necessary to remove a tenant who fails to pay rent on time or causes extensive damage to the rental property.¹¹ Landlords are required to provide only 3 days' notice to tenants who allegedly engage in violent, dangerous or criminal behaviors.¹² Evictions for any other cause require 30 days' notice.¹³ Relative to other jurisdictions, these notification periods may seem generous. In Houston, TX or Phoenix, AZ, a tenant may be evicted within 24 hours of receiving a notice.¹⁴

Though some states specify what information should be included in an eviction notice and provide detailed requirements

for its delivery, Tennessee state law only mentions that the notice must be given to tenants in writing.¹⁵ If a landlord does not provide a tenant with clear information about the cause of the eviction or the next steps of the legal process, tenants may not be aware of their rights to remedy the reasons for the eviction or to later challenge the eviction in court.

In Tennessee, eviction cases are first heard in county-level General Sessions civil courts, which allows each county to independently govern certain aspects of the eviction process. For example, filing fees for an eviction can vary from one county to the next. In Shelby County, landlords must pay \$144.50 to file an eviction case.¹⁶ If their property were a few miles east, in Fayette County, TN, landlords would pay more (\$176.75) each time they file an eviction case.¹⁷ This difference in cost is critical, as recent research suggests that higher eviction filing fees can deter landlords from filing frivolous or repetitive eviction actions.¹⁸

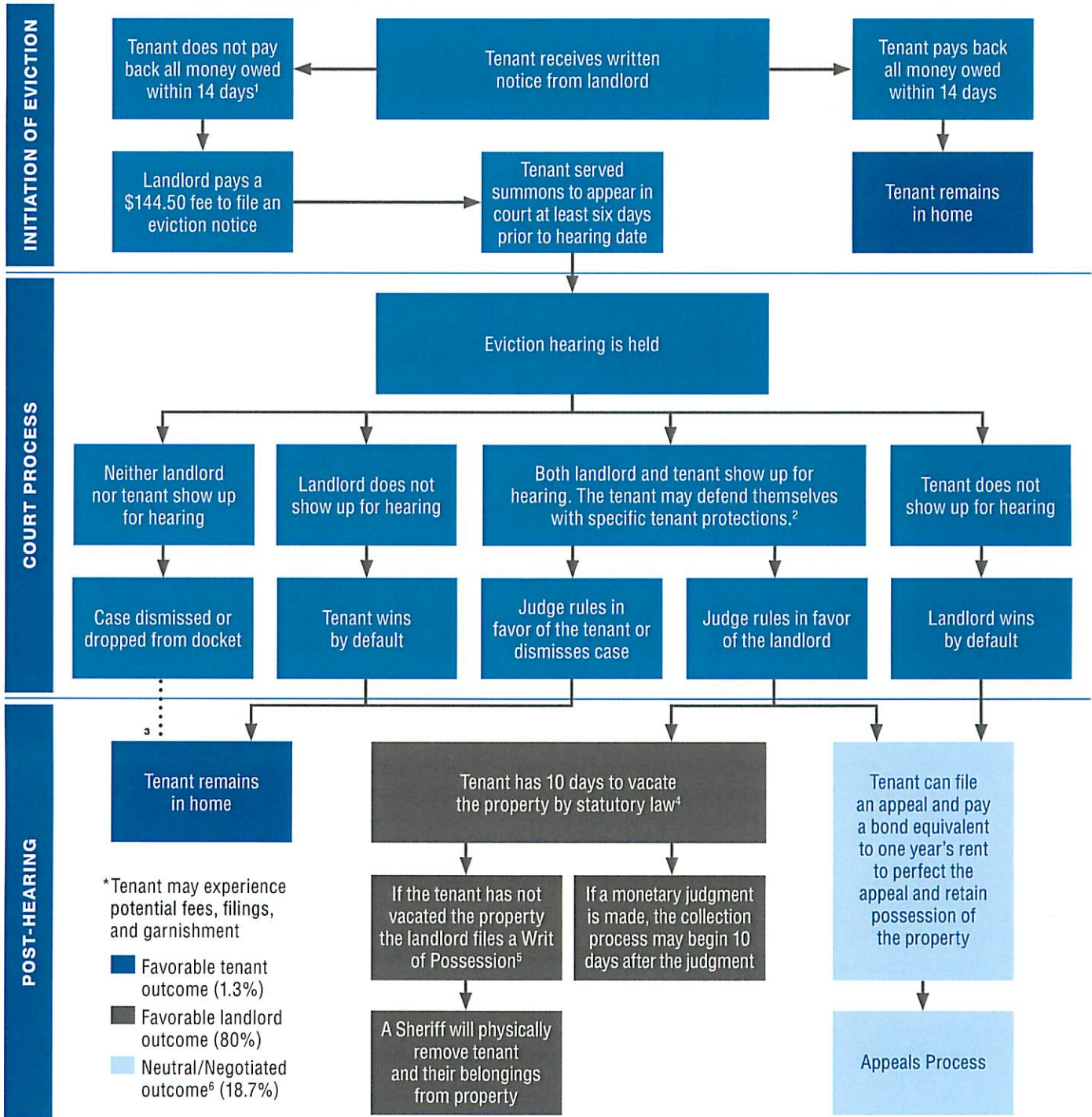
COURT PROCESS

Once a landlord files an eviction case, the tenant will receive a summons to appear in court for a hearing. If the tenant does not attend the hearing,¹⁹ the court will often rule in favor of landlords by default as long as they are present (default judgment).

When tenants come to court, they have the legal right to mount a defense to their eviction. However, admissible defenses are defined by the eviction laws governing the jurisdiction—what might be considered a valid defense in one court may not be permissible in another. It can be challenging for unrepresented litigants to know what legal defenses are available to them. For example, domestic violence is considered a permissible defense in eviction cases in Shelby County, where only the perpetrator of the violence can legally be evicted.²⁰ However, the law requires domestic violence survivors to follow specific requirements—including the acquisition of a protection order with certain conditions—in order to remain in the property following the eviction of the perpetrator.²¹ Without legal assistance, it is very possible that domestic violence survivors facing eviction will be unaware of their rights and responsibilities under law. Notably, being a survivor of domestic

A Common Story The Eviction Process in Shelby County, TN

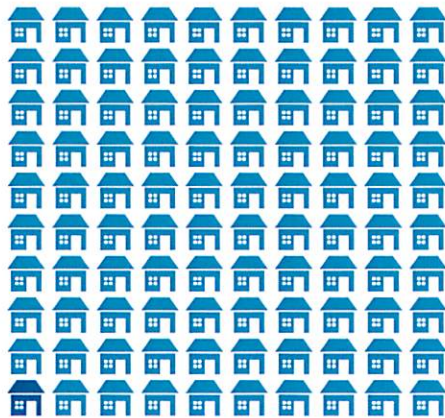
FIGURE 1 The Formal Eviction Process in Shelby County, TN



A Common Story The Eviction Process in Shelby County, TN

violence is not a legal defense against eviction in all states. Domestic violence survivors living in Iowa and Ohio, for example, have no legal recourse to amend or cancel their leases, because there is no explicit protection in their state laws.

When a tenant appears in court and the landlord does not, case dismissal is not automatic. In Shelby County, a dismissal is issued only if a tenant knows to affirmatively request it. Without legal assistance or information, many tenants are not aware of this option. If an individual knows to request this option, the judge will dismiss the case due to lack of prosecution. In other words,



In a review of Shelby County court data from 2016–2019, only 1.3% of the cases resulted in a clear ruling for the tenant.

if the landlord is not pursuing the case it will be dismissed. An individual's ability to navigate an eviction proceeding is facilitated by knowledge of the legal process.

POST-HEARING

In many jurisdictions, a ruling in favor of the plaintiff (landlord) is by far the most common outcome of an eviction case. This holds for Shelby County as well. In a review of court data from 2016–2019, landlords prevailed in their eviction cases 80% of the time. In 18.7% of the cases, landlords voluntarily withdrew the eviction case, but left open the possibility of filing an eviction action at a later date. Only 1.3% of the cases resulted in a clear ruling

for the tenant. While tenants have the option to appeal a ruling in Shelby County, this does not automatically defer ("stay") the court's decision. To stay the eviction judgment and remain in their home, tenants must pay a full year's worth of rent into an appeal bond, where the money is held by the court until the appeal is finalized.²² The cost alone puts this option out of reach for most tenants.

Without a stay of judgment, tenants have ten days to vacate the rental property with all of their possessions. After this period, the landlord may file a Writ of Possession with the court and pay an additional filing fee to regain control of the property. Once granted, the Shelby County Sheriff's Office will make arrangements to meet the landlord at the property to physically remove tenants and their belongings.²³ Neither Tennessee nor Shelby County laws require that additional notice be given to the tenant before removal occurs. As with other aspects of the eviction process, these steps can vary from state to state. For instance, Maine has an abandoned property statute requiring landlords store any property left behind by tenants and formally notify them of how to collect their belongings.²⁴

As in most jurisdictions, all evictions filed in Shelby County are considered public record and are therefore accessible to background check companies and other entities that collect and sell personal information. It has been well-documented that having an eviction filing on one's record—regardless of outcome—can be a barrier to obtaining future rental housing.²⁵ When eviction cases result in a ruling or default judgment against the tenant, they may be required to pay court and attorney's fees in addition to back rent owed, late fees, and other monetary penalties. The financial ramifications of eviction may follow tenants for months and even years after an eviction judgment, by way of small claims suits or garnishment orders. This is true even when the tenant vacates the property after an eviction is filed in court, but before the hearing occurs.

Next Steps in LSC's Eviction Research

The variations in the law and the hyper-local nature of the eviction process results in a

In the coming year, LSC will take a focused look at the laws that frame the eviction process, how this process is actualized in courts across the country, and what legal support systems are available to help low-income individuals and families in need.

range of obstacles that litigants must overcome to successfully navigate the system. The process map outlined above for Shelby County is just one example of the circuitous route that evictions take in courts across the country. Given the variations that exist, there are thousands of process maps that could be developed for American eviction courts, each one listing a unique combination of rights and procedures, forms and fees, and waiting periods. Unfortunately, the complexity of eviction laws and procedures make it difficult to understand the law and apply it to the facts at hand. There are very few resources to which advocates and policymakers can turn in order to understand the legal and procedural variations in eviction laws. This information is critical to understand the variation in local eviction rates and to develop policies and interventions that can be scaled for broader impact.

Greater transparency is also essential. While court data is largely public, this information is rarely used to monitor and critically evaluate the different pathways evictions take in court. This information could be used to examine representation rates of litigants, fees and filings, judgment rates, and more. To tell the story of the eviction legal process, detailed case-level data is needed to reconstruct the eviction process which occurs in local courts, and to catalog steps which create the greatest difficulty for litigants. Greater transparency about the eviction legal process can help both tenants and landlords understand their rights.

In the coming year, LSC will take a focused look at the laws that frame the eviction process, how this process is

A Common Story The Eviction Process in Shelby County, TN

actualized in courts across the country, and what legal support systems are available to help low-income individuals and families in need. Although the study was conceived prior to the COVID-19 pandemic, its impact on evictions cannot be ignored. Therefore, an upcoming brief will examine the impact of the pandemic and the effect of moratoria policies on evictions at the state and local levels.

LSC has convened an advisory board of legal practitioners, academics and policymakers who will contribute their expertise to the study. Over the next year, LSC will:

- Work with Temple University's CPHLR to create a database of state and local eviction laws and processes
- Examine collected court data to unearth and better understand trends within the eviction process (there are 25 million records to date)
- Catalogue the range of eviction legal services, innovations, and interventions available to low-income residents

LSC expects to publish briefs, data notes, and reports in addition to highlighting relevant articles and resources as the work progresses.

Acknowledgements

The authors would like to thank Cindy Ettinghoff, Executive Director of Memphis Area Legal Services (MALS), and Milandria King, Managing Attorney at MALS, for guidance on the eviction process in Shelby County.

Suggested Citation

Ranya Ahmed, Sarah Abdelhadi, Madeline Youngren, and Carlos Manjarrez. (2021) A Common Story: The Eviction Process in Shelby County, TN. Legal Services Corporation.

Endnotes

- 1 U.S. Census Bureau. (2020). Household Pulse Survey (Week 18). [Data set]. Retrieved from <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>.
- 2 U.S. Census Bureau. (2020). Household Pulse Survey (Week 18). [Data set]. Retrieved from <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>.
- 3 National Low Income Housing Coalition. (2020). Retrieved from: <https://nlihc.org/eviction-and-foreclosure-moratoriums>.
- 4 An estimated 54.2 million persons were eligible for LSC-funded services in 2019. LSC's eligibility standard is 125% of the federal poverty level. Eligibility data from the U.S. Census Bureau 2019 American Community Survey 1-year estimates (50 states, District of Columbia, Puerto Rico), the 2010 Decennial Census (American Samoa, Virgin Islands), and the independent states of the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau.
- 5 U.S. Department of Housing and Urban Development. (2020). FY 2020 Fair Market Rent Documentation System. [Data set]. Retrieved from <https://www.huduser.gov/portal/datasets/fmr.html#2020>.
- 6 U.S. Bureau of Labor Statistics. (2019). Labor force data by county, 2019 annual averages, Local Area Unemployment Statistics. [Data set]. Retrieved from <https://www.bls.gov/lau/#cntyaa>.
- 7 Eviction Lab. (2018). Eviction tracking: Memphis, Tennessee. Retrieved from <https://evictionlab.org/eviction-tracking/memphis-tn/>.
- 8 Legal Services Corporation. (2020). *Civil Court Data Project*, retrieved December 1, 2020.
- 9 National Apartment Association. (2020). Covid-19 Information for Tennessee. Retrieved from: <https://www.naahq.org/covid-19-information-tennessee>; See *In Re: Covid-19 Pandemic*, No. ADM2020-00428 (Tenn. Apr. 24, 2020) (Order).
- 10 Legal Services Corporation. (2020). *Civil Court Data Project*, retrieved December 1, 2020. Types of cases seen in the Civil Division of the Shelby General Sessions Court include civil warrants, replevin actions, and distress warrants.
- 11 Tenn. Code Ann. § 66-7-109(a).
- 12 Tenn. Code Ann. § 66-7-109(d).
- 13 Tenn. Code Ann. § 66-7-109(b).
- 14 In Texas, the standard minimum notice period is 3 days; however, leases may include conditions for even shorter notice periods [see Tex. Prop. Code § 24.005]. In Arizona, landlords may "may deliver a written notice for immediate termination of the rental agreement" under certain conditions (e.g. violence, criminal behaviors) [see Ariz. Rev. Stat. § 33-1368(A)(2)].
- 15 Tenn. Code Ann. § 66-7-109.
- 16 Shelby County, Tennessee General Sessions Court Clerk. (2019, Sep 10). Court costs. Retrieved on 01 Dec 2020 from <https://gs4.shelbycountyttn.gov/100/Court-Costs>.
- 17 <https://lsc-live.box.com/s/zdrg1p7duv9s0hlf44pybg8o1k4di3zg>.
- 18 Leung, L., Hepburn, P., and Desmond, M. (2020). Serial eviction fling: Civil courts, property management, and the threat of displacement. *Social Forces*, 1-29. doi:10.1093/sf/soaa089.
- 19 Tenants fail to appear for eviction hearings for myriad reasons. Some may vacate the premises early, preemptively assuming they will lose the case. Others may struggle to physically appear in court due to work or childcare obligations, or simply because of a lack of transportation. Even in the case of virtual court sessions, defendants may encounter barriers to due process because of lack of access to the internet or a capable device.
- 20 Tenn. Code Ann. § 66-7-109(a)(2)(e).
- 21 Tenn. Code Ann. § 66-7-109(a)(2)(e).
- 22 *Johnson v. Hopkins*, 432 S.W.3d 840 (Tenn 2013).
- 23 General Sessions Court Clerk, Shelby County, Tennessee. (n.d.) FAQs: Civil court. Retrieved on 24 November 2020 from <https://gs4.shelbycountyttn.gov/Faq.aspx?TID=16>.
- 24 14 M.R.S. § 6013.
- 25 Housing Action Illinois and Lawyers' Committee for Better Housing. (2018, March). Prejudged: The stigma of eviction records. Retrieved from <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf>.