



# EQUAL JUSTICE AMERICA

## SUMMER 2024

### EJA FELLOWSHIP RECIPIENT



<b>NAME</b>	Drew Perkoski
<b>LAW SCHOOL</b>	Temple University – James E. Beasley School of Law
<b>ORGANIZATION</b>	Mobilization for Justice

**Update 1:** I have started my summer with Mobilization for Justice in their Housing Rights Project. During my first week I was back in housing court with clients. Our office was defending against an eviction proceeding that arose from a mother attempting to transfer her apartment to her two adult sons. We negotiated a stipulation with the landlord that transferred tenancy and created terms for dropping the action. If the terms are met, an eviction and over 30,000 in debt should be avoided.

My team also submitted testimony in support of the FARE act, a local bill to change New York's apartment brokers fee system. New York is one of only two cities in the country where landlords hire brokers to let their units but require prospective tenants to pay the broker fee as part of their upfront cost of moving. This fee is unaffordable for many New Yorkers, especially in combination with security deposits and other up-front costs of moving. The FARE act would require the party who hires the broker to pay the broker. We are happy to support the bill and provided city council with stories from our clients about the impact eliminating broker fees would have on them.

Renting is not a temporary embarrassment on the path to home ownership. Renters should not have to shell out every dollar they make to property owners and their agents. I am happy to be doing work that supports tenants' rights both in court and in the legislature.

**Update 2:** Nationally, about 66% of people own their homes. In New York City the number is flipped; about 69% of New Yorkers rent. Where two-thirds of the country can clearly pass on their home to a family member through a will or intestacy when they pass, over two-thirds of New Yorkers cannot. The impact of not passing on a home to the deceased is academic, but the impact on the relatives of the deceased is material.

To keep New Yorkers in their homes after the head of household passes away, New York rent regulations have mechanisms for co-occupants to succeed to tenancy. The short version of the



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requirement is that a family member or someone with a family-like relationship must be living in the apartment with the tenant for at least two years prior to the tenant's death. This can also apply to benefits and subsidies the apartment was receiving before the tenant's death.

Landlords and their attorneys rely on the churn of the highly competitive rental market and tenants lack of access to counsel. They try to get people out of apartments quickly, frequently, and with minimal effort expended on procedure. This means that they often ignore an occupant's right to succeed to tenancy and try to evict them, putting the burden back on the occupant to prove their right to succeed in court.

The client I am working with now has lived in his apartment since the day he was born. In the wake of his mother's passing, the landlord has tried to remove him from rent regulated and subsidized housing. On top of this, the landlord has even presented an argument in the alternative that the man is a squatter.

We are now headed to court with all of the documents needed to show that our client is who he is: the son of the last tenant, who has lived in the apartment his entire life. We are in court because the landlord hasn't bothered to pay attention for 38 years to a man who took his first steps, got his first job, and is now entering middle age on the landlord's property. We are keeping our client housed, and we are keeping him in the community he will spend his entire life in. The rental market will continue to churn, but with a little help, this man will be stable through it all.

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**Update 3:** Prior to 2013, the Bronx Municipal Courthouse was overflowing with evictions. That was before the overflow moved into a new building dedicated to housing cases. The firm behind that new building, Rafael Vinoly Architects, says that "the new Bronx Housing Court stands as a model for how to integrate a modern structure with a large and complex program into a sensitive urban context."

Before 9am, a line forms in front of the building, heading north along Grand Concourse. The line extends past the building down to the end of the block. Judges stand at the south side of the doors to chat and have their morning cigarette before entering. The people in line have rolled up papers with appearance information. Some have money order receipts, leases, and other papers they hope will keep them from being put out on the street.

Doors open and people file through metal detectors. The public areas are six floors, up to four courtrooms per floor, and hallways all on the north side. People climb the switchback staircases to find their assigned room. This morning there is an issue with a room on the third floor, so all 90 cases scheduled for that room get moved one over. The bailiffs call out in the hallway to make the announcement.

Of those 90 cases, a few are set for intake with the legal service provider of the day. The group of 9:30 AM tenants who have shown up are herded into a gaggle and taken back out into the hallway. There are a few small standing desks built along the hallways, but not enough. I take the first intake form from the stack and the first tenant from the gaggle ten feet away to an



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open spot of wall near the stairs. We write standing up, using a legal pad as a half-as-sturdy clip board.

The tenant does not know why she is in court. The only thing she knows is that she received a court postcard telling her to come at this day and this time, was sent up to this room, and now is speaking to me. After verifying income and contact information, I pull her case's index number from the docket posted in a shadowbox outside of the original courtroom's door. I open the public e-filing system on my phone and type in the index number.

The filings show that the landlord has not been paid rent in over a year. They claim to be owed over \$26,000 by this woman and a John Doe. The woman instantly realizes that the John Doe is the man who was living with her, to whom she paid half the rent and who claimed to be paying the full rent to the landlord. The man moved out some time between the mailing of the rent demand the woman never saw and the mailing of the court postcard, which is how she ended up in court to find all this out. This John Doe was not on the lease, took \$13,000 from the woman, and left her with \$26,000 in debt.

After explaining what is in the filings to the woman I re-explain that our conversation today does not make her our client yet. I tell her when to expect to her back from us and when her case has been adjourned to. She asks if emergency cash assistance from the city, called a One Shot Deal, would fix her situation. I explain that a One Shot Deal might cover the amount she owes, but that we cannot help her with the application yet. Now that we have all of her contact information and she knows why she was called into court this morning, she is free to go. She will be in our system shortly, once the paper form is scanned and everything is typed up.

Waiting for the 11:30 AM tenants, one of my co-interns points out how much of what goes on in the building is helping landlords access government funds. A few dollars in filing fees, maybe a few hundred in legal fees, and this landlord is on their way to accessing \$26,000 in public money, routed through a tenant. This repeats with variations on the form of government benefit. If we consider this the modern structure of public housing, especially true given the decades of decline in the publicly owned housing stock, then maybe Bronx Housing Court does serve as a model for how to integrate this into a sensitive urban context. The model shows that private landlords can have a dedicated site for accessing public funds, a site which provides no comfort or even practical aid to the people whose housing, and thus safety, they jeopardize in the process. The model isn't necessarily efficient, but it is brutal, stripped of decorum, and humiliates the poor, some of whom don't even know why they're being called into court.

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**Update 4:** Rent stabilization helps New Yorkers avoid exploitation by capping annual rent increases, with some exceptions for offsetting the cost of improvements. Because rent stabilization prevents landlords from seeking the exploitative rents the market might otherwise allow, many landlords will do anything and everything to get their building deregulated. After a 2019 law took away most paths to deregulation, the one common route left open is destruction.

Destruction can happen in a few ways. First is the combination of two or more rent stabilized units into one unit by removing walls or other partitions, a process called "Frankensteining" by



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advocates and the press. Second is destruction by some natural disaster causing the need for a complete overhaul of the building. This often happens after a fire. Third is similar to the second, but stems from the building owner's negligence. The landlord refuses to repair structural issues with the building, waits for a breaking point, claims that it would be economically infeasible to repair, then applies to demolish the building. This third situation is being faced by a group of tenants I am helping to represent.

The Department of Buildings (DOB) issued a vacate order after years of complaints by tenants of foundational cracks appearing throughout their building. Their landlord, now forced to do something other than continue to neglect the issue, is seeking to demolish the rent stabilized building, chipping away at New York's closer-to-affordable housing stock. The landlord has thus far prevented tenants from returning to the premises to retrieve their possessions since the day they were forced to vacate.

We have already secured an injunction preventing the processing of any demolition application for the building by DOB. We are negotiating a cascading stipulation with several stages to allow tenants to retrieve their valuables from their crumbling apartment. They have heirlooms, wedding photos, and mementos of childhoods spent half a world away trapped inside a building they would have access to if not for the landlord letting it almost fall. We are preparing to litigate the economic infeasibility of repairs, which if successful will prevent the destruction of this rent stabilized building and the destruction of the lives that ought to go on inside.

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**Update 5:** Tenant advocacy sometimes requires having someone recognized as tenant to the home they already live in and pay rent for. Landlords will treat their residents as licensees rather than tenants, a legal distinction with invisible, or rather nonexistent, material distinction. The law then further divides licensees into those it considers to have possession over the premises and those it does not.

The former is typically the remaining family member of a deceased tenant. While the resident may have never been listed on the paperwork for the unit, and thus were only ever a licensee of the tenant of record, they succeed to the tenancy; remaining family members can be thought of as inheriting another's possession. Some of these succession cases end in a housing court proceeding (described in my second update of the summer). Succession to public housing may be settled in a bureaucratic office before reaching a courtroom.

A public housing resident attempting to succeed to an apartment has three levels of administrative review before they will be allowed to assert their rights in court. One client I worked with has had her case in limbo, hovering around the second step with no communication from the city housing authority for about two years. Through this period and through the decades prior, the client has maintained possession of the unit. Now, three tenant-attorneys and two city-attorneys after beginning, a two-page letter with five attachments has restarted the process for this resident to finally be recognized as a tenant in the apartment she has spent nearly her entire adult life in.



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Residents of assisted living and similar facilities also have somewhat unique processes. To be removed from one of these facilities, a resident should be put through a process pursuant to the New York Social Services Law. The process must conclude before the resident is put out. However, a resident of one facility might be temporarily transferred to a more intense facility or hospital without such a proceeding.

All of this is important background for the case I am collaborating with our Disability and Aging Rights project on. A resident of an assisted living facility was transferred to a nursing home for thirty days. During these thirty days, the assisted living facility informed the resident and her family that if she attempted to return, she would be sent to a hospital. Despite collecting payment for the room and still holding the resident's personal effects, the assisted living facility had decided to effectively lock the resident out of her home. A lockout case was initiated by the resident's next-of-kin and we were in court shortly thereafter.

While it is clear that, for the purposes of the lockout statute, the assisted living facility has locked out our client, the judge raised an issue as to possession. The question we are briefing the court on is whether a resident of an assisted living facility with her own private room may be considered a tenant, despite the terms of the occupancy agreement calling her a licensee. Case law holds out succession as the unique case where a licensee has possession, in contrast with residents of assisted living and similar facilities. The law does not, however, preclude the possibility that other licensees, like our client, could have possession of their unit.

The briefing schedule set by the court is set to take a month and a half, with then more time expected before a decision is made. The reasonable estimate is that our client will now, for reasons of procedure, live in the alternative facility she was transferred to two months longer than she should have been there. Her residence at this alternative facility may also become permanent if we lose the case. These material consequences are hinged on immaterial legal classifications, ones which would not be thought of by reasonable people signing an agreement to be housed in exchange for payment to the property owner.

The landlord has more rights than the tenant. The tenant has more rights than the licensee. The licensee has more rights than the homeless. In America, your rent check won't always keep you in the room it pays for. In the conservative places like Grants Pass, not being able to pay rent might land you in jail. In the liberal places, they might let you die in the street. I'd take my lunches this summer on the water by the ferries, looking out on ships coming in and at the old warehouses turned into luxury homes for bankers. It's been said that god is pooh-bear, but that was before pooh-bear entered public domain, and what to America is anything it can't make a buck off. The old, the sick, the poor, all at the whim of the doubly-degreed superior-citizens on the 5th, 8th, and 11th floors of 111 Centre Street and the places like it, deciding who gets a roof over their head and who will be left behind.