

The Gendered Impact of Illegal Act Eviction Laws

Leora Smith

In Toronto and New York City, “illegal act” eviction laws allow public housing providers to evict every member of a household on the basis of a single illegal act committed by a single person in their home. Leaseholders and their dependents can be evicted even if they were not involved in the illegal act underpinning the eviction. An analysis of illegal act evictions carried out over the last six years by North America’s two largest public housing providers, Toronto Community Housing Corporation and New York City Housing Authority, suggests that illegal act evictions laws have a grossly disproportionate impact on women. In both Toronto and New York City, women are far more likely than men to be evicted for actions that they did not personally commit. In both cities, in at least 88% of instances where a leaseholder was evicted because of actions committed by another person, the leaseholder was a woman. Also in both cities, women threatened with illegal act evictions actually committed the underlying illegal act in less than 35% of instances. Men who face eviction are more likely to do so for their own actions. These trends hold true despite the fact that the laws governing each jurisdiction are interpreted quite differently. The results from this limited investigation beg further study and suggest that illegal act eviction laws unfairly impact women – regularly punishing them for the actions of others.

TABLE OF CONTENTS

INTRODUCTION	538
I. HOW DID WE GET HERE? THE EVOLUTION OF ILLEGAL ACT EVICTION LAWS IN NEW YORK CITY AND TORONTO	541
A. <i>New York City</i>	541
B. <i>Toronto</i>	543
II. CARRYING OUT ILLEGAL ACT EVICTIONS FROM PUBLIC HOUSING IN NEW YORK CITY AND TORONTO	544
A. <i>New York City</i>	544
B. <i>Toronto</i>	546
III. INTERPRETATION OF ILLEGAL ACT EVICTION LAWS IN NEW YORK AND ONTARIO	547
A. <i>Knowledge Requirement</i>	547
B. <i>Mitigating Circumstances</i>	550
IV. QUANTIFYING THE IMPACTS OF ILLEGAL ACT EVICTION LAWS ON WOMEN IN NEW YORK CITY AND TORONTO	553
A. <i>Methodology</i>	553
B. <i>Findings</i>	554
TABLE 1: Comparing demographics in New York City and Toronto .	554

TABLE 2: Comparing demographics of tenants living in homes provided by the New York City housing authority and Toronto community housing	554
TABLE 3: Illegal act eviction outcomes for men and women leaseholders in NYCHA and TCHC	555
TABLE 4: Reasons underlying women’s eviction notices	555
V. A FRAMEWORK FOR UNDERSTANDING THE DISPARATE IMPACT OF ILLEGAL ACT EVICTIONS ON WOMEN	557
VI. CONCLUSION	558

INTRODUCTION¹

In my second month of law school I started volunteering in a clinic that served clients who live in public housing. My first day was an intake shift, which meant that I answered the phones and took down basic information about the challenges a client was facing, so we could later call back with more information and legal support. During that shift, I received a call from a woman who told me she was being evicted from her unit, which was run by the Boston Housing Authority. When I asked the woman why she was being evicted, she told me that the police found her boyfriend’s drugs in her apartment. “Ok,” I said, “so he was arrested?” She responded that he was. “Were you arrested?” I asked. “No” she said. “Were the drugs yours?” I asked. They were not. “If he was arrested, and you weren’t, and the drugs weren’t yours, are you sure that *you’re* being evicted?” I asked. In doing so, I made a rookie mistake — assuming that I knew more about my client’s situation than she did. She was sure. The Housing Authority was terminating her subsidy and had left a notice of eviction for her. As we talked more, she told me that she had been trying to get her boyfriend to leave for weeks, but he kept coming back to the apartment. Then, the police came to her door, searched the unit, and arrested him. Days later she received a notice that she was being evicted for permitting an illegal act to take place in her home.

Evictions such as the one that she faced are common. For many years, practitioners, scholars, and those living in public housing have all noted the harmful impact of illegal act eviction laws on women, and especially poor women of color.² Defenders of current illegal act eviction laws argue that

¹ The author wishes to acknowledge and thank the following people: Esme Caramello for her early encouragement and feedback, Marcia Peters, Lynn Weissberg and Elizabeth Blake for their mentorship, Leena Charlton, Wyndham Bettencourt-McCarthy, Dave Stein, and Camieka Woodhouse for their invaluable insights, and the CR-CL editors, especially Morgan Franklin, Jimin He, and Ryan Dykhouse for their astute comments and edits.

² See, e.g., Regina Austin, *Step on A Crack, Break Your Mother’s Back: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing*, 14 YALE J.L. & FEMINISM 273, 275–276 (2002); Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123, 1141 (2016); Mathew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. OF PSYCHOL. 88, 104 (2012).

they are in place to help make neighborhoods safer.³ Maintaining safe neighborhoods for low-income housing residents is, of course, an important goal. A national newspaper in Canada reported in 2012 that residents of Toronto's largest public housing provider were four times more likely to be victims of murder than other residents of the city.⁴ Every legislator should be concerned with advancing the safety and security of people living in public housing.

With that said, it is not at all clear that illegal act eviction laws actually make low-income neighborhoods safer. When it comes to removing alleged perpetrators from public housing, there are already legal processes in place to do just that. Ann Cammett in her article *Confronting Race and Collateral Consequences in Public Housing* writes: "It might seem obvious, but targeting criminal gangs who are running amok in housing projects is the job of law enforcement, which has at its disposal a panoply of criminal statutes to do its work."⁵ It is not obvious that removing the family members and roommates of "criminal gangs," or others alleged to have committed criminal activities, does anything to further neighborhood safety. While the efficacy of illegal action eviction laws in increasing neighborhood safety is not well supported, it is clear — and this Note aims to add to the body of literature proving this point — that the negative impacts of these laws place an overwhelming burden on women.

This Note will compare the legal basis and real-life outcomes of illegal act evictions conducted by the New York City Housing Authority (NYCHA) and Toronto Community Housing Corporation (TCHC) — North America's two largest social housing providers. Because of their sizes, both housing providers have long waitlists. The wait can be up to twelve years for some residents in Toronto.⁶ In 2013, *The New York Times* reported that there were 227,000 households on NYCHA's waitlist, while only about 5,400-5,800 units become available each year.⁷ High demand and low supply can lead to internal and external pressure on housing authorities to evict tenants who break the rules to make room for those waiting. As a result, there are

³ Congressional findings codified in the Public and Assisted Housing Drug Elimination Act, state that "the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs" 42 U.S.C. § 11901(1) (1988).

⁴ Stephen Spencer Davis and Timothy Appleby, *Residents of Toronto Public Housing Four Times More Likely to be Murder Victims*, THE GLOBE AND MAIL (June 3, 2011, 5:47 PM), <http://www.theglobeandmail.com/news/toronto/residents-of-toronto-public-housing-four-times-more-likely-to-be-murder-victims/article586043/?page=all>, archived at <https://perma.cc/K766-F6YK>.

⁵ Cammett, *supra* note 2, at 1142.

⁶ Laurie Monsebraaten, *Ontario's Affordable Housing Waitlist Grows*, THE TORONTO STAR, (May 25, 2016), <https://www.thestar.com/news/gta/2016/05/25/ontarios-affordable-housing-wait-list-grows.html>, archived at <https://perma.cc/Q92J-T8K4>.

⁷ Mireya Navarro, *227,000 Names on List Vie for Rare Vacancies in City's Public Housing*, THE NEW YORK TIMES, (July 23, 2013), <http://www.nytimes.com/2013/07/24/nyregion/for-many-seeking-public-housing-the-wait-can-be-endless.html>, archived at <https://perma.cc/V5LX-YLEU>.

enough illegal act evictions in each jurisdiction to allow for a comparative analysis of the different approaches taken in each city, and the gendered impact that these different approaches have. The data set developed in this Note is a first attempt to quantify a phenomenon that people familiar with public housing evictions already know to be true: that illegal act evictions from public housing disproportionately affect women, punishing them severely for crimes that they are not even alleged to have committed.⁸ By comparing the outcomes of judicial interpretations and policy choices in North America's two largest public housing providers, the Note also aims to glean lessons about strategies to lessen the unjust consequences of illegal act evictions, while working to maintain the same levels of safety in public housing neighborhoods that more affluent communities enjoy.

Part I of this Note will outline the evolution of illegal act eviction laws in the United States, where public housing is a federal issue, and Ontario, where it falls under provincial jurisdiction. In both places, illegal act eviction statutes originated in the context of the War on Drugs and have expanded since that time to include an ever-wider range of actions. Part II will examine the ways in which public housing providers carry out illegal act evictions, and appeals processes that are available to tenants threatened with eviction. In both cities, there is wide latitude given to administrative tribunals, and only narrow grounds on which courts can overturn their decisions. As a result, outcomes are very much dependent on individual hearing officers, making it difficult for women to defend themselves from eviction or even know the grounds on which their case will be decided.⁹ Part III highlights the biggest differences between illegal act eviction laws in the two cities: the ways in which courts have interpreted knowledge requirements and mitigating circumstances. Despite these fairly significant differences in the interpretation and application of the law, the data reviewed in Part IV reveals that outcomes in both cities are similar — both legal systems disproportionately evict women for actions that they did not commit. While this Note stops short of providing specific policy recommendations to avoid disparate outcomes on women, it provides a framework for considering why these outcomes are so unjust, and how policymakers and litigators might utilize that framework to increase fairness for women in public housing.

⁸ The data used for this paper was gathered from case law, where the gender but not the race of plaintiffs and defendants are identified. As a result, this paper focuses only on gender disparity in illegal act evictions. Given North America's history of housing discrimination, as described in the sources cited throughout this Note, and the current demographics of the public housing population, it is likely that many of the phenomena discussed here are experienced disproportionately by women of color.

⁹ See *infra* Part(II).

I. HOW DID WE GET HERE? THE EVOLUTION OF ILLEGAL ACT EVICTION LAWS IN NEW YORK CITY AND TORONTO

A. *New York City*

Since 1937 and the passage of the first Housing Act, which provided federal funding to state agencies developing low-rent housing projects,¹⁰ public housing has been an important federal issue in the United States. In 1965, President Johnson established the Department of Housing and Urban Development (“HUD”).¹¹ Three years later, Congress passed the Housing and Urban Development Act, which encouraged the utilization of tax benefits and subsidies to incentivize private developers into building low-rent units.¹² In the 1980s, President Ronald Reagan instituted severe budget cuts, which deeply reduced spending on public housing.¹³ Though it is not clear that housing availability and crime are causally related, as the number of subsidized units available decreased, crime and drug use in public housing increased.¹⁴ In response, when Congress amended the Anti-Drug Abuse Act (“the Act”) in 1988 — one of many policies advancing the “war on drugs” and “tough on crime” movements of the era¹⁵ — HUD promulgated regulations requiring Public Housing Authorities (“PHAs”) to include lease provisions that made drug-use grounds for eviction.¹⁶

In 1996, President Clinton’s Administration challenged PHAs to adopt even stricter policies, known as “one-strike-you’re-out,” that required eviction of any tenant found to have committed a single illegal act, including possessing or selling illegal substances.¹⁷ HUD incentivized the one-strike policy by making PHAs who adhered most closely to the guidelines eligible for increased funding.¹⁸ That year, President Clinton also signed the Housing Opportunity Program Extensions Act (“HOPE Act”) into law.¹⁹ It encouraged information sharing between police departments and PHAs for the purpose of eviction, making it much easier for landlords to meet their burden of proof when conducting illegal act evictions.²⁰ The HOPE Act also expanded the scope of the “illegal act” statute so that tenants could be evicted for criminal activity whether it occurred “on or off the premises” of their

¹⁰ 42 U.S.C. § 1437 (2016).

¹¹ Pub. L. No. 89–74, 79 Stat. 667 (1965).

¹² Evi Schueller, HUD v. Rucker, *Unconscionable Due Process for Public Housing Tenants*, 37 U.C. DAVIS L. REV. 1175, 1178 (2004).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 459 (2010).

¹⁶ 42 U.S.C. § 1437d (1988) (current version at 42 U.S.C. § 1437d (2013)).

¹⁷ Renai S. Rodney, *Am I My Mother’s Keeper? The Case Against the Use of Juvenile Arrest Records in One-Strike Public Housing Evictions*, 98 NW. U. L. REV. 739, 744 (2004).

¹⁸ *Id.* at 745.

¹⁹ *Id.* at 744.

²⁰ *Id.*

apartment.²¹ The statute is still in force, and has not changed much from its 1996 iteration. It currently reads:

Each public housing authority shall utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.²²

Notably, though the law requires PHAs to hold an illegal act as a “*cause* for termination of tenancy,” it does not actually demand that PHAs enforce the eviction. In fact, on November 2, 2015, HUD issued a guidance letter specifically highlighting to PHAs that the statute “does not require their adoption of “One Strike” Policies.”²³ This letter revealed a sharp turn away from the policies of the 1990s, and reflected growing concern about the collateral consequences of the criminal justice system, such as eviction.²⁴ The letter further stated, “PHAs and owners generally retain broad discretion in setting . . . eviction policies,” and stressed that mere arrest for criminal activity cannot be considered as evidence that illegal activity actually occurred, and thereby grounds for eviction.²⁵ Finally, the letter laid out the “BEST PRACTICES ON EVICTING AND TERMINATING ASSISTANCE FOR CRIMINAL ACTIVITY.”²⁶ Some of these practices include: considering the seriousness of the offense and its impact on other residents, the culpability of the leaseholder, the impact eviction might have on family members, the extent to which the leaseholder has tried to mitigate the events, the family's history, the safety of other tenants, and the integrity of the program.²⁷ After decades of increasing harshness in illegal act eviction policy, HUD's guidance letter encouraged a move toward greater leniency. It remains to be seen whether HUD, under President Trump, will continue this trend.

²¹ *Id.* at 743 n.35.

²² 42 U.S.C. § 1437d(1)(6) (2013).

²³ U.S. DEP'T OF HOUS. AND URBAN DEV., GUIDANCE FOR PUBLIC HOUSING AGENCIES (PHAs) AND OWNERS OF FEDERALLY-ASSISTED HOUSING ON EXCLUDING THE USE OF ARREST RECORDS IN HOUSING DECISIONS 2 (2015), <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>, archived at <https://perma.cc/RTN9-9CC8>.

²⁴ In 2010 HUD joined the Federal Interagency Reentry Council, a council of 23 federal agencies that was formed to address barriers to re-entry and collateral consequences experienced by people who are arrested or convicted of crimes and their family members. The guidance letter issued on November 2, 2015 was one of a series of letters that HUD released as a result of its work with the Council.

²⁵ *Guidance for PHAs*, *supra* note 22, at 3.

²⁶ *Id.* at 6.

²⁷ *Id.* at 6–7.

B. Toronto

In Canada, public housing is governed by provincial law and administered at the municipal level. While Ontario law encourages the creation of public housing authorities, usually referred to as non-profit housing corporations, the province does not actively operate or participate in the governance of social housing. Rather, social housing providers are essentially private landlords who receive government funding, mostly at the municipal level.²⁸

In Ontario, like in the United States, illegal act evictions laws are stricter today than they were when first conceived. Under common law, where Ontario's illegal act evictions originate, evictions could only be carried out if the illegal act violated an explicit lease term or a statute.²⁹ Additionally, landlords could only evict tenants for a "continuing course of [illegal] action," and the tenant herself had to be implicated in the act in order to be evicted.³⁰ The first statutory codification of illegal act evictions appeared in Ontario in 1969 — before the HUD lease requirement appeared in the United States.³¹ In 1975, the Ontario legislature added the option for landlords to fast-track evictions for illegal acts.³² The most recent version of Ontario's illegal act eviction laws was passed in 2006 as part of the Residential Tenancies Act, which is still in place. The statute on illegal evictions reads:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.³³

A subsequent section adds that tenants can be evicted whether or not there has been a criminal conviction for an alleged illegal act.³⁴ The current law echoes President Clinton's "one strike" policy, and like the federal policy in the United States, punishes leaseholders not only for their own acts, but also for those committed by other people. Although Ontario's statute does not explicitly mention drug-related crime, legislative history suggests that growing concerns about drug-related crimes influenced Ontario legislators' decision to increase the severity and scope of illegal act eviction laws in recent

²⁸ Cf. Housing Services Act, R.S.O. 2011, c. 6, Sched. 1, §26 (Can.)

²⁹ Mark Anthony Drumbl, *The State as Landlord: The Constitutionality of the Termination of Public Leases on Account of a Tenant's "Illegal Activities"*, 7 WINDSOR REV. OF LEGAL AND SOC. ISSUES 75, 80 (1997).

³⁰ *Id.* at 82–83.

³¹ *See id.* at 84.

³² *Id.* at 84–85.

³³ Residential Tenancies Act, R.S.O. 2006, c. 17, §61(1) (Can.).

³⁴ *Id.* at §75.

decades.³⁵ Today, Ontario's illegal act eviction laws are quite similar to the lease provisions that HUD requires PHAs to include in their contracts with leaseholders. The ways in which evictions are carried out are also similar, which will be explored further in Part II.

II. CARRYING OUT ILLEGAL ACT EVICTIONS FROM PUBLIC HOUSING IN NEW YORK CITY AND TORONTO

Tenants in TCHC or NYCHA housing who are served with eviction notices can challenge their evictions at administrative hearings and can apply for judicial review of the administrative decisions. In both cities it is extremely difficult to overcome a decision to evict at the administrative level, meaning that the processes and standards used at administrative hearings have a significant impact on tenants' outcomes. Currently, there are no processes in place specifically to mitigate the impact of illegal act evictions on women. Although hearing officers are permitted to consider mitigating circumstances that might weigh against eviction, in neither city are hearing officers required to consider the specific challenges facing female heads of household, such as familial responsibilities or the difficulty that poor women of color with dependents face in finding private market units once evicted from public housing. Courts that review administrative decisions to evict are unlikely to reverse them based on these factors either.

A. *New York City*

As required by federal law, NYCHA leases include terms that provide justification for illegal act evictions. The relevant clauses almost directly quote 42 U.S.C. § 1437(d)(1)(6). They forbid criminal activity and extend the prohibition beyond the tenant herself, to guests and other people "under the [t]enant's control."³⁶ Tenants facing eviction as a result of illegal acts can request a hearing with a hearing officer.³⁷ Tenants are allowed to present mitigating circumstances to the hearing officer, which are general statements that often go beyond the scope of the grounds for lease termination and support the tenant's argument for why she should be permitted to retain her public housing unit.³⁸ However, there are no publicly available guidelines on

³⁵ See, e.g., *Bill 20, Tenants and Landlords Protection Act: Hearing Before Standing Comm. On Admin. Of Justice*, 34TH CAN. PARLIAMENT(1993), http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=1994-03-08&ParlCommID=501&BillID=&Business=Bill+20%2C+Tenants+and+Landlords+Protection+Act%2C+1993&DocumentID=18047, archived at <https://perma.cc/B3B2-JRQD>.

³⁶ See *Harris v. N.Y. City Hous. Auth.*, 941 N.Y.S.2d 538 (N.Y. Sup. Ct. 2011) (quoting NYCHA lease clause).

³⁷ New York City Housing Authority, *Grievance Procedures*, NYCHA 040.302, at 2 (Aug. 1997), https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf, archived at <https://perma.cc/6QJ7-9BYP> [hereinafter *NYCHA Grievance Procedures*].

³⁸ *Id.* at 5.

the standard that hearing officers should use to balance mitigating circumstances against the rationale for eviction. The lack of guidance makes it difficult for leaseholders to prepare arguments that will be convincing to hearing officers. Preparation for the hearing is made more difficult by the fact that NYCHA decisions are not published, so leaseholders cannot study old decisions to learn which arguments might be most successful. Attorneys, as “repeat players,” can sometimes provide this kind of institutional knowledge, but it is relatively rare for tenants to have legal representation at NYCHA hearings. In fact, attorneys working with the Legal Services Corporation, the country’s biggest provider of civil legal services to low-income people, are prohibited from representing clients facing illegal-act evictions from public housing.³⁹

A NYCHA hearing can end in five dispositions: termination of tenancy, “eligible [to continue receiving assistance],” “probation,” “eligible with referral to Social Services,” or “eligible subject to permanent exclusion of one or more persons in the household.”⁴⁰ According to NYCHA policy, if the offender has been removed from the household, then the disposition cannot be termination of tenancy.⁴¹ Rather, the tenant can be deemed eligible to continue receiving assistance, put on probation, or forced to impose a permanent exclusion. Violation of either the probation or the permanent exclusion order is grounds for termination of the lease. Tenants can apply for judicial review of hearing decisions in the New York Supreme Court by arguing that the NYCHA’s decision was (1) made in violation of lawful procedure, (2) affected by an error of law, (3) arbitrary, capricious or abuse of discretion, or (4) not supported by substantial evidence.⁴² NYCHA’s decision “is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency’s determination is supported by the record.”⁴³ The limited grounds on which NYCHA decisions can be appealed and judicial deference to agency determination make it difficult for leaseholders to challenge a hearing officers’ assessment of mitigating circumstances.

Because there is no clear legal standard for mitigating circumstances, a hearing officer’s weighing of the circumstances can almost never be overturned on grounds (1) or (2). Factor (4) is helpful for leaseholders arguing there was not enough evidence to establish that an illegal activity occurred, but cannot really be utilized by a leaseholder arguing that the totality of their circumstances should have outweighed the occurrence of an illegal activity. As a result, most leaseholders who seek review of a hearing officers’ assess-

³⁹ Cammett, *supra* note 2, at 1150 (citing 45 C.F.R. § 1633.3).

⁴⁰ *NYCHA Grievance Procedures*, *supra* note 37, at 5.

⁴¹ *Id.*

⁴² N.Y. C.P.L.R. § 7803(3)–(4).

⁴³ *Coleman v. Rhea*, 927 N.Y.S.2d 815, 815 (N.Y. Sup. Ct. 2011) (quoting *In re Matter of P’ship 92 LP & Bldg. Mgt. Co., Inc. v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 849 N.Y.S.2d 43, 47 (N.Y. App. Div. 2007), *aff’d* 901 N.E.2d 740 (2008)).

ment of mitigating circumstances can argue only that the decision was “arbitrary, capricious, [or] an abuse of discretion.”⁴⁴ As will be discussed in further detail later, this is a particularly high bar to overcome.⁴⁵

B. Toronto

Though it provides housing to over one hundred thousand people⁴⁶, the Toronto Community Housing Corporation (“TCHC”) is treated like any other private landlord in Ontario. Like other private landlords, TCHC must bring illegal act evictions to the Landlord Tenant Board (“LTB”).⁴⁷ Once TCHC decides to pursue an eviction, it must provide a tenant with one of the “eviction forms” supplied by the LTB. Eviction forms are pre-written notices that cover the range of grounds for eviction. Landlords provide tenants with the appropriate form, and check boxes off a list of options to describe the particular reason for pursuing eviction.⁴⁸ Landlords will often use both the “illegal act” form, and the “causing serious problems” form (relating to property damage, safety violations, and violations of others’ reasonable enjoyment of the property) when attempting to evict tenants for alleged criminal activity.⁴⁹ Once the forms have been issued and a hearing date set, the LTB hears and decides the case based on a balance of probabilities.⁵⁰ As in NYCHA hearings, tenants are permitted to present mitigating circumstances to the LTB, such as financial need, the presence of children in the unit, and the unlikelihood that the act will happen again.⁵¹ While members of the LTB are permitted to consider these factors, there are no factors that they must consider, or that must be given greater weight when present. Even if the LTB finds that a landlord has met her burden of proof, they can decline to

⁴⁴ *Id.*

⁴⁵ See *infra* Part III(B).

⁴⁶ *Who We Are*, TORONTO COMMUNITY HOUSING (2017), <https://www.torontohousing.ca/who-we-are>, archived at <https://perma.cc/3M8W-X8WG>.

⁴⁷ TCHC has internal guidelines regarding which acts reach the threshold to trigger an eviction notice. Specifically, TCHC notes that they attempt to balance the need to maintain individual tenancies, with the need to maintain “harmonious healthy communities.” While in most cases the TCHC commits to attempting alternative resolutions before seeking eviction, in the case of “serious impairment of safety or serious criminal activity” they do seek eviction immediately. See *Eviction for Cause Policy*, Toronto Community Housing (May 1, 2015), <https://www.torontohousing.ca/about/policies-programs/policies/tenant-transfers-relocation/Pages/Evictions-for-Cause-Policy.aspx>, archived at <https://perma.cc/WC8W-E4Q9>.

⁴⁸ *Forms for Landlords*, SOCIAL JUSTICE TRIBUNALS ONTARIO (2015), <http://www.sjto.gov.on.ca/ltb/forms/#landlord-forms>, archived at <https://perma.cc/M4C9-T82B>.

⁴⁹ *Id.*

⁵⁰ Social Justice Tribunals Ontario, EVICTION FOR AN ILLEGAL ACT OR BUSINESS, INTERPRETATION GUIDELINE 9 (2011), <http://www.sjto.gov.on.ca/documents/ltb/Interpretation%20Guidelines/09%20-%20Eviction%20for%20an%20Illegal%20Act%20or%20Business.html>, archived at <https://perma.cc/D8N6-7SSW>.

⁵¹ *Id.*

enforce an eviction due to mitigating circumstances, so long as it would not be “unfair” to do so.⁵²

Landlords and tenants can appeal LTB decisions to Ontario Superior Courts, but only on questions of law. The LTB’s decision to consider or ignore particular mitigating circumstances is considered a question of law that can be reviewed. Appellants might claim, for example, that the LTB failed to consider relevant circumstances, or that the LTB considered circumstances outside the scope of the statute.⁵³ The standard of review on appeal is reasonableness.⁵⁴ While the court will review *which* circumstances were weighed, the LTB retains discretion in *how much* weight to give the relevant circumstances.⁵⁵ A court will show a high level of deference to the LTB’s discretionary decision, unless it was exercised in a vexatious or capricious manner, or the LTB’s discretionary finding was “so defective as to be an error of law.”⁵⁶

III. INTERPRETATION OF ILLEGAL ACT EVICTION LAWS IN NEW YORK AND ONTARIO

The text of the statutes that establish illegal act eviction laws in Ontario and the United States are similar. However, courts and administrative tribunals in the two jurisdictions have interpreted these laws quite differently. The most striking differences are Ontario’s knowledge requirement and the weight given to mitigating circumstances. It is notable, however, that even these significant differences in law do not lead to significantly different outcomes when it comes to the impact of illegal act eviction laws on women.

A. Knowledge Requirement

In 2009, members of the New York Police Department entered a woman’s apartment in the Bronx. The police claimed to have a warrant to search for controlled substances, specifically heroin and heroin paraphernalia, which they did not find. The police did find a sealed fanny pack behind a wall unit. Inside of it, they found two firearms. After finding the firearms, they arrested the woman who held the lease to the apartment. She had been living in her NYCHA apartment for 26 years. She asserted that the firearms belonged to her son, and that she did not know he had hidden them there. The court held this fact to be irrelevant, and the tenant was evicted.^{57,58}

⁵² Residential Tenancies Act § 83(1), R.S.O. 2006, c. 17 (Can.).

⁵³ Toby Young, *But Only On A Question Of Law: Examining The Scope of Appellate Review of the Landlord and Tenant Board*, 22 OSGOODE J. L. AND SOC. POL’Y 115, 157 (2009).

⁵⁴ Toronto Cmty. Hous. Corp. v. McGowan, 2016 CanLII 172 (Can. O.N.S.C.).

⁵⁵ Young, *supra* note 53, at 156–57.

⁵⁶ Joseph v. Toronto Cmty. Hous. Corp., 2013 CanLII 413 (Can. O.N.S.C.).

⁵⁷ Though the court stated that they could evict the plaintiff whether or not she knew about the firearms, they also took notice of the fact that she had earlier pled guilty to fourth degree possession, essentially claiming knowledge of their presence in her apartment. It is

In 2013, a woman and her two children, aged 11 and 13, were evicted from Toronto Community Housing when police found three firearms belonging to her then-boyfriend in her home. The tenant argued that her boyfriend did not live with her and that she was unaware of the firearms. She testified that she expressed surprise and shock when the police found the firearms, a fact corroborated by the police officers who were present. She testified against the firearm owner in his criminal trial. The court held that the tenant must have known about the firearms, because two were found in a drawer in her bedroom, underneath her then-boyfriend's passport. They held that it was "more likely than not" that she was aware of their presence, and terminated her lease.⁵⁹

NYCHA's illegal act lease clause, and the Ontario statute establishing grounds for illegal act evictions are both vague regarding the circumstances in which a tenant will be punished for the actions of others. The federal statute governing illegal act evictions from NYCHA requires public housing authorities to include "the [illegal] actions engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control" as cause for termination of tenancy.⁶⁰ NYCHA leases include a clause that directly quotes this section of the federal statute.⁶¹ From the text, it is not clear whether a tenant must have known about, or been able to stop, a third-party's illegal act in order to be evicted for it. The statute governing illegal act evictions in Ontario is also vague. It states that a landlord may give a tenant a notice of termination if the tenant commits an illegal act or "permits a person to do so in the rental unit."⁶² The statute does not define "permit," creating uncertainty regarding the mental state required to find a tenant culpable for the illegal act of her guest. Because neither the Ontario nor U.S. federal statute speak specifically to a knowledge requirement, it was left to the courts to decide whether illegal act evictions can be carried out on strict liability terms.

In 2002, the United States Supreme Court decided in *HUD v. Rucker* that, absent a clear knowledge requirement in law or policy, illegal act evictions can be carried out on strict liability terms.⁶³ The New York Supreme Court regularly upholds NYCHA decisions to evict tenants on the basis of a third-party's actions, even if the tenant had no way of knowing about the

worth noting that fourth degree possession is a misdemeanor charge in New York City. Criminal defendants are often advised to plead guilty to misdemeanor charges, rather than risk more serious charges at trial, whether or not they actually believe themselves to be guilty of the crime accused. Defendants are often not warned about collateral consequences, such as eviction, that might result from their pleas.

⁵⁸ *Smart v. Rhea*, 932 N.Y.S.2d 763, 763 (N.Y. Sup. Ct. 2011).

⁵⁹ *Toronto Cmty. Hous. Corp. v. McGowan*, 2016 CanLII 172 (Can. O.N.S.C.).

⁶⁰ 42 U.S.C. § 1437(d)(1)(6) (2012).

⁶¹ See *Harris v. N.Y.C. Hous. Auth.*, 941 N.Y.S.2d 538, 548–50 (N.Y. Sup. Ct. 2011) (quoting NYCHA lease clause).

⁶² Residential Tenancies Act, R.S.O. 2006, c. 17 § 83(1) (Can.).

⁶³ *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 125 (2002).

activity.⁶⁴ Ontario's LTB usually takes the opposite approach. Most LTB decisions hold that a tenant can only be evicted if she knew or was "willfully blind" to the illegal activity that forms the basis of the proposed eviction.⁶⁵ However, at least one LTB case in the last year suggests that a strict liability standard could be imposed for illegal act evictions. There, the LTB stated that even if the tenant was not aware of the illegal activity in her home, "the responsibility rests with the Tenant to ensure the upstanding conduct of both occupants and guests."⁶⁶ In that case, the tribunal ultimately declined to evict the tenant due to mitigating circumstances, so there was no appeal available on the question of strict liability.⁶⁷ There is currently no binding precedent on this question, but the prevailing opinion in Ontario appears to be that knowledge is required in order to carry out an eviction for an act committed by a third party.

While a knowledge requirement does insert some leniency into illegal act eviction laws, it can sometimes have perverse consequences. For example, though they uphold a strict liability standard, New York courts still tend to examine tenants' knowledge of the illegal activity in question. In *Grant v. New York City Housing Authority*, a woman and her five children were evicted when the police allegedly found marijuana, a bottle of oxycodone, and a firearm in her home.⁶⁸ The woman, a single mother, was not home at the time of the search. She had lived in her unit for 23 years and sat on the Tenant Board for 5 years. There was no evidence she was aware of the items' presence, and the court found they had been brought in by her older children and their friends.⁶⁹ In assessing her knowledge of their actions, the court specifically noted that the boys' mother had previously suggested that her son should seek treatment for his drug dependence.⁷⁰ While the court ultimately found that the family should be evicted whether or not the petitioner was aware of the drugs and firearms,⁷¹ it is concerning to note that a parent's intervention in their child's behavior could create culpability under a knowledge requirement. The LTB partially protects tenants from these perverse consequences by holding that while knowledge is necessary to carry

⁶⁴ See, e.g., *Grant v. N.Y.C. Hous. Auth.*, 986 N.Y.S.2d 22, 23–24 (N.Y. App. Div. 2014); *Rasnick v. N.Y.C. Hous. Auth.*, 10 N.Y.S.3d 69, 70 (N.Y. App. Div. 2015).

⁶⁵ See e.g., TSL-64152-15 (Re), 2015 CanLII 94898, at *2 (Ont. LTB) (holding that tenant must have been "willfully blind" to her boyfriend selling large quantities of drugs from their apartment); TSL-71869-16 (Re), 2016 CanLII 52809, at *3 (Ont. LTB) (holding that a mother must have known or been willfully blind to fact that her son was forcibly confining and trafficking a woman in his bedroom).

⁶⁶ See TEL-53863-14 (Re), 2015 CanLII 16010, at *3 (Ont. LTB).

⁶⁷ *Id.* at *4.

⁶⁸ *Grant*, 986 N.Y.S.2d at 23.

⁶⁹ See *id.*

⁷⁰ *Id.* ("[T]here is no evidence that she had specific knowledge of the presence of the weapon or the drugs, which apparently were brought into the apartment by her older children and their friends. However, she acknowledged that one of her older sons is a habitual marijuana user, and that she had encouraged him to seek treatment.")

⁷¹ *Id.* at 24–25.

out an eviction, it is not always sufficient to do so. In fact, the LTB arguably sets non-eviction as its default option.

B. Mitigating Circumstances

In 2010, a woman was evicted from a Bronx apartment where she had lived for four years after police entered her unit and found her, along with two guests, in possession of two marijuana cigarettes and three bags of crack cocaine. She testified that the value of the crack cocaine was \$15. The police testified that an informant had purchased crack cocaine from the tenant or her guests. The tenant appealed her eviction claiming she had a history of mental illness and drug addiction and that she had been in the midst of a relapse at the time of the search, but had entered outpatient treatment one month afterward and was now on her way to recovery. She told the court that she was fighting to regain custody of her children who had been removed due to her addiction, but could only do so on the condition that she maintained her tenancy. The court weighed the mitigating circumstances she presented, and held that her penalty did not “shock the conscience.” They upheld her eviction.⁷²

The Landlord Tenant Board declined, in 2016, to evict a tenant who was found with \$70 worth of crystal meth in his apartment, despite the fact that the tenant pled guilty to possession of an illegal substance. The tenant, who was 49-years-old at the time of the hearing, told the Board that he had been addicted to drugs since the age of thirteen, and that his unit in Toronto Community Housing was the first stable home he had ever had. He testified that he had been drug-free for 1 and ½ months, and had asked the Landlord’s help in keeping away the other people with whom he used to consume drugs. The Board denied the eviction, holding that the unit was central to the tenant’s recovery from drug addiction, and that upholding his tenancy was not unfair to the Landlord who could apply for eviction again if the tenant engaged in dangerous or illegal behavior.⁷³

Section 83(1)(a) of the Residential Tenancies Act states that the LTB may “refuse to grant the application [for eviction] unless satisfied, having regard to all the circumstances, that it would be unfair to refuse.”⁷⁴ The wording of the statute gives the LTB wide latitude to deny a landlord’s eviction application, even if an illegal act is deemed to have occurred. Indeed, the LTB regularly invokes § 83(1)(a): in over 20% of the cases reviewed for this paper, the LTB permitted tenants to stay in their homes despite findings of illegal activities.⁷⁵ Some of the mitigating circumstances that the LTB

⁷² *Coleman v. Rhea*, 927 N.Y.S.2d 815 (Table) (N.Y. Sup. Ct. 2011).

⁷³ TSL-63145-15 (Re), 2016 CanLII 44301, at *3 (Ont. LTB).

⁷⁴ Residential Tenancies Act, R.S.O. 2006, §83(1)(a) (Can.).

⁷⁵ See *infra*, Part IV(A), “Methodology.”

found convincing included a tenant's recovery from drug addiction, that an offending occupant had voluntarily moved out of the home, and a record of good behavior.⁷⁶ In all of the cases reviewed for this Note, the LTB never found financial hardship, or a need for affordable housing to be sufficient circumstances for denying an eviction. There are also many cases where the LTB will grant an eviction despite a tenants' presentation of mitigating circumstances. The LTB is least sympathetic to tenants when it believes that a tenant's actions posed a significant threat, or an ongoing danger to other residents. Drug trafficking crimes, in particular, are viewed by the LTB to be correlated with ongoing violence, and cases involving drug trafficking are likely to result in eviction.⁷⁷

It is more challenging to discern the ways in which NYCHA hearing officers assess mitigating circumstances, because NYCHA hearing decisions are not published. No publicly available guidelines could be found outlining the criteria for a successful argument on the grounds of mitigating circumstances. Judicial reviews, undertaken when public housing tenants challenge NYCHA decisions, are published. As mentioned, tenants can challenge NYCHA decisions in New York Supreme Court on the grounds that they were "arbitrary, capricious or an abuse of discretion."⁷⁸ The court's standard of review is whether the administrative decision is "shocking to one's sense of fairness."⁷⁹ This provides some insight into the court's approach to mitigating circumstances, which might affect the decisions of hearing officers hoping to have their decisions upheld.

In *Grant*, the court states that a decision will "shock one's sense of fairness" if it creates an outcome "so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct."⁸⁰ Essentially, the court is weighing the harm that eviction causes to a tenant against the

⁷⁶ See, e.g., TEL-53863-14 (Re), 2015 CanLII 16010, at *4 (Ont. LTB) (holding that a tenant's record of good behavior and strong desire to ensure that no illegal activities continue make it fair to deny eviction); TSL-63145-15 (Re), 2016 CanLII 44301, at *3 (Ont. LTB) (allowing a tenant to stay in his apartment because he is in recovery from his drug dependency); *TNL-47131-13 (Re)*, 2015 CanLII 2894, at *3 (Ont. LTB) (holding that because the offending son has moved it is not unfair to maintain the mother's tenancy).

⁷⁷ See *Joseph v. Toronto Cmty. Hous. Corp.*, 2013 CanLII 413, at *3 (Can. Ont. Sup. Ct. J.) (holding that the tenant's possession of drugs and multiple safes in his apartment implied participation in trafficking, creating an unacceptable risk to other residents due to the "violent nature of the drug trade"); see also TSL-64152-15 (Re), 2015 CanLII 94898, at *3 (Ont. LTB) (holding that "the Tenant or an occupant of the rental unit have committed an illegal act, and in doing so have placed other residents' safety at risk. This risk is an outflow of the violent nature of the drug trade."); TSL-73306-16 (Re), 2016 CanLII 52867, at *2 (holding "it more likely than not that an occupant of the rental unit has committed an illegal act by possessing a loaded prohibited firearm, trafficked drugs from the unit, and consequently has placed other residents' safety at risk. This serious impairment of safety is [an] outcome of the violent nature of the drug trade.").

⁷⁸ N.Y. C.P.L.R. § 7803 (McKinney 2017).

⁷⁹ *Grant v. N.Y.C. Hous. Auth.*, 986 N.Y.S.2d 22, 24 (N.Y. App. Div. 2014) (quoting *Pell v. Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 313 N.E.2d 321, 327 (N.Y. 1974)).

⁸⁰ *Id.*

harm caused by the illegal act. This standard differs from the LTB's in its assumptions. The New York standard assumes that the misconduct itself was harmful (because the impact of the eviction must be "so grave" to outweigh it), and therefore that the court should lean toward upholding the eviction. Indeed, the cases reviewed support the inference that the New York "so grave" standard sets an extremely high bar. For example, the *Grant* court states that though it is moved by the situation of a single mother attempting to support five children on her own, the gravity of an eviction is not disproportionate to the danger she allegedly created in the housing complex by (even unknowingly) allowing her sons to possess drugs and a firearm there.⁸² By comparison, Ontario's fairness standard states, "[the tribunal may] refuse to grant the application [for eviction] unless satisfied, having regard to all the circumstances, that it would be unfair to refuse."⁸³ This standard sets *refusal* to grant eviction as the default option for the reviewing court. The difference in assumptions helps to explain the difference in outcomes. In only 8% of New York cases brought against a female tenant that were reviewed for this Note did the court decline to evict because doing so would shock their sense of fairness or because they deemed eviction to be too grave a remedy.⁸⁴ In Ontario cases reviewed for this paper, where the Board and reviewing courts use a balancing standard, 23% of eviction actions against female tenants were denied due to mitigating circumstances.⁸⁵

The New York court, like the LTB in Ontario, has made it clear that the mere fact that public housing is often a "tenancy of last resort," and therefore that eviction usually results in homelessness for a tenant, is not a grave enough impact to shock their sense of fairness.⁸⁶ From this and other decisions, it seems that New York courts' sense of fairness is only shocked when they are near-certain that a tenant will not be able to find another home, and if they think the illegal act alleged is either unlikely to be repeated or caused minimal harm to other residents.⁸⁷

The knowledge requirement and the way in which mitigating circumstances are weighed are the two major differences between U.S. and Ontario tribunals' interpretations of illegal act eviction laws. Despite these differences, which seem quite stark, the outcome in both jurisdictions is the same — illegal act eviction laws have a startlingly disparate impact on women.

⁸¹ It is worth noting that this is an entirely subjective determination, based upon the presiding judge's personal assessment of the gravity of an eviction — an experience that the judge him or herself might never have faced, and likely never faced in circumstances similar to that of public housing tenants.

⁸² *Grant*, 986 N.Y.S.2d at 23.

⁸³ Residential Tenancies Act, R.S.O. 2006, §83(1)(a) (Can.).

⁸⁴ See *infra*, Part IV(A), "Methodology."

⁸⁵ See *infra*, Part IV(A), "Methodology."

⁸⁶ *Perez v. Rhea*, 984 N.E.2d 925, 927–28 (N.Y. 2013).

⁸⁷ See, e.g., *Feister v. Olatoye*, 29 N.Y.S.3d 847 (Table) (N.Y. Sup. Ct. 2015) (holding that a leaseholder with mental disabilities, who was not charged with any crime, who agreed to remedy her rent delinquency, and who has lived in NYCHA housing for a decade is unlikely to find another home if evicted and should receive probation rather than termination of her lease).

IV. QUANTIFYING THE IMPACTS OF ILLEGAL ACT EVICTION LAWS ON WOMEN IN NEW YORK CITY AND TORONTO

A. *Methodology*

Due to time and resource constraints, the number of cases used for this analysis had to be limited in some way. Though illegal act evictions occur in both public and private housing, this Note only looks at evictions from public housing from January 1, 2010 to September 1, 2016, where either NYCHA or TCHC are parties to the eviction litigation. In both cities, individuals living in public housing are extremely vulnerable to homelessness and so the policy implications of illegal act evictions are particularly important. Twenty-nine NYCHA decisions and twenty-seven TCHC decisions were reviewed for this Note.

Because NYCHA hearing decisions are not published, the analysis of New York City cases is based on judicial reviews of administrative hearings and appeals of judicial reviews. The sample might lead to biased results, as it is possible that attorneys consider cases where women and children are threatened with eviction to be more compelling and therefore more worthwhile to appeal. If true, that would skew the results, leading to an overrepresentation of cases affecting women. In New York City, women are sometimes given the option of permanently excluding a member of their household who allegedly committed an illegal act, in order to maintain their tenancy.⁸⁸ Evictions that resulted from violations of permanent exclusion stipulations are included in the New York City analysis. While these cases are not technically decided on the basis of an illegal act, the evictions occur because of illegal act laws, and it is therefore appropriate to include them when assessing the impact of these laws on women.

The Toronto analysis includes both LTB decisions, which are published, and judicial reviews of them. However, no case was double-counted — if a case was reviewed, only the results of the review were recorded, not those of the LTB hearing.

Overall, it is important to note that the limited data set used for this Note provides only a very small snapshot of the impact that illegal act eviction laws have on women living in public housing across North America. The cases discussed span only six years. Only a fraction of decisions made in those six years are published. Only a fraction of evictions from public housing ever get the chance to be published, because many evictions — due to a diversity of factors including pride, stigma, community norms, lack of education, and scarcity of affordable housing attorneys — are never even

⁸⁸ New York City Housing Authority. *Grievance Procedures*, NYCHA 040.302, at 5–6 (Aug. 1997), https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf, archived at <https://perma.cc/6QJ7-9BYP>.

challenged by tenants.⁸⁹ The staggering disparity that is illustrated even in this small study, however, should highlight the need for a more thorough examination of the problem presented.

B. Findings

TABLE 1: COMPARING DEMOGRAPHICS IN NEW YORK CITY AND TORONTO

	New York ⁹⁰	Toronto ⁹¹
Population	8.2 million	2.6 million
Percentage population identified as women	53%	52%
Percentage population identified as men	47%	48%

TABLE 2: COMPARING DEMOGRAPHICS OF TENANTS LIVING IN HOMES PROVIDED BY THE NEW YORK CITY HOUSING AUTHORITY AND TORONTO COMMUNITY HOUSING

	NYCHA	TCHC
Number of residents	388,017 ⁹²	110,000 ⁹³
Visible minority residents (% of total residents)	95% ⁹⁴	N/A ⁹⁵

⁸⁹ Telephone Interview with Camieka Woodhouse, former Clinic & Program Advisor, Legal Aid Ontario (Jan 6, 2017).

⁹⁰ N.Y.C. DEPT OF HEALTH, TABLE 1: ESTIMATED POPULATION BY AGE, SEX AND REGION, NEW YORK STATE – 2010 (2011), https://www.health.ny.gov/statistics/vital_statistics/2010/table01.htm, archived at <https://perma.cc/V8YG-HYUF>.

⁹¹ STATISTICS CAN., 2011 CENSUS: AGE AND SEX COUNTS, (2012) https://www1.toronto.ca/city_of_toronto/social_development_finance_administration/files/pdf/censusbackgrounder_ageandsex_2011.pdf, archived at <https://perma.cc/9RQU-EJFJ>.

⁹² OFFICE OF POLICY. DEV. & RESEARCH, U.S. DEPT OF HOUS. & URBAN DEV., PICTURE OF SUBSIDIZED HOUSEHOLDS (2015), <https://www.huduser.gov/portal/datasets/assths.html>, archived at <https://perma.cc/E7TT-DCDR>.

⁹³ TORONTO COMMUNITY HOUSING, “IN EVERY NEIGHBOURHOOD, 2015 ANNUAL REPORT (2016), <http://www.toronto.ca/legdocs/mmis/2016/ex/bgrd/backgroundfile-94697.pdf>, archived at <https://perma.cc/P5P2-UXRK>

⁹⁴ *Id.*

⁹⁵ Somewhat surprisingly, TCHC does not publish data about the gender or racial demographics of their residents. Across Ontario, there is a failure to collect and analyze race-based data, a problem that has been highlighted by the African Canadian Legal Aid Clinics. See AFRICAN CANADIAN LEGAL CLINIC, DISAGGREGATED DATA COLLECTION (RACE-BASED STATISTICS) POLICY PAPER, <http://www.aclc.net/wp-content/uploads/Policy-Papers-1-11-English-FINAL.pdf>, archived at <https://perma.cc/L7CD-DP32>. According to available statistics for Toronto, 62% of people living in poverty are “racialized” — a term defined in the report as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.” NAT’L COUNCIL OF WELFARE REPORTS, A SNAPSHOT OF RACIALIZED POVERTY IN CANADA 16, https://www.canada.ca/content/dam/esdc-edsc/migration/documents/eng/communities/reports/poverty_profile/snapshot.pdf, archived at <https://perma.cc/2584-N5EJ>.

	NYCHA	TCHC
Female leaseholders (% of total residents)	77% (female-headed household) ⁹⁶	N/A ⁹⁷

TABLE 3: ILLEGAL ACT EVICTION OUTCOMES FOR MEN AND WOMEN LEASEHOLDERS IN NYCHA AND TCHC

	NYCHA		TCHC	
	Male leaseholders	Female leaseholders	Male leaseholders	Female leaseholders
Of those threatened with illegal act eviction	17%	83%	52%	48%
Of those threatened with illegal act eviction because of a third party’s act	12%	88%	10%	90%
Of those evicted as result of a third party’s act	15%	85%	14%	86%

TABLE 4: REASONS UNDERLYING WOMEN’S EVICTION NOTICES

Of women threatened with eviction under illegal act statutes. . .	NYCHA	TCHC
The percentage who were accused of actually committing the underlying act	33%	23%
The percentage evicted for violating a stipulation to permanently exclude someone from their home	46%	N/A

Analysis of the last six years of illegal act evictions from these two housing providers suggests that their legal and policy regimes share one defining characteristic — both result in disproportionate impacts on low-income women. In New York City, illegal act evictions are overwhelmingly brought against women. Of the cases reported between 2010 and 2016, over 80% involved a female leaseholder. In Toronto, only 48% of cases recorded from this time period were brought against women. In both cities, however, women were much more likely to be threatened with eviction as the result of actions committed by a third party.

In New York City, 88% of cases where an eviction was sought because of an illegal act committed by a third party were brought against women. 85% percent of leaseholders who were actually evicted from NYCHA hous-

⁹⁶ *Id.*

⁹⁷ *See id.*

ing because of the acts of third parties were women. In Toronto public housing the numbers are similarly staggering. 77% of women threatened with eviction from TCHC did not commit the illegal act providing the eviction rationale. By comparison, fourteen illegal act evictions were brought against male tenants during the same period in Toronto. In only *one* of those cases was the male tenant threatened with eviction based on the act of a third party.⁹⁸ Overall in Toronto, 90% of people threatened with eviction for the actions of third parties are women.

It is also notable that in New York City, many illegal act evictions brought against women were based on violations of permanent exclusion orders. In situations where one member of a household is accused of participating in illegal acts, but other members are held blameless, NYCHA policy provides permanent exclusion as one option to resolve the issue.⁹⁹ When a leaseholder permanently excludes a member of their household, they must stipulate that the excluded person will never even visit. They must also submit to unannounced inspections by police.¹⁰⁰ If the police ever find the excluded person in the unit, the leaseholder can be evicted. This is an important part of the story of illegal act evictions as nearly 50% of illegal act evictions from NYCHA housing that were studied resulted from violation of permanent exclusions.¹⁰¹ Though permanent exclusions are often presented as a less-harsh option than eviction, the results suggest that on top of tearing families apart, exclusions might only delay evictions rather than actually preventing them. There are a wide variety of reasons why women, and other leaseholders, invite permanently excluded friends and family into their homes. In *Ottley v. N.Y. City Housing Authority*,¹⁰² for example, a woman was evicted after asking her son — who had been excluded following discovery of marijuana in their home — to move back in with her when she was diagnosed with breast cancer and required his assistance. Many practitioners, the author included, have likely worked with clients who declined a permanent exclusion choosing instead to fight tooth and nail against an eviction order because the family member proposed for exclusion acted as their

⁹⁸ TEL-53868-14 (Re), 2015 CanLII 35178, at *4 (Ont. LTB) (evicting a male tenant on the basis of illegal acts committed by a guest in his apartment despite the tenant's claim that he allowed the guest in under duress).

⁹⁹ New York City Housing Authority, *Grievance Procedures*, NYCHA 040.302, at 6 (Aug. 1997), https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf, archived at <https://perma.cc/6QJ7-9BYP>.

¹⁰⁰ Cammett, *supra* note 2, at 1144.

¹⁰¹ In Toronto, exclusion is not a formal option, but it is often negotiated informally with TCHC or results from temporary restraining orders applied to an offender. Exclusions in Toronto tend not to be permanent. However, once a household member is removed, the leaseholder is put at risk of being classified as "overhoused" and moved to a smaller unit. Once the period of exclusion ends, the leaseholder remains in the small unit, and it becomes impossible for the excluded member to move back in. Telephone Interview with Cameika Woodhouse, former Clinic & Program Advisor, Legal Aid Ontario (Jan 6, 2017).

¹⁰² 964 N.Y.S.2d 228, 228 (N.Y. App. Div. 2013).

primary caregiver. The draconian nature of this option is examined in greater detail elsewhere.¹⁰³

Taken together, this data is staggering in its discrepancy — not only are women in New York more likely to face illegal act evictions, but in both New York City and Toronto women are much more likely to face illegal act evictions as the result of an act that they did not commit. The mere fact that women might be more likely to be leaseholders in public housing does not adequately explain, or justify, the discrepancy.

V. A FRAMEWORK FOR UNDERSTANDING THE DISPARATE IMPACT OF ILLEGAL ACT EVICTIONS ON WOMEN

Matthew Desmond, in his article *Eviction and the Reproduction of Urban Poverty*, stated that “in poor black neighborhoods, eviction is to women what incarceration is to men: a typical but severely consequential occurrence contributing to the reproduction of urban poverty.”¹⁰⁴ This theory illuminates a way forward for addressing the devastating impact that illegal act eviction policies have on women, and most often, poor women of color.¹⁰⁵

Collateral consequences of interactions with the criminal justice system have ballooned in recent decades.¹⁰⁶ Those that more commonly accrue to men are more often part of the popular discussion around criminal justice reform. Take felon disenfranchisement — dispossessing those convicted of certain crimes from their right to vote — as an example. Criminal justice policies have had a discriminatory impact on African Americans, leading to their disproportionate incarceration.¹⁰⁷ Relatedly, felon disenfranchisement also disparately impacts African Americans — nearly 1 in every 13 voting age African Americans have had their right to vote revoked.¹⁰⁸ The Brennan Center for Justice reports that the rate of disenfranchisement for African Americans is almost four times higher than for non African Americans.¹⁰⁹ The discriminatory deprivation of African Americans’ political rights is not

¹⁰³ Cammett, *supra* note 2.

¹⁰⁴ Desmond, *supra* note 2, at 88. Though Desmond’s article focuses on rental housing in the private market, his theory also applies to public housing.

¹⁰⁵ Across all forms of public housing in New York City, residents are more likely to be non-white. National Low Income Housing Coalition, *Who Lives in Federally Assisted Housing?*, HOUSING SPOTLIGHT, Nov. 2012, at 2 <http://nlhc.org/sites/default/files/HousingSpotlight2-2.pdf>, archived at <https://perma.cc/3B7U-6DK4>. Though similar statistics were not found for the TCHC population, in Ontario “racialized” persons are more than twice as likely to live in poverty as “non-racialized” persons. NAT’L COUNCIL OF WELFARE REPORTS, A SNAPSHOT OF RACIALIZED POVERTY IN CANADA 2, http://www.esdc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml, archived at <https://perma.cc/Q6PJ-FKD3>.

¹⁰⁶ Pinard, *supra* note 15, at 459.

¹⁰⁷ BRENNAN CTR. FOR JUSTICE, *Racial Justice*, <https://www.brennancenter.org/issues/racial-justice>, archived at <https://perma.cc/T7NF-WA3N>.

¹⁰⁸ THE SENTENCING PROJECT, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* 3 (Oct. 2016), <http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

¹⁰⁹ *Id.*

justified by the underlying incarceration rate, which also results from racist policies. Discriminatory policy in one area of the law cannot be used to justify discriminatory outcomes in another area. So too for public housing. A history of housing discrimination and sex inequality means that women of color are more likely than men to be leaseholders in public housing and to support a household of dependents. But just as an unjust incarceration rate of African Americans does not justify an unjust rate of disenfranchisement, the disproportionate level of responsibility that women carry for housing dependents does not justify the disproportionate number of women punished for the actions of other household members.

Policymakers do not create laws in vacuums. If poor women of color tend to be public housing leaseholders, then it is the responsibility of policymakers to mitigate the impact of discriminatory practices, rather than creating legislation that furthers and entrenches discrimination. In addition to sharing illegal-act eviction laws, Ontario, New York, Canada, and the United States have all promulgated laws that forbid discrimination — both intentional and “disparate impact” — in general, and specifically in relation to housing. Given that illegal act eviction laws as they are currently implemented clearly have a discriminatory impact on women, litigators should take note of opportunities to challenge these laws in court. Policymakers too should take note.

The results of this limited study show that even fairly significant differences in the interpretation and applications of illegal act eviction laws do not change their disparate impact on women. Indeed, any policy targeting leaseholders and holding them culpable for the actions of others in their homes will by its very nature disproportionately impact women. If policymakers are intent upon allowing illegal act evictions, they should consider these impacts more explicitly in procedural requirements. For example, hearing officers should be required to weigh the subjective reasonableness of a woman’s actions given her circumstances, or to consider the overwhelming challenges that low-income, female heads of household face when looking for housing in the private market as a significant mitigating circumstance.

VI. CONCLUSION

Illegal act evictions have a devastating impact on women, punishing them harshly for actions that they have not committed. In a public housing context, the consequences of these laws are particularly severe. It is surprising to note that this trend holds true in both Toronto and New York public housing, despite the different ways that illegal act eviction laws are applied in their jurisdictions. For that reason, legislators must create public housing policy with the understanding that it will largely impact women, and work to mitigate that impact. An easy first step might be to engage female leaseholders in shaping policy development that actually advances their interests and those of their neighborhoods. Those who best understand how to dis-

mantle the barriers erected to impede their success must be given space and power to enact the policies necessary to do so. Making that space requires acknowledging that there is a pervasive problem. The staggering numbers presented here should make this particular problem impossible to deny.

