



## DEFEND RTC

### Frequently Asked Questions + Answers

#### **Tenants have Right to Counsel (RTC)---How is it possible they aren't getting it?**

It's a great question. The law says the city's Office of Civil Justice "shall ensure that all income eligible tenants have access to legal representation." That's both a right and a mandate. The city's law is being violated by the New York State Courts.

One of the central challenges (which can't be fixed on the city level) is that we need the *state housing* court to willingly implement a *city* law---we can't require them to do it. Pre-COVID the courts were adjusting calendars and implementing different rules to uphold RTC, like signage, notice in court papers, judges making announcements, etc. Between March 2020 and Jan. 15, 2022 COVID related eviction protections put many cases on pause for months if not years. When those protections were lifted Jan. 15, 2022, courts began to move old and new cases at a rate that outpaced the number of lawyers. At the same time, legal services orgs (like most sectors), are experiencing an unprecedented labor shortage---there are less RTC attorneys than before the pandemic and not enough to meet the pace the courts have set.

***The reason tenants aren't getting attorneys today is because the courts are refusing to use their power to slow down cases until everyone has an attorney.*** The courts refuse to match the flow of cases with the capacity of the RTC legal services providers.

#### **Who can ensure tenants' Right to Counsel is upheld?**

The Chief Judge of the State of NY could fix this today. They could issue an order that pauses all RTC-eligible cases that don't have RTC attorneys until the RTC legal services organizations have capacity. They could mandate longer adjournments, reduce the number of cases on the calendar, not calendar new cases until the backlog is addressed and so much more. There is precedent for this. Throughout the pandemic, the courts issued a series of administrative orders and directives where they paused cases where tenants didn't have attorneys and only moved cases forward where both sides were represented.

The state legislature could also pass [Statewide Right to Counsel](#) which not only expands RTC to all tenants across the state it also creates rules for the court system to uphold it. Passing Statewide RTC mandates adjournments and essentially legislates what the Chief Judge has so far failed to do.

## **If the solution is so simple, why aren't the courts doing it?**

It's a very clear political decision not to. After years of not having the power they were used to in court, landlords are pushing hard to evict tenants. The courts are actively prioritizing the landlords' right to move cases quickly over the tenant's right to have an attorney.

In addition, housing courts are historically conservative. For decades, until RTC was passed in 2017, the court facilitated hundreds of thousands of eviction cases where one side was denied access to attorneys. It meant hundreds of thousands of tenants and their households were denied access to the full breadth of the law and their defenses. It meant thousands of tenants were sued who shouldn't have been, thousands signed agreements against their own interests and thousands were evicted who otherwise wouldn't have been. When RTC passed, all of this began to fundamentally change. But we had to fight hard for every small advance from the courts—notice in court papers, signs on the walls, judges to make announcements, space for tenants to meet with attorneys, etc. Conservative institutions like courts use moments of crisis to roll back rights poor people and people of color have won. This moment is no different. The courts are choosing to violate tenants rights instead of using their power to slow down cases, uphold RTC and protect tenants' rights.

While they may say things like it would be discriminatory against landlords to slow down eviction cases, by not doing it they are actually discriminating against tenants.

## **Why is the City letting this happen?**

Unfortunately this administration has shown no leadership on this issue at all. It's outrageous. The city can and should be working with the courts and doing so much more to uphold RTC.

## **Can't we sue to stop this?**

The challenge is we'd need to sue the courts. Because the state court system isn't bound to uphold city laws, we don't have grounds to sue them. We can't sue the city because they can't control what the courts do. In addition, given that the courts are inherently conservative, giving all of the power to the courts to decide on how to enforce the rights of tenants isn't always something we can rely on.

## Is the problem the NYC law? Does it need to be strengthened and fixed?

There are definitely weaknesses in the law but they aren't the reason tenants aren't getting lawyers today. The Chief Judge has the power to fix this problem TODAY, before we win changes to the legislation. We fought hard to make the law as strong as possible but it's not strong enough. We are working to strengthen and expand the law by passing statewide legislation. The changes we need to make the courts uphold RTC, such as mandating adjournments, can only happen on the state level. Our legislation for Statewide RTC would fix this. To be clear, legislation isn't required to stop this crisis. The Chief judge could fix it today.

## Is the problem funding?

RTC definitely needs to be better funded. We are fighting for this through the budget fight in our Statewide RTC campaign. Funding is critical to attracting and retaining RTC attorneys. So is the pace of cases in housing court—lawyers need time to do their best work and when cases move faster than allows for excellent legal work it's devastating for tenants and also demoralizing to attorneys.

But funding won't fix the immediate challenges. There aren't enough attorneys applying for jobs, legal services organizations need to hire a lot of attorneys to fill the gaps and they are having a hard time retaining the lawyers they do have. While the legal services organizations are working on strategies to address the staff shortages, the coalition is also working with law schools to recruit new attorneys to RTC.

Until the capacity of the legal services organizations changes, it's up to the courts to ensure that tenants have attorneys.

## Why aren't there enough attorneys?

There are definitely concerns around funding and internal practices at legal services organizations that many unions are taking on. These are really important and we support them.

At the same time, we want to underscore that ***the number of attorneys needed to defend tenants is a direct consequence of the number of cases landlords initiate***. The city and state can and should be doing much more to prevent lawsuits against tenants. On the city level, we've been calling for the city to investigate the [worst evictors](#) whose use of evictions is a clear business model and we've been calling on the city and state to stop subsidizing these worst evictors. On the state level laws like **Clean Hands**, which would negate a landlord's ability to sue for nonpayment if there are housing code violations, and **Good Cause** eviction, which would limit a landlord's ability to sue for things other than nonpayment, would drastically reduce the number cases and therefore the number of attorneys needed.

Additionally, there is no reason courts have to move so fast. Only the housing court moves at this pace. **This is really critical—in contrast to other courts, housing court cases are being driven by one party who is wealthier, whiter and more powerful than the other party and the courts are responding to that.** If cases slowed down, again, you wouldn't need so many attorneys.

**So while there are real capacity needs at legal services organizations we should not let landlords and the courts dictate the conditions that require so many attorneys.** We can and must change the rules.

### **I'm a tenant being denied RTC, what can I do?**

[Join our fight](#) to stop the courts from violating your rights! We are [taking action](#) all the time to demand the courts and the legislature uphold RTC.

Organize where you live! [Connect with an organizing group](#)—they can help you run campaigns against your landlord and also organize eviction defense, organizing actions in court and so much more.

#### **For individual Legal Support:**

- Call the Housing Court Answers' hotline at **212-962-4795 or 718-557-1379** from Monday through Friday (9am-5pm) to speak with an advocate or call 311 and ask for Right to Counsel.
- Show up to court and fight to protect your home! It's important that you go to court to respond to your landlord's claims against you. If you don't, your landlord can win by default.
- Ask the judge for an adjournment to find an attorney. Ask for as many adjournments as you need. A sample of an adjournment letter can be found here in [English](#), or in [Spanish](#).
- See our Tenant Self Defense Resource Guide, to help you advocate for yourself in court. ([English](#); [Spanish](#)).