
CODING EVICTIONS

St. Joseph County
Eviction Court Watch Study

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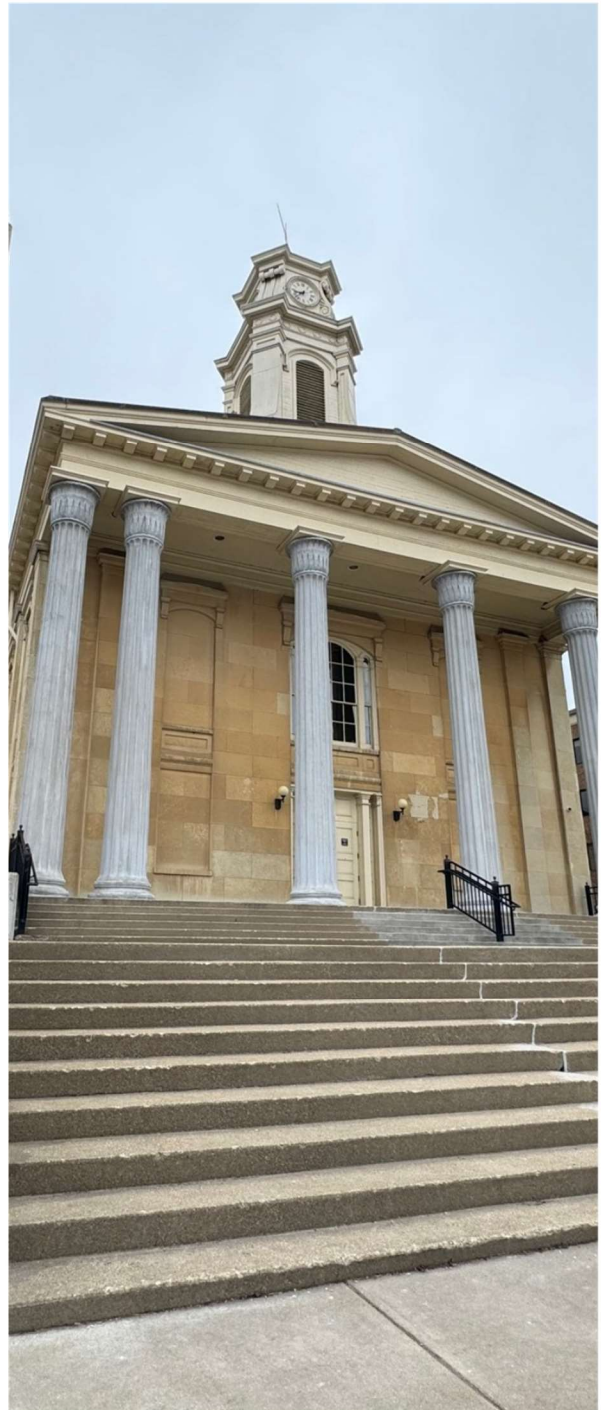


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EXECUTIVE SUMMARY AND RECOMMENDATIONS

From May to September 2023, court observers tracked the eviction process for 655 filings in St. Joseph County Small Claims court with the intention of deepening understandings of the eviction process. This effort aimed to uncover the intricacies of the eviction process, enhance support mechanisms for tenants, and improve advocacy and access to legal resources.

Our findings highlight a commendable adherence to the proper legal framework by St. Joseph County magistrates, setting a standard unfortunately not mirrored in several other counties in the state. Through conversations with other legal aid providers in other counties, we discovered several other counties are not following the statutes or caselaw regarding evictions and the eviction sealing statute. Additionally, we uncovered inconsistencies between public records and the orders signed by the court. Most notable of these inconsistencies include recordings of party appearances and information about money judgments.

FINANCIAL BURDENS AND PROCEDURAL DISPARITIES

Our findings suggest a statistically significant correlation between eviction and race. Non-white tenants, households led by single mothers, and households with children are more likely to have an eviction filed against them ($p=.01$). The financial strain of eviction proceedings became clear very early in our project as unpaid rent was the cause of eviction in most cases. The average rent among cases in the dataset is \$905.47 ($n=393$), with most tenants being a little over three months behind ($n=147$). From May 2023 to February 2024, landlords were awarded a staggering \$721,838.43 ($n=165$) in eviction related judgments, with individual awards ranging from \$451.80 to \$10,309.91, including fees.

This financial burden is exacerbated by the imbalance of representation in the court. Landlords were represented by counsel in 71 percent of hearings ($n=572$), while tenants were represented in only 1 percent ($n=569$). Only 48 percent of tenants appeared for their initial hearings. These disparities are particularly impactful for tenants who, unlike many landlords, are often navigating the process for the first time. Landlords have the advantage of familiarity with the system, even without counsel. Our findings suggest that implementing a court rule standardizing when tenants must receive notice before an eviction hearing would likely improve the number of tenants able to attend their hearings. We argue this notice period be set at 21 days before the date of the possession hearing.

IMPACT OF EVICTION FILINGS AND THE POTENTIAL FOR RECORD SEALING

Other eviction research has investigated the impact of eviction records on tenants' ability to find housing after an eviction.¹ Our study revealed the extent of the harms the "Scarlet E" of an eviction record expand beyond what filing numbers can explain. Among the cohort of cases in the data, we have information tracking how many named parties were included in the case caption for 651 filings. Because more than one named party can be included in the lawsuits, we found a total of 778 eviction records were added to renters' records within our cohort. This amounts to 20 percent more people faced with the complications that come with having an eviction record than other estimates.

Despite the potential relief provided through Indiana Code 32-31-11-3(c), which allows for the sealing of certain eviction records, our observations indicate a lack of awareness and

accessibility to this option among tenants. Only 14 percent of renters (n=286) who appeared at their possession hearings were informed about the possibility of eviction sealing. While roughly 48 percent of filings were eligible to be sealed, only a tiny fraction have been actualized, underscoring a significant gap in tenant empowerment and protection.

In light of our findings, we recommend the following:

1. Before any improvements can be made to the eviction process, we must agree on the basic, underlying law that applies. The Supreme Court must determine what body of law governs eviction and then set out a systematic effort to educate judges regarding that law.
2. Judges are required to inform parties of the availability of the pre-eviction diversion program. Judges should likewise be required to inform tenants of the possibility they could seal their eviction case from public view.
3. To truly be effective, the eviction sealing statute, Ind. Code §32-31-11-3(c) needs to be self-executing and be applied automatically whenever the conditions of the statute are met.
4. Because Small Claims court does not permit discovery, the Notice of Claim should be required to contain more specific information about the nature of any alleged breach of the lease. Without this information, a tenant is unable to prepare for the hearing.
5. Small claims' rule 3 should be amended to require a minimum of 21 days' notice before an eviction hearing can be held. This provides the tenant with time to prepare, including time to ask for leave from work, arrange childcare, and find adequate transportation to the hearing.
6. Courts need to enforce important rules such as small claims' rule 8(C) consistently. Information provided to the public should be accurate and up to date. The Supreme Court may play a role in this by providing sample instructions and notifying clerks of changes in the law. The Supreme Court should monitor compliance with this and other small claims' rules.
7. Courts should find ways to allow incarcerated tenants to participate in hearings.
8. Regular meetings among housing advocates and court staff should be held to share information about the eviction process. We are siloed in our own day to day activities and, as a result, do not question practices or procedures that may be ineffective or incorrect, losing the benefit of creative practices that have made a difference in other courts and counties.

EVICTION AWARENESS AND RESPONSE IN INDIANA

The national conversation around eviction underwent a significant transformation with the publication of Matthew Desmond's award-winning book *Evicted: Profit and Poverty in The American City* in 2016.² Highlighting the acute lack of reliable data in evictions, Desmond's work spurred the creation of Eviction Lab, which intended to increase access to eviction data across the United States.³ Despite its reliance on sometimes sporadic and incomplete court and public records, this project remains the most extensive effort to compile eviction data in the nation, covering all 50 states and Washington D.C.

Indiana's eviction crisis was brought into sharp focus when South Bend, Indianapolis, and Fort Wayne were listed among the top 20 evicting cities nationwide.⁴ This revelation, along with improved access to data through Eviction Lab, led to the development of several tools aimed at aiding in eviction research. One of the first was the Foreclosure and Eviction Analysis Tool (FEAT) by the New America Project, an "open source data tool" to assist researchers run statistical analysis on eviction datasets.⁵ Utilizing FEAT, IUPUI's Polis Center created the "Indiana Evictions and Foreclosure Dashboard," allowing individuals to view eviction filings across the state.⁶ Unlike Eviction Lab, this dashboard attempts to distinguish between eviction filings and actual evictions, furthering our understandings of the breadth of housing instability in Indiana.

The issue of eviction gained further attention during the COVID-19 pandemic, prompting the Indiana Supreme Court to initiate eviction facilitation and eviction diversion programs. Local units also began implementing their own eviction prevention programs to incentivize parties in eviction hearings to work together to find solutions without proceeding with eviction. These attempts were derailed by the Indiana legislature in 2022 when the legislature overturned the governor's 2021 veto of Indiana Code §32-31-10-5, banning mandatory pre-eviction diversion statewide.⁷ Conversely, that same year the state legislature passed a bill allowing tenants to seal eviction records if certain eligibility requirements are met. This was a huge win for tenants and something discussed at length later in the report.⁸

In response to the ongoing crisis, the Coalition for Court Access⁹ and Indiana Bar Foundation¹⁰ launched a kiosk project to provide immediate, tailored legal information to individuals facing eviction through real-time chats with Legal Navigators.¹¹ To operationalize this initiative, the Bar Foundation, with funding from the IHCDA, contracted with legal aid organizations across the state to hire personnel to assist with the project. These navigators would aid on the help desk part-time while also working as directed by their hiring organization, presumably engaging in similar outreach and assistance activities within their local communities.

INTRODUCTION

Amidst these statewide responses to the eviction crisis, the Community Forum for Economic Justice in South Bend convened local stakeholders to form the Housing is a Human Right Task Force (HHR). This grassroots initiative began attending eviction court on Mondays when most hearings are held, offering tenants information on the eviction process, local rental assistance resources, and the dates for legal aid housing clinics. It became clear that most people lacked the knowledge to navigate the eviction process independently.

To provide more targeted assistance to tenants, HHR saw the need for a deeper understanding of courtroom proceedings. As a result, the group began discussions of a court watch program to gather the information necessary to fine-tune their advocacy and support. It soon became apparent they lacked the expertise for such an effort and Professor Judith Fox, Clinical Professor from the Notre Dame Law School, offered her assistance.

At around the same time, Katherine Wines was hired as a Legal Navigator at Pro Bono Indiana with funding from the Bar Foundation. Tasked with helping tenants navigate the complex eviction process, she often encountered practical questions and dilemmas faced by tenants which underscored the value of firsthand courtroom observations. The alignment of Wines' responsibilities and HHR's goals laid the foundation for a productive partnership.

In May of 2023, the St. Joseph County Court Watch Project began collecting data on eviction proceedings. Attempting to transcend the limitations of public records, the project embarked on a mission to systematically collect and analyze eviction proceeding data through live observations. This approach was designed not just to fill the knowledge voids for tenants and advocacy groups, but also meticulously document and assess the eviction process's efficacy and fairness.

This project attempts to bridge the gap between theoretical knowledge and practical realities of the eviction process in St. Joseph County. The primary goal of this project was to illuminate the intricacies of these proceedings, provide stakeholders with insights to enhance support for tenants, and improve access to legal resources. The ensuing report offers a comprehensive analysis of the data collected, discussions on why these analyses matter, and recommendations to improve tenant outcomes. By doing so, we hope to encourage a process that is more fair, transparent, and efficient, ensuring that all parties involved are afforded the dignity and justice they deserve.

METHODOLOGY

WORKSHEET AND DATA COLLECTION

The first appearance for a tenant in an eviction hearing is the possession hearing. In St. Joseph County, most of these occur on Monday. The court employs a “cattle call” approach to scheduling these hearings, meaning each time slot will have several cases scheduled to be heard by the court. Hearings are scheduled in 30-minute increments beginning at 8:30 am and continuing until 3:30 pm. In any given day, the court will hear anywhere from 30 to 50 cases back-to-back, with a break in the afternoon for lunch. Parties sign in at a tablet when they arrive at court to notify the bailiff they are present for their hearing and wait for their cohort to be called into the courtroom.

Given the rapid pace of the hearings, it was necessary to develop and utilize a worksheet to standardize data collection. Information gathered by the worksheet included who appeared for each side, the lease agreement, and outcome of the hearings, among other details.¹² This worksheet ensured the same information was collected from each case and was formatted to chronologically follow the progression of a possession hearing. Every morning before hearings began, observers would obtain the docket to preemptively fill out one worksheet per case with party names, case numbers, and scheduled times. As cases were called to be heard by the court, observers would find the correct worksheet for the case and complete it as much as possible. Worksheets were printed one sided, allowing observers flexibility to take additional notes on any abnormalities or complexities in the case.¹³

THE CODING PROCESS

Once the worksheets were complete, the data was coded for analysis. In this context, “coding” is the process of organizing raw data (like court observations) into a standardized format. Most of the collected data was “categorical,” where different situations or outcomes are represented by numbers. Below is an example of how we coded defendant appearances as a categorical variable.¹⁴

Variable Name	Definition	Code	Sourced
def_app	How the defendant appeared for the hearing	0 – did not appear 1 – appeared with attorney 2 – appeared without attorney	Observation and MyCase

Chart 1: Example of Coding a Categorical Variable

Variables were coded according to the observations taken down on the worksheets, while simultaneously checking the data with information available through public records. Once the data was completely added into Excel, it was double-checked using attorney access through public records, which contains more information than general searches. The main difference in access is that attorneys can open the documents that have been filed in the case while the public cannot.

This additional information allowed us to add another layer of depth to the data we collected and allowed us to double-check our observations against tangible documents filed in the case such as leases, ledgers, and notes by the judge. All but seven¹⁵ of the variables included in the dataset

could be consistently checked with public records. Not all cases were resolved by October 1 when data collection ended. Data on all cases is current as of February 7, 2024.

In situations where a data point differs from public records, it is best practice to leave the data blank to prevent inaccuracies. However, after comparing the eviction information with public records for a few weeks, it became clear that each of the magistrates who preside over the hearings record information in different ways. For example, some magistrates would note a defendant appeared at a hearing in the public record, when really the defendant had signed in to indicate their arrival, spoken with the opposing attorney to discuss a deal, and left before their case had been called before the court. Those tenants did not appear before the court and did not participate in the hearing in any way. These instances were coded as 0 for “did not appear.” In instances where public records differed from the observations, a case-by-case analysis was used to determine recording the data point.¹⁶

SAMPLE AND VARIABLES

Our dataset has a total sample size (n) of 655, meaning that it contains information about 655 individual eviction cases. It is noteworthy that not all cases in our dataset have complete information for every variable. Incomplete data can happen for a variety of reasons, but most often the data point was simply not discussed at the initial hearing. The sample size provides context for the analysis outlined in the rest of the report. Acknowledging incomplete data helps in accurately assessing the generalizability of our conclusions. This report uses notations like (n=000) to show the reader how many cases had information that contributed to a statistic. This is done to provide clarity between data points of varying completeness and helps gauge how representative and trustworthy the numbers are in reflecting the broader context.¹⁷

The dataset tracks information for 64 variables, which predominantly fit into the following four categories:

1. **Hearing Context** – These variables helped us keep track of the basic information about the cases. They were sourced mainly from a docket provided to observers by the clerks in the Small Claims court.
 - Examples: case number, date, scheduled time, and magistrate presiding
2. **Hearing Observations** – These variables collect information that could only be gathered from direct observation in the hearings and cannot be double-checked or collected in the public record. For that reason, these variables are typically not included in other forms of eviction data.
 - Examples: actual start and end time, rent, amount owed, months behind, whether parties were given information about sealing, or allowed to give testimony
3. **Procedural Information** – These variables track specific aspects of court procedures and practices. These were all determined through public records by an attorney to ensure accuracy.
 - Examples: notice given to tenant, 8c compliance, or if the case is eligible for sealing

4. **Status Variables** – These variables track the status of the case over time and change as the case progresses. Many of these were added after data collection had begun to enable us to quickly group together cases with certain statuses. Doing so allowed us to quickly update cases, which we did frequently to keep them current.
 - Examples: status, possession, sealable, and conclusion.

When coding the cases into Excel, each case was assigned a unique ID number. Defendant names were not included.¹⁸ As the purpose of the study was to understand the process and procedures of eviction, data on demographic information was not collected.¹⁹ Because of this, analyses involving demographic information are based on recognized practices of using geographic codes and Census data rather than from observations.²⁰

Not collecting demographic information made it difficult to assess whether our sample was representative. After comparing the distribution of rents between our data and that of the 2022 American Community Survey, we found the distribution to be similar as seen in Figure 1. Additionally, the median rents between the two sources were within \$104 of each other, with a median of \$875 (n=394) and \$979, respectively.²¹ Though further analysis could provide more certainty about the representativeness of our data, these comparisons to other available data do provide some indication the sample is representative.

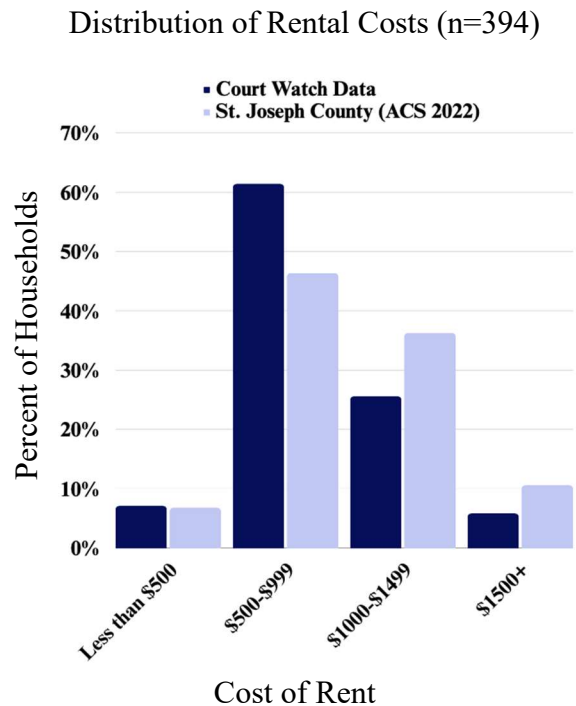


Figure 1: Distribution of Rental Costs

COMBINING DUPLICATES

After weeks of collecting data, cases in the dataset which had been continued at previous hearings were re-observed. To avoid double-counting data points, cases that were observed more than once were combined into a single row. Variables were added to incorporate details from past hearings, but those details (such as service period, who appeared, etc.) were not counted in the overall data once a second hearing was observed. As cases progressed, the data was condensed into the latest entry. Eventually, all duplicates within the dataset were condensed to hold information for the hearing where possession was granted. If a case were continued more than once, the information would be condensed into the most recent hearing until a final judgment on possession was declared.

To maintain consistency in timelines, it was necessary to add two data points: the date when final possession was granted and the magistrate presiding.²² This was done to account for timeline variables in possession being granted in continued vs. non-continued cases.

DATA CLEANING

Data cleaning is the process of identifying and rectifying inaccuracies, inconsistencies, and errors in a dataset to ensure a reliable analysis. For categorical variables, this involves ensuring each

category is distinct and there are no instances where the data shows a condition that does not align with the codebook. In cleaning the data for this project, no data was removed in categorical variables.

After submitting our dataset to the Foreclosure and Eviction Analytic Tool (FEAT) for demographic analysis, it became clear that many of the addresses in the dataset were incorrect.²³ While they were populated from information provided by landlords, the tool was unable to recognize all addresses in the geocoding process necessary for analysis. Addresses that were rejected by the tool were checked against other available public records such as county tax records and errors were corrected, as necessary. Corrected errors include misspellings, incorrect zip codes, and missing street identifiers. Further adjustments were made in addresses for mobile home parks and apartment complexes to the main complex address for the purposes of running FEAT analysis.

FINDINGS

ST. JOSEPH COUNTY'S RENTAL MARKET

St. Joseph County is in North Central Indiana with a population of roughly 273,000—13 percent of whom are renters.²⁴ The median household income in 2022 was \$61,877, whereas the per capita income was significantly lower at \$34,266, suggesting disparity in wealth distribution within the community.²⁵ This gap indicates that while some households earn considerably more, a substantial portion, including the 14 percent living in poverty, may not be as economically secure.²⁶ The area is predominantly white (70 percent), with the next highest racial group being Black (14 percent) and Hispanic (10 percent).²⁷ About 14 percent of the population live in poverty.²⁸

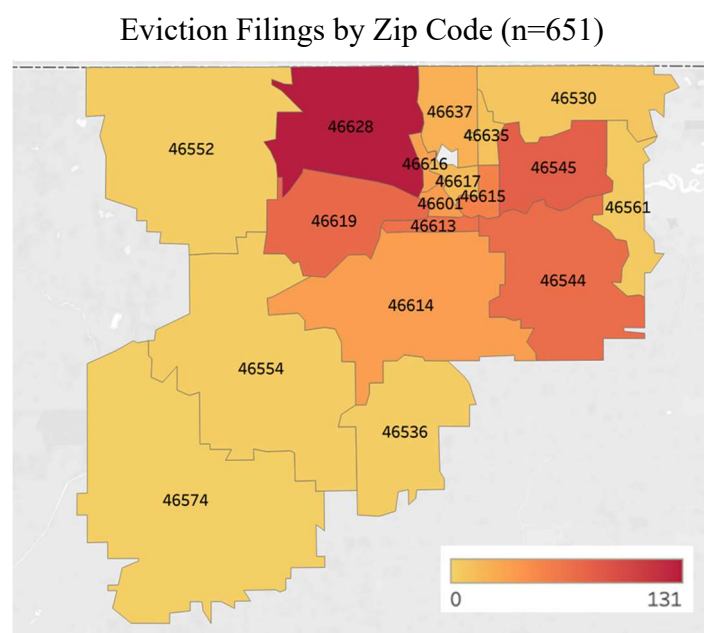


Figure 2: Distribution of Eviction Filings Observed, by Zip Code (n=651)

The volume of evictions filed in the county varies by zip code. Figure 2 (left) provides a visualization of the distribution of eviction filings by zip code. The zip code with the most evictions by volume was 46628 with 131. Located on the western side of the city of South Bend, it is home to some of the poorest members of the community and holds some of the highest concentrations of minority residents.²⁹ The next highest zip code is 46545, located in the city of Mishawaka.³⁰ A slightly more affluent and less racially diverse area of the county, this zip code accounted for 81 eviction filings within our dataset. Both zip codes contain a large concentration of large apartment complexes, many of which are regulars in the South Bend Small Claims Court.³¹

Our study found the average rent in our cohort of cases to be \$905.47 (n=383), slightly below the 2023 HUD calculated Fair Market Rent (FMR) of \$1099 for a two-bedroom rental in South Bend and the South Bend Tribune's report of average rents over \$1000³² More than a quarter of renters in St. Joseph County were rent burdened in 2022, spending more than 30 percent of their income in rent.³³ While eviction rates are down compared to pre-COVID filing rates, they remain high.³⁴ The cost of rent played a significant role in nearly every eviction in our study. With rental prices on the rise, the pressure on families struggling to afford rent is expected to increase, leading to more evictions.

FEAT ANALYSIS RESULTS

Upon conducting regression analysis using the Foreclosure and Eviction Analytic Tool, the data revealed p-values of 0.01 across various demographics, indicating a strong statistical correlation

between eviction rates and specific tenant groups. Specifically, Black tenants were found to have a significant likelihood of facing eviction. Furthermore, the analysis identified a significant correlation for households headed by single mothers and those with children, underscoring the vulnerability of these family structures to housing instability. These p-values signify there is a 99 percent confidence that the correlation between tenant demographics and eviction rates are not due to chance. This highlights a broader pattern of eviction practices that disproportionately impact non-white tenants and families, suggesting a critical need for targeted interventions aimed at addressing these inequalities within the housing system.

THE SCARLET E

Eviction Filings v. Eviction Records

When an eviction is filed with a court, an eviction record is associated with the names of any person named in the lawsuit. An eviction record can significantly hinder a tenant's ability to find safe and affordable housing in the future, painting them with a "Scarlet E."³⁵ Landlords often conduct background checks on potential tenants and a history of eviction filings can prevent an applicant from being approved for housing, forcing tenants into a cycle of housing instability which pushes many to settle for less desirable and often unsafe rental properties.³⁶ The stigma and practical barriers associated with an eviction record make it difficult for people to access stable and affordable housing, perpetuating cycles of poverty and marginalization.

The difference between the number of eviction filings and the total number of eviction records is rarely considered when evaluating the eviction crisis. Counting the number of named parties per filing better reflects the true scope of the issue, providing a richer understanding of the housing crisis. There are 651 cases with data on the number of named parties to the eviction. When each party to the eviction is considered independently, a total of 778 individual eviction records were added for St. Joseph County residents during the study. Therefore, the number of individuals impacted by the Scarlet E is 20 percent larger than filing numbers alone suggest.³⁷

Eviction Sealing

In a rare win for tenants, in 2022 the Indiana legislature granted tenants the right to seal certain eviction records from public view.³⁸ Under this new law, a tenant may file a petition with the court to seal an eviction record if a money judgment has not been entered against them in the eviction case and any of the following occurs:

- “(1) the action is dismissed,
- (2) a judgment in favor of the tenant is entered; or
- (3) the opinion overturning or vacating the judgment against the tenant becomes final.”³⁹

Sealing is mandatory if the petition is submitted to the court and the conditions outlined above are met.⁴⁰ Most cases that are sealable are eligible because the eviction was dismissed. While it is more common for cases to be dismissed before possession is granted, a substantial number were dismissed after a possession decision was rendered. If the tenant does not owe damages to the landlord and the case is dismissed, the statute allows the record to be sealed.

The breakdown of eligibility for all 655 cases are as follows:

Eligibility Status	Sealable	Number of Cases	% of Total Cases (N=655)
Not Currently Sealable	No	311	47%
Dismissed Before Possession Granted	Yes	203	31%
Judgment for Tenant	Yes	2	<1%
Judgment Against Tenant Overturned or Vacated on Appeal	Yes	0	0%
Dismissed After Possession Granted	Yes	109	16%
Sealed	NA	30	5%

Chart 2: Case Sealing Eligibility (n=655)

There are 167 cases in our cohort that remain in a pending status. Additionally, Indiana law requires the court to dismiss any eviction case if the landlord has not taken any action for 180 days.⁴¹ Landlords are likewise required to dismiss if the matter is resolved, but still pending with the court.⁴² If the court fails to do so on their own volition, a tenant is permitted to file a motion requesting dismissal.⁴³ It is hard to determine definitively how many of these pending cases will become sealable, but based on our observations thus far it is probable a good portion of them will be subject to the sealing law in the future.

During our observations, only 14 percent of tenants who appeared for their hearings were told about the possibility of sealing their eviction records. Most tenants only become aware of this right through external stake holders, like the HHR group and legal aid providers, rather than directly from the courts.⁴⁴ Reliance on networks of under-resourced organizations to disseminate vital information is not only inefficient but limit the effectiveness of eviction sealing as a bargaining chip for tenants.⁴⁵

THE EVICTION PROCESS

Eviction in Indiana is governed by Indiana Code §32-31-2-1.⁴⁶ It is normally a bifurcated process beginning when a landlord files a Notice of Claim,⁴⁷ which is subsequently served on the tenant. In most cases, the landlord asks for a hearing on possession followed by a bench trial to determine damages. In an increasing number of cases, especially those involving large apartment complexes, landlords are pursuing possession orders, but opting to waive their damages hearings.⁴⁸ They are not, however, waiving damages. Instead, damages are often passed on to private debt collection agencies.⁴⁹

THE NOTICE OF CLAIM

An eviction in St. Joseph County begins when a Notice of Claim is filed with the Small Claims Court. Indiana small claims' rule 2 specifies what information this notice must contain, including the name, address email, and phone number of each party, among others detailing the time and date of the hearings.⁵⁰ Subsection (B) of this rule outlines more specific requirements, including “a brief statement of the nature and amount of the claim.”⁵¹

We initially intended to code the information contained in this statement to determine the specific reasons for eviction, but quickly abandoned the idea because these statements were nearly universally meaningless. Most stated every possible reason allowed for eviction, including breach of lease, rent, late fees, damages, and attorney's fees. It also became clear a statement as broad as “breach of lease” could refer to something as simple as a claim for unpaid rent or as complicated as alleged criminal activity in the unit. Despite the low quality of information gleaned from these statements, it is safe to say an overwhelming majority of evictions were brought for nonpayment of rent.

We also intended to record the stated amount owed in rent from the Notice of Claim and again were forced to abandon the variable. Instead of providing a specific amount for arrears, landlords (the plaintiff in eviction cases) most commonly list the claim as \$10,000, the jurisdictional limit of the court.⁵² Though not officially recorded quantitatively, after speaking with hundreds of tenants before their possession hearings, it is clear to observers that the practice of landlords claiming the jurisdictional limit in damages is a massive source of stress for tenants.

During the possession hearings, plaintiffs sometimes mentioned how much rent was owed by the defendant. The average back rent owed amounted to \$3264.02 (n=214), with average arrears going back 3.2 months (n=147). When a tenant is served with eviction papers stating they owe \$10,000, it puts them in an antagonistic position. Considering the stress eviction itself puts on tenants, this inflated claim compounds the tenant's feelings of uncertainty towards their landlord and dissuades them from reaching out to figure out a compromise outside of court.⁵³

Subsection (B) of Rule 2 also requires the plaintiff to file a copy of any relevant contract along with the Notice of Claim.⁵⁴ In 66 percent of cases, a signed and current lease between the parties was filed, while the rest were residing in their units on a month-to-month basis either due to an oral lease or holdovers from long expired written leases. Although the law requires all leases be submitted with the Notice of Claim, it was common for the lease to be introduced at the possession hearing instead. As a result, we were not able to view all relevant leases. However,

our research suggests many tenants facing eviction had a lease for their first year in a unit and continue beyond as a month-to-month tenant.⁵⁵

SERVING THE NOTICE OF CLAIM

Parties to any court action must receive proper notice and an “opportunity to be heard.”⁵⁶ How notice is provided in an eviction case is determined by Indiana small claims’ rule 3(A). Service is most often executed by the St. Joseph County Sheriff’s Office, though plaintiffs can also provide personal service. The most common type of service is called copy service, which is perfected when one copy of the Notice of Claim is left at a defendant’s residence, and another is sent to the address through the mail. This type of service was utilized in 93 percent of cases in our study (n=595).

Type of Service	Number of Cases
Copy Service	551
Personal Service	6
No Record of Service	38

Chart 3: Methods of Service (n=595)

In 38 cases there was no record showing service had been perfected at the time of the possession hearing. Most of the time these cases are continued until proper service is achieved.⁵⁷

As Small Claims courts are less formal and have fewer procedural rules, defendants do not have to file answers in response to the complaint against them. Instead, tenants must appear at their first hearing to avoid a default judgment. On average, tenants are given notice of their hearing 20 days before their court date. However, there is no rule setting a minimum time between service of the Notice of Claim and the first hearing.⁵⁸

Number of Days from Service to Possession Hearing	
Average	20.1
Mode	13
Minimum	0
Maximum	46

Chart 4: Days from Service to Possession Hearing (n=565)

While most plaintiffs are providing tenants with more than 20 days’ notice, a significant number of tenants get fewer than two weeks to prepare for their hearing. Some got fewer than a week.

SMALL CLAIMS RULE 8(c)

In July 2021, the Indiana Supreme Court amended the court rules to alter some aspects of small claims’ cases, two of which are relevant to this project.⁵⁹ First, the threshold amount for claims which required a landlord to hire an attorney increased from \$1500 to \$6000.⁶⁰ As many properties are owned by corporations or trusts, this rule change placed stricter requirements on these entities which preferred to appear by a designated representative rather than a lawyer.⁶¹ The second change amended the documentation required before a designated representative may appear on behalf of a property owner. This change intended to guarantee the person appearing

has the authority to act on behalf of the landlord and the owner of the property has consented to being bound by any representations made by the designated employee.⁶² Under this new rule, corporations and trusts must make a specific designation in every case the representative intends to appear “by a certificate of compliance” and a “duly adopted resolution.”⁶³

There were 122 cases in our dataset where small claims’ rule 8(c) applied. Of those cases, only 15 complied with the rule. The penalties that can be ordered by the court for non-compliance of this rule include ordering the landlord to hire a lawyer, imposing sanctions, entering a judgment for the tenant, or dismissing the case.⁶⁴ The court imposed such penalties in only 12 percent of cases where the Plaintiff failed to comply with the rule (n=122).

POSSESSION HEARINGS

Appearances

A well established and unfortunate reality of eviction hearings is that most tenants do not appear in court. Our study was no different, with 49 percent of tenants appearing at their possession hearings. While further regression analysis would be required to determine the significance of the correlation, there appears to be a relationship between the number of days’ notice a tenant had before their hearing and whether they appear. More than 70 percent of tenants who appeared for their hearings had more than two weeks’ notice, while only 10 percent with fewer than two weeks’ notice appeared.

Unsurprisingly again, an extreme minority of tenants appear at their hearings with counsel, amounting to one percent of cases. Conversely, landlords were represented in 71 percent of cases.⁶⁵ Figures 3 (right) illustrate the stark differences between how landlords and tenants appear for their initial possession hearings.

Landlords have more options on how to appear at their hearings. Because many rental units are owned by corporations or managed by property management companies, they choose to appear via designated representatives. Tenants must always come on their own behalf, unless represented by an attorney. Observers witnessed several instances where a family member attempted to appear on their behalf, including cases where the tenant named in the eviction matter was incarcerated. In these situations, the court is not allowed to permit the family member to represent the absent tenant because they are not attorneys.

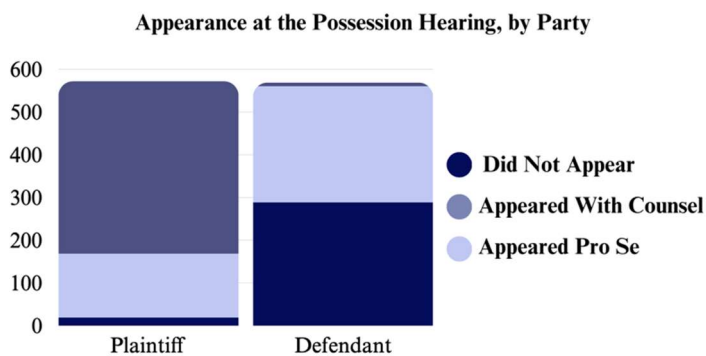


Figure 3: Appearance at Possession Hearings (Plaintiff: n=572) (Defendant n=569)

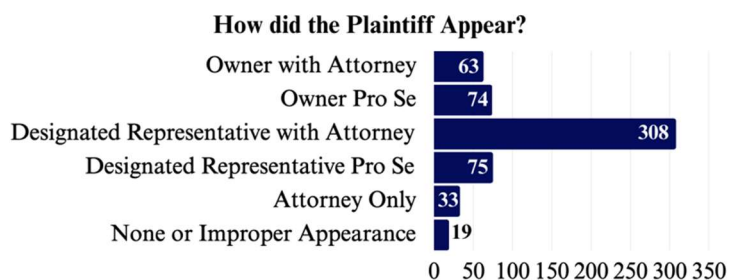


Figure 4: Appearance by Plaintiff at Possession Hearings (n=572)

Duration

Tenants appearing at their hearings face significant challenges in defending their right to possession, with nearly two-thirds of hearings (n=322) concluding in five minutes or less. This rapid pace leaves little room for defenses, a situation depicted in Figure 5, illustrating hearing length by frequency.



Figure 5: Duration of Possession Hearings (n=332)

Our analysis considered the possibility these brief hearings could result from tenants opting for continuances to find legal counsel, as it is a common practice for one presiding magistrate to offer for each case.⁶⁶ Many of these continued cases were reobserved and their records combined as explained in the methodology. It became clear the prevalence of short hearings was not directly tied to such continuances.

Further investigation led us to

hypothesize the absence of tenants at the hearings may be the culprit. Figure 6 below shows the duration of all possession hearings and hearings in which the defendant appeared. We found 44 percent of hearings lasting five minutes or fewer (n=211) involved tenant appearances, suggesting that even when tenants are present, they have scarcely more than two minutes to present their defense against eviction.

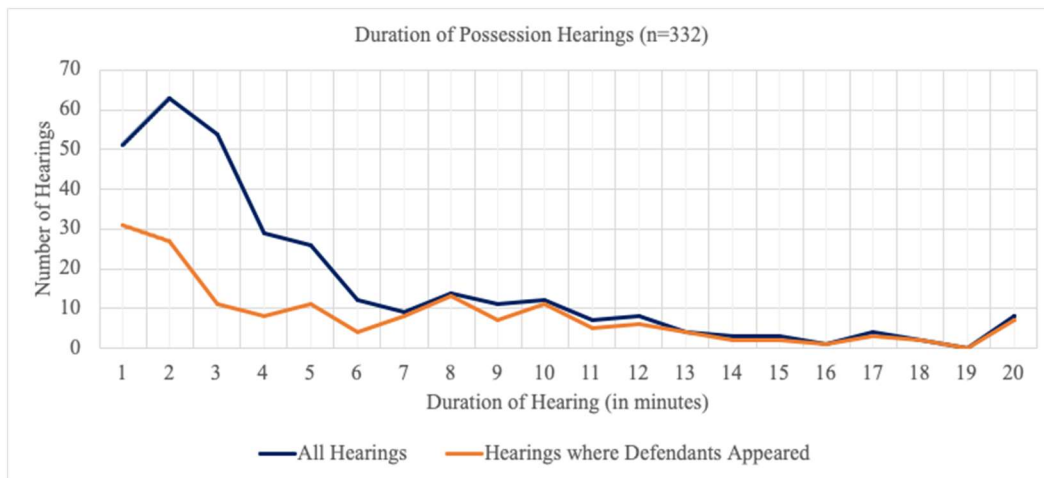


Figure 6: Duration of Possession Hearings when Defendants Appear (n=332)

The issue of withheld rent due to unaddressed housing conditions added to the complexity of tenant’s ability to defend themselves. Legal aid providers have long reported many evictions occur because tenants withhold rent to compel landlords to make necessary repairs: a strategy that is not recognized by Indiana law. Among our initial aims was to track evictions linked to housing conditions vis-à-vis nonpayment of rent. However, this endeavor was quickly halted as it became evident that judges consistently dismissed the relevance of housing conditions during possession hearings. This judicial reluctance to consider conditions that may drive tenants to

withhold rent further narrows the scope of options for tenants defending their right to possession, underscoring the systemic challenges they face in eviction proceedings.

Possession Decisions

Indiana law contemplates various methods through which a landlord can regain possession of a rental unit, each tailored to different circumstances. These include:

1. **Emergency Possession without Hearing**— 48 hours’ notice to the tenant;⁶⁷
2. **Emergency Possession with Hearing**— in cases where immediate harm to the landlord is a concern, possession can be sought with a hearing scheduled within three days of notifying a tenant.⁶⁸
3. **Temporary Restraining Order**— requires hours’ notice and utilized in urgent situations.⁶⁹
4. **Immediate Possession**— as a preliminary matter when the court determines “with reasonable probability”⁷⁰ the landlord is entitled to possession.
5. **Final Possession**— as a final order of the court.⁷¹

For claims requesting immediate or emergency possession, landlords must submit a sworn statement alongside the Notice of Claim.⁷² If the court grants immediate possession, landlords are required to post a bond, the amount of which is typically set by the landlord rather than the court. Bonds paid among our cohort of cases range from \$500 to \$3000, with \$2000, more than double the average rent for our cohort, being the most frequent bond amount (n=393). This bond is a security, and tenants can post a counterbond to remain in the unit until a hearing is set (typically the damages hearing). Although immediate possession implies tenants must vacate on the day of the hearing, the practical execution of this order takes a few days. Tenants will be served new paperwork and, upon receipt, they have 48 hours to either match the bond or vacate.

Despite the different requirements for each method of regaining access, landlords do not always receive the possession they request. Chart 5, below, shows the possession granted versus what was requested by the landlord, indicating judicial discretion which often does not align with the landlord's initial claims.

Landlord’s Request	Number of Requests	Type of Possession Granted		
		Immediate	Final	Emergency
Immediate	328	41	287	0
Final	68	7	61	0
Emergency	4	1	3	0

Chart 5: Possession Requested at Initial Hearing and Possession Granted (n=400)

Most landlords were granted final possession during their initial hearing regardless of their initial request to the court. Emergency possession requests were infrequent and none were granted within the cohort we studied. Denials of possession were similarly infrequent with only one tenant successfully retaining possession. However, the court does not always grant possession: a considerable number of cases were dismissed before or at the first hearing, though the reasons for dismissals are not clearly stated in public records. Several cases are open with no hearings scheduled, effectively in limbo waiting for action. Figure 7 shows the current state of possession for cases within the dataset.

In cases where tenants were ordered to relinquish possession, the average time from the hearing to the effective move-out date was 14.6 days (n=393), with a minimum of 0 days and a maximum of 66. The most frequent number of days tenants had to move was two days.⁷³ Despite the informal nature of Small Claims court, this variability in outcomes raises concerns about the consistency of the courts. The experiences of tenants, given identical circumstances, can differ markedly depending on the day and the presiding magistrate, highlighting a broader issue of equity and fairness in eviction court.

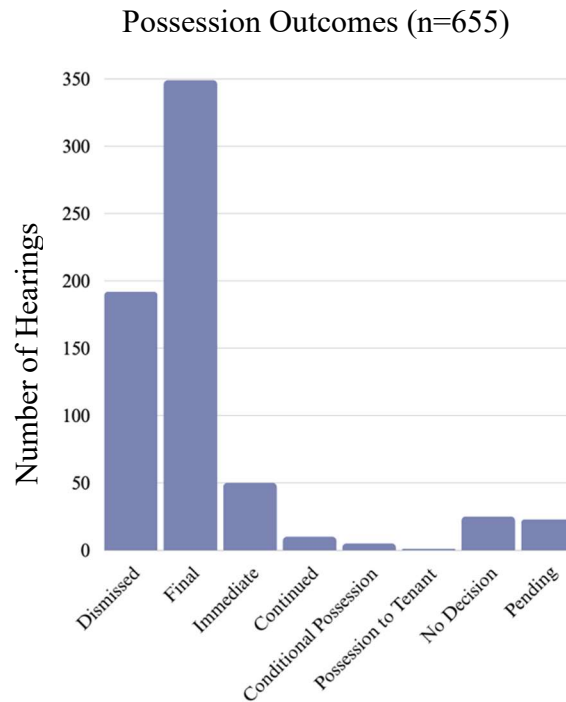


Figure 7: Possession Outcomes Ordered by the Court (n=655)

The Damages Hearing

In cases where landlords seek money damages, a second hearing is scheduled. If immediate possession was rewarded to the landlord, the tenant retains the right to challenge this decision (though such instances are rare). Unlike possession hearings which are concentrated early in the week, damages hearings are heard throughout—complicating direct observation efforts. As a result, our insights into these hearings are derived solely from public records.

About a quarter the cases we followed ended in a judgment for damages, totaling \$723,024.43 in awards to landlords from May 1, 2023 to January 31, 2024 (see Figure 8 below). As we collected information about the outcomes of damages hearings, we found numerous discrepancies between the judgment amounts reported in the public record by clerks (what a tenant would see when going online to check their balance) and those ordered by the court.

The largest damages award observed was \$10,309.91 with an additional cost of \$115 in court costs and fees.⁷⁴ This raises some concerns given the jurisdictional limit of \$10,000 for Small Claims court.⁷⁵ Litigants are required to waive any damages exceeding this limit.⁷⁶ Courts can add court fees to judgments beyond the jurisdictional limit, but cannot grant a judgment more than \$10,000. There were eleven judgments of \$10,000 plus fees and one in which the court granted a judgment beyond the jurisdictional limit, then granted additional fees on top.⁷⁷ Overall, the average granted to a landlord in damages was \$4382 (n=165) and all judgments granted will accrue interest at 8 percent annually, increasing the financial burden on tenants over time.

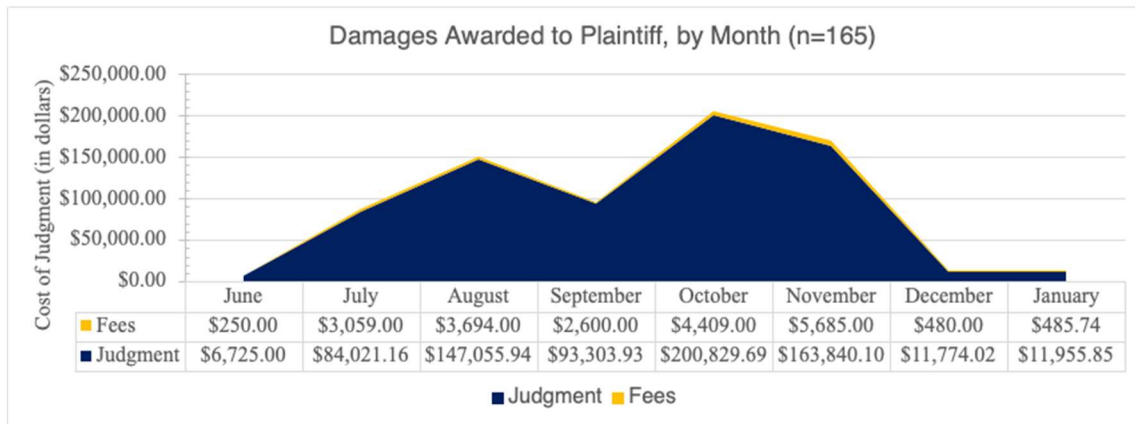


Figure 8: Damages Awarded to Plaintiff by Month (n=165)

Final Outcomes

Cases were last updated for this report on February 7, 2024. A simplified version of the final outcomes of the case we tracked can viewed below in Figure 9.⁷⁸

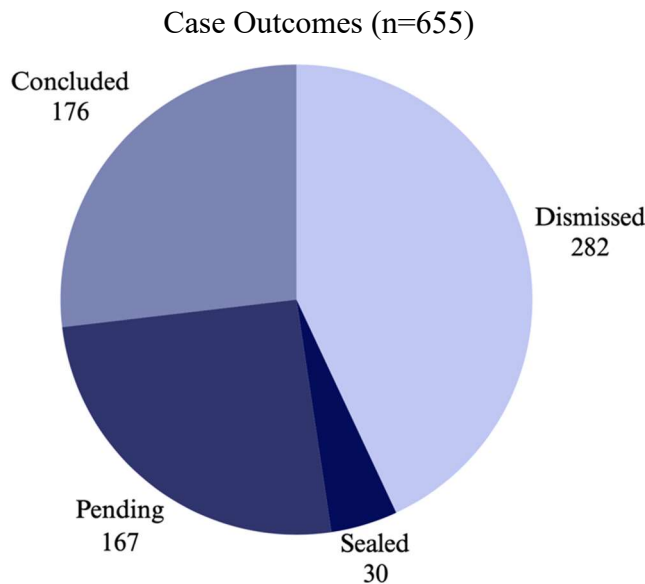


Figure 9: Simplified Case Outcomes to Date (n=655)

There are 167 cases still pending a final resolution. Interestingly, 74 cases are in a specific form of limbo where landlords have sought possession but have not pursued a hearing for damages. Officially, these are marked as pending since the typical structure for the eviction process anticipates two hearings. Yet practically these cases may be at their conclusion. Indiana Code §32-31-10-3 requires a landlord to “dismiss the action if the case is resolved between the parties at any time before final adjudication of the action, unless the plaintiff is seeking damages.”⁷⁹

Another 69 cases remain open pending a procedural action from the plaintiff. The reasons for these procedural holdups vary widely, encompassing everything from awaiting the scheduling of a damages’ hearings to the filing of motions for default judgments when tenants

fail to appear at the damages hearing. Such unresolved cases can severely impede a tenant's ability to find new housing, as landlords may view these open records more unfavorable than resolved evictions. This underscores the importance of timely actions by landlords and court staff to ease the negative impacts on tenant's future housing opportunities.

DISCUSSION OF RESULTS

This study aimed to deepen our understanding of eviction court operations to enhance support for tenants faced with losing their homes. We found the judicial personnel professional and cooperative, readily engaging with observers and answering procedural questions. However, the judicial system is stretched thin, struggling under the weight of excessive caseloads, insufficient judicial officers, and state laws that heavily favor landlords. The result is a rapid and often superficial processing of eviction cases, leaving little room for thorough examination of each claim. Consequently, the eviction process has evolved into a streamlined path for landlords: often at the expense of tenants' ability to mount a successful defense. This is a systemic issue resulting in a judicial process that is a "cheap, easy, fast first step" for landlords.⁸⁰

VARIABILITY OF THE EVICTION PROCESS

Among the most compelling insights from this study emerged not from the data itself but from the discussions it spurred among legal professionals statewide. While presenting our initial findings detailing the bifurcated nature of hearings and the underlying legal framework in St. Joseph County, we were met with surprise. Our conversations revealed a startling lack of consistency in how eviction cases are adjudicated, not just from one judge to another within the same court system, but across different counties. It became clear that some courts were not uniformly applying the same legal standards: a practice at odds with judicial principles since judges, while free to interpret the law, cannot disregard or invent law to suit the case at hand.

We found the judges of St. Joseph County are correctly interpreting the law that governs eviction by using the ejectment statute, Indiana Code §32-30-2-1, which explicitly covers actions to "take possession by an action brought against the tenant in possession."⁸¹ Furthermore, the statute has consistently been upheld as the governing law for eviction cases in the state. In *Adams v. Holcomb*, the court's ruling stated the following:

"...ejectment is a proper remedy to be used by a landlord to recover possession of leased premises from his tenant after the expiration of the term, or for nonpayment of rent, or for forfeiture of the lease by breach of the condition thereof when it is stipulated in the lease or provided by law that the lessor shall have the right to reenter for such nonpayment of rent or breach of contract."⁸²

Despite suggestions to the contrary, recent landlord-tenant laws have not superseded this statute as confirmed by both legislative and judicial actions.⁸³ For example, a 2008 Indiana Supreme Court decision discussing the ejectment statute stated that "[o]ur General Assembly enacted a statutory scheme that provides for a pre-judgment possession hearing."⁸⁴ The court continues to explain the bifurcated hearing process for granting immediate possession. In a more recent case, *Johnson v. Housing Authority of South Bend*, a landlord claimed the ejectment statute did not govern its eviction action because it did not, according to the landlord, apply in Small Claims court.⁸⁵ While the court's ultimate decision did not depend on this assertion, the court addressed it, nonetheless. The court rejected the Housing Authority's argument the ejectment statute did not apply in Small Claims court, instead explaining that while it did apply, the court had not improperly applied it as the tenant claimed.⁸⁶

Others have argued the ejectment statute only applies to actions for title, not possession. In *Flick v. Reuter*, the court explains the ejectment “is a possessory action” and not an action about title to the land.⁸⁷ This distinction is crucial in understanding how ejectment is relevant in eviction proceedings, reinforcing both statutory and judicial consensus the ejectment statute serves as the appropriate legal foundation for eviction cases.

The practice of bifurcated hearings (splitting the process into separate sessions for possession and damages) stems from the ejectment statute's approach to managing immediate and final possession. This adaptation aims to streamline court operations amidst heavy caseloads, but it also significantly restricts tenants' ability to prepare and present a compelling defense to avoid eviction. Notably, this bifurcation is not mandated by law and seems out of place in courts that do not apply the ejectment statute. This procedural evolution highlights a troubling trade-off: the pursuit of judicial efficiency often undermines the depth and fairness of eviction proceedings, disadvantaging tenants at a critical juncture in their fight to retain their homes.

SEALING EVICTIONS

Need for More Robust Tenant Education from Courts

Since the COVID-19 moratorium ended in August 2020 there have been 8016 eviction filings in St. Joseph County.⁸⁸ Eviction is a significant disruption in the lives of tenants and their families, often leading to cascading effects such as loss of community ties, disruptions in children’s education, and increased difficulty securing future housing. Evicted tenants not only lose their home, but they also often lose their possessions, exacerbating an already economically stressful situation.⁸⁹ Eviction records make tenants less desirable to landlords and often cause them to move into increasingly less safe, and often more expensive, housing.⁹⁰ Sealing the records can help prevent this downward spiral.

Indiana law provides three ways in which an eviction filing can be sealed from public view. The first is through the Supreme Court’s eviction diversion program.⁹¹ If the parties agree to participate, the eviction is stayed while the tenant applies for rental assistance. If the assistance is successful in bringing the tenant current on rent, the matter is dismissed and automatically sealed. The second is outlined by Indiana Code §32-31-10-4 which specifies that, if the plaintiff has not prosecuted a case for 180 days, the court shall send a notice to the plaintiff to either continue prosecuting the case or dismiss it. If they fail to do either, the court must dismiss the case and seal the record.⁹² These two methods are self-executing, meaning the tenant does not have to take any action to have the record sealed. It does not appear that either of these are being used as often as the law intended.

The third method is not self-executing and is also the most common avenue for a case to become eligible for sealing. In 2022, the Indiana legislature enacted a statute to allow tenants to file a petition with the court to seal an eviction filing if there are no damages owed by the tenant and either:

- “(1) the action is dismissed,
- (2) a judgment in favor of the tenant is entered; or

(3) the opinion overturning or vacating the judgment against the tenant becomes final.”⁹³

Because tenants must be proactive to achieve sealing under this method, it is crucial for tenants facing eviction to learn about the possibility of sealing. As it currently stands, most education about sealing provided to tenants is done through providers of legal aid. Only 14 percent of tenants were informed by the court of their right to seal certain evictions.

The current approach to eviction record sealing exemplifies a significant access to justice issue, especially in a legal landscape where tenants’ options are extremely limited. By placing the onus on tenants to learn about and navigate the eviction sealing process, stakeholders overlook that eviction sealing is not just a post-procedural formality: it is a vital tool for tenants to self-advocate for better outcomes throughout the process. From negotiating move-out terms to ensuring access to future housing opportunities, knowledge of the right to seal eviction records allows tenants to negotiate from a place of power.

Variability of Court Interpretation in Eviction Sealing

In conversations with other housing advocates, we discovered that some courts are misinterpreting this statute and refusing to seal eviction records that should be eligible. The language of this statute is clear: if no damages are owed to the landlord and the case is dismissed, the eviction record can be sealed. Yet judges across the state are not allowing the sealing of records if the landlord was granted possession but damages were not owed by the tenant. The ability to seal a record is not predicated on whether the tenant lost possession—the only requirements in the statute are that no damages are owed to the landlord and the action was dismissed.⁹⁴

The right to appeal such erroneous decisions, while legally available to tenants, often proves to be impractical. One percent of tenants were able to acquire representation for their eviction cases. Securing free legal assistance for an initial eviction hearing is challenging enough and finding representation for an appeal is even more untenable. We also cannot overlook the fact that to get to the point of an appeal, the tenant must have previously been informed about their right to seal. Furthermore, once sealing is rejected, they would need to understand that rejection as a violation of their rights.⁹⁵ Thousands of tenants across the state are being denied the benefit of this statute. If the court in St. Joseph County interpreted the law to exclude cases where possession was granted, the number of cases eligible for sealing would reduce by 17 percent (n=312).

In our study tenants won in two notable cases, highlighting ambiguities around sealing eviction records when a judgment favors the tenant. One case involved a tenant’s counterclaim on habitability issues.⁹⁶ Despite having already moved from the property before the possession hearing, the judge granted the landlord possession.⁹⁷ The parties returned for their damages hearing where the landlord claimed over \$2000 in back rent. After hearing the evidence, the judge found the landlord had violated the warrant of habitability and issued a judgment in favor of the tenant for \$500.⁹⁸ The second case follows a similar fact pattern.⁹⁹ Both these cases should be sealable under the law, though the same judges who refuse to seal a case dismissed after possession may have the same qualms about sealing these cases.

The challenge of breaking the cycle of poverty underscore the need for comprehensive and proactive solutions in addressing housing instability. To fully ensure equitable access to this statute’s protections, an automatic sealing process would be ideal. In the interim: it is crucial that courts take a more proactive role in informing tenants about the possibility and benefits of sealing their eviction records, thereby enhancing their capacity to advocate for themselves. Our data suggests that, if fully utilized, almost half of the tenants facing eviction could have their record sealed, significantly protecting them from further displacement.

NOTICE OF CLAIM DEFICIENCIES

The Notice of Claim frequently fails to specify the reasons for eviction, commonly aggregating various allegations into a vague statement like “breach of lease, rent, damages, attorneys’ fees.” The absence of discovery rights in the Small Claims court places tenants at a disadvantage, often leaving them to learn the true scope of the basis for their eviction at the hearing. This challenge is exacerbated by short notice periods. This places tenants at a massive procedural disadvantage, as well as making it nearly impossible to access legal aid or prepare an effective defense.

Our judicial system’s effectiveness hinges on active involvement of both parties, “[a]n elementary and fundamental requirement of due process.”¹⁰⁰ This mandates that defendants receive notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afforded them an opportunity to present their objections.”¹⁰¹ Over half the cases we monitored received their eviction notice 19 days or fewer before their hearings (n=565). This is simply not enough time.

As the Supreme Court pointed out in *Mullane*, notice is not enough to ensure due process. The tenant must also have time to prepare their objections to eviction. The lack of adequate time to prepare is accelerated by the quick turn-around between notice and the hearing. The clerks routinely set possession hearings two weeks from the date of filing, guaranteeing the tenants will have less than 14 days’ notice. Those facing eviction often work in inflexible working arrangements, requiring more time to request time off, make childcare arrangements, find transportation, or gather the necessary documents to prove their case. Recognizing this critical gap the authors of this report vetted and submitted a proposal to the Indiana Supreme Court requesting the court change small claims’ rule 3 to require at least 21 days’ notice before an eviction hearing can occur. This proposed rule could potentially kill two birds with one stone.

ISSUES WITH COPY SERVICE

An overwhelming number of plaintiffs utilized copy service, with 93 percent (n=595) utilizing it to perfect service on their tenants. Copy service is a method fraught with reliability issues: documents left on doors blow away, are exposed to the elements, and can be picked up by anyone, including strangers.

We found several instances of service issues in our study that illustrate the flaws of copy service. Cause number 71D01-2304-EV-000725 was filed on April 18, 2023. The sheriff filed proof of service attesting to leaving a copy of the summons at the tenant’s address and mailing a copy on April 21. The possession hearing occurs on May 15. The tenant did not appear and possession was granted to the landlord. More than a month later, on June 30, the post office returned the summons to the court marked “moved left no address” with a June 26, 2023 date stamp.

It is impossible to know why it took two months for the letter to be returned to the court. Had the tenant already moved out before the eviction hearing? Did she ever receive notice of the eviction? Should she even have been evicted if she no longer lived there? This case is still marked “pending” because the landlord did not request a damages hearing. The last activity was more than 180 days ago. Technically, it should be dismissed pursuant to Indiana Code §32-31-10-4.¹⁰²

In case 71D03-2305-EV-000851, the situation escalates due to service issues. The summons was marked “unserved,” and recorded almost a month before the eviction hearing. Despite the defendant's absence, which was possibly due to not receiving notice, the court issued an eviction order on June 15. The defendant contacted the court on June 21 to complain about lack of notice, only to be informed they could remain in the property by posting a \$2000 bond. No follow-up hearing was scheduled. Subsequently, an attempt to serve the possession order failed as the property was found vacant, suggesting the tenant had either moved or been locked out. Meanwhile, a damages hearing proceeded without the tenant's knowledge, resulting in a \$1873.74 judgment against them. This sequence of events, including the lack of required notice, highlights systemic issues in service and due process, reflecting broader procedural challenges within the small claims’ process.

Building on the theme of procedural challenges and the lack of proper service, another layer of complexity emerges when actions—or the lack thereof—taken by the court directly harm tenants. A prime example is found in case 71D05-2305-EV-001068. Filed on May 30, with the possession hearing quickly scheduled for June 12, this case encountered a standstill when the judge identified a failure by the landlord to adhere to rule 8(C), leading to judicial inaction. Consequently, the tenant is left with an unresolved eviction record, a situation the court has not rectified. This case, along with several others filed by South Bend Homes, LLC., underscores related issues and further illustrates the detrimental impacts of procedural inefficiencies on tenants.

SMALL CLAIMS RULE 8(c)

Our dataset revealed a notable issue in noncompliance with small claims’ rule 8(c), a critical regulation ensuring plaintiffs have the legal right to file a case and property owners’ consent to their representatives' actions. Misinformation about this rule was prevalent during our study, potentially allowing representatives to make unendorsed claims or agreements. After we alerted the court to this misinformation, accuracy, and adherence to Rule 8(c) improved. Notably, inaccurate information on the court’s website was corrected.

APPEARANCES FOR INMATES

As reported, tenants often fail to appear but some try to appear and are thwarted. Incarcerated individuals pose a challenge for the courts. One of the tenants in our study was incarcerated.¹⁰³ A relative appeared on their behalf but was not permitted to speak. An eviction was ordered, but the file was eventually sealed. While only a few such situations were witnessed in this study, students in Professor Florence Roisman class at the McKinney School of Law in Indianapolis have witnessed this and reported on it.¹⁰⁴ As the students point out, incarcerated individuals, no less than anyone else “have a constitutional right of access to the courts,” and such access must be “adequate, effective, and meaningful.”¹⁰⁵ Landlords were repeatedly given the opportunity to

appear telephonically. The courts regularly hold hearings where prisoners appear remotely. An incarcerated person's home and liberty are at stake as the ability to be released on bond or obtain parole could often depend on having a home to return to. Courts should try to provide a means for incarcerated persons to appear, in person or remotely, in eviction proceedings.

COURT DEFERENCE TO LANDLORDS

Court observations highlight a disparity in treatment between landlords and tenants within the eviction process. Tenants who fail to appear at hearings face immediate default judgments and eviction, whereas landlords often receive additional opportunities to present their case.¹⁰⁶ Courts extend the curtesy of rescheduling for landlords who miss hearings or need time to gather more evidence, a flexibility rarely afforded to tenants. Observers saw several continuances granted to allow landlords to procure necessary ownership documents, sometimes even pausing the hearings for them to obtain proof of ownership from the Recorder's Office while tenants wait in the lobby.¹⁰⁷

Tenants, lacking the eviction process experience that seasoned landlords often have, are further disadvantaged by not receiving the same treatment from courts. This disparity is stark when tenants need access to their evidence, significantly hindered by the courthouse's ban on cell phones. Despite the availability of resources like the public library—just one block away from the courthouse, equipped with printers and staff ready to assist—tenants' pleas for additional time to gather and present documentation in support of their defense are rarely heeded. This discrepancy in treatment underscores the critical need for the eviction process to offer equitable opportunities for all parties, ensuring fairness in how cases are presented and heard.

POSSESSION HEARINGS

The initial hearing in eviction proceedings typically addresses immediate possession. Despite seeking immediate possession, landlords are granted final possession in 88% of cases (n=400). To the benefit of both parties, this strategy allows magistrates to negotiate additional time for the tenants to vacate and landlords to avoid the bond requirement. However, this arrangement also means tenants forfeit the right to contest possession through a counter-bond and evidentiary hearing: a significant procedural loss.¹⁰⁸

Most hearings conclude in under five minutes, barely enough time for landlords to outline their case, leaving tenants with minimal opportunity to present their defense. The vagueness of the Notice of Claim often means tenants are unprepared, encountering the specifics of their eviction for the first time at the hearing. The decision typically hinges on whether the tenant owes money, with affirmative answers leading to eviction.

While most hearings are brief, a minority exceed this duration, with some lasting over 20 minutes without a discernible pattern for the variance.¹⁰⁹ Longer hearings generally require tenants to actively challenge and request more time, occasionally resulting in the hearing's postponement to a less congested day. Despite these exceptions, the outcome frequently remains eviction of tenants, with substantive disputes deferred to the damages hearing.

DAMAGES HEARINGS

An initial objective of our study was to analyze court responses to tenant defenses based on property conditions, addressing assertions that courts often overlook habitability issues. We encountered few instances where tenants raised concerns about property conditions through counterclaims or as defenses, and the limited scope of our data prevents definitive conclusions. However, these select cases shed light on judicial perspectives toward habitability claims and highlight the obstacles tenants encounter in asserting these defenses within the legal process.

In a notable case, the court issued a detailed order clarifying its stance on habitability claims, providing valuable insights into how such issues are addressed. Initially, the landlord received a final possession order but did not pursue a writ for eviction.¹¹⁰ Subsequently, the tenant filed a counterclaim highlighting concerns over mold and lead paint, accompanied by evidence of a deteriorating roof and lead hazards, including inspection reports and photos. A hearing was scheduled. At that hearing the tenant admitted she had stopped paying rent, but also submitted pictures and other documentary evidence to support her counterclaim.

The court found “that while the Defendant was in breach of the rental agreement, the Plaintiff was in breach of his obligation as a landlord to provide a residence in habitable condition.”¹¹¹ Citing the precedent from *Noble v. Alis*, the judge defined the damages as “the difference between the rental value of the apartment as warranted and its actual value in the defective condition,”¹¹² The court estimated the apartment’s true fair rental value at \$200, significantly lower than the \$700 per month claimed by the landlord. After adjusting for the owed rent and considering the tenant’s security deposit, the court awarded the tenant \$500, balancing the obligations breached by both parties.¹¹³

While it is theoretically possible for a habitability claim to impact some eviction decisions, it is not possible if the claim is not heard until after possession is decided. For example, suppose the judge in the case outlined above determined the property’s market value at \$100 rather than \$200. By accounting for the changes in the market rent of the unit at the possession hearing, it would have been clear the tenant was not in arrears at the time of the possession hearing. In fact, they would have overpaid, negating the landlord’s claim for possession. This illustrates the risk in routinely awarding final possession without fully addressing underlying issues. Unfortunately, our study did not encounter such a scenario, leaving unanswered questions about how courts might adjudicate under these circumstances.

Damages are the only remedy the courts enforce for breach of the warranty of habitability.¹¹⁴ Therefore, tenants face impossible choices when a landlord fails to provide a habitable property. They must continue to pay the full amount of rent set out in the lease, despite the breach, or be evicted. If they break the lease, they may be required to continue paying rent through the end of the lease term. Yet, once one party to a contract materially breaches that contract,¹¹⁵ the other party is generally not required to perform.¹¹⁶ This basic contract principle is not applied to residential leases. A failure to provide the only thing required of a lease, a habitable housing unit, is clearly a material breach. Instead, residential leases are only enforced in one direction. Tenants are unable to rescind the lease and are forced to continue to perform despite not receiving the benefit contracted for.

ERRORS AND INCONSISTENCIES IN COURT DATA

The integrity of court records is paramount for the justice system to function effectively and fairly. Our study has unveiled significant discrepancies in how cases are recorded within the court system. This issue is not with our data collection, but rather with the court’s inconsistent and occasionally incorrect documentation of cases.

One example of this issue involves a case filed in March 2023.¹¹⁷ Although the plaintiff never requested a hearing on damages and none was scheduled after possession was granted in May, the online record still lists this case as “[p]ending (active)” nine months after a judgment was made.¹¹⁸ This misclassification not only misrepresents the case’s status but also affects the potential for sealing or dismissal under Indiana law.¹¹⁹

Another case from April 2023 received a preliminary possession order in May, yet the docket shows final possession was granted despite the judge’s notes indicating otherwise.¹²⁰ The tenant should have had a chance to contest possession at the final possession set for July 19,¹²¹ but the hearing was a “hallway hearing” without judicial participation.¹²² This mistake in data entry deprived the tenant of the opportunity to contest possession at their final hearing, fundamentally undermining their rights.

Discrepancies extend to the recording of damages awarded to parties, as well. Recommended practices advise tenants to make payments through the court to ensure an accurate record and prevent future disputes over the balance owed. When a damages award is determined by the court it is recorded on the online record, and as payments are made, they are reflected in that record. Figure 8 shows an example of such a record.¹²³

Balance Due (as of 02/14/2024)
3,805.00

Charge Summary

Description	Amount	Credit	Payment
Restitution	3,865.00	0.00	60.00

Transaction Summary

Date	Description	Amount
07/17/2023	Transaction Assessment	3,865.00
08/07/2023	Mail Payment	(10.00)
09/05/2023	Counter Payment	(10.00)
10/19/2023	Counter Payment	(10.00)
11/30/2023	Counter Payment	(10.00)
12/28/2023	Counter Payment	(10.00)
02/01/2024	Counter Payment	(10.00)

Figure 8: Screenshot of Inconsistent Financial Records

Several cases showed judgment amounts in these records that did not match the judge’s orders,¹²⁴ and instances where judgments were not recorded at all, despite being ordered.¹²⁵ Such inaccuracies can lead tenants to mistakenly believe they owe nothing, often until a collection agency becomes involved. Relying on what they were told by the court, they reasonably believe the collection action is not justified.¹²⁶

Inaccessibility of detailed orders for non-attorney parties compounds these issues, making it difficult to verify information or correct errors. This lack of transparency and the challenges of

rectifying records potentially years later undermines public confidence in the judiciary and underscores a need for systemic change. To restore trust and ensure fairness the court system must adopt more rigorous standards for documentation, provide mechanisms for easy verification and correction of records.

CONCLUSION

Safe, affordable housing is the cornerstone of thriving families and communities. In the realm of residential leases, landlords must provide units that meet all health and safety standards, while tenants are obligated to pay rent. However, the balance in this agreement often tilts unfairly in favor of landlords, deviating from the equitable treatment expected in contractual relationships. Indiana's legal landscape and the procedural shortcuts of small claims courts severely limit tenants' ability to assert their defenses and claims, effectively disadvantaging them when landlords fail to uphold their part of the contract.

Our study has uncovered a system where efficiency often overshadows justice, with courts at times bypassing state laws and fundamental due process. Though some state policymakers have acknowledged the pressing issue of evictions, actionable solutions are scarce. Notably, the eviction sealing law represents a significant advancement for tenant rights, yet its impact is minimized by tenants' lack of awareness and representation. Facing seasoned attorneys, unrepresented tenants struggle to navigate the complex eviction process.

To address these disparities, a fundamental shift in eviction court culture is needed, starting with a clear articulation of applicable laws. Court procedures and notice requirements must be revised to offer tenants a genuine opportunity to present their defenses. Slowing down the pace of cases to allow thorough examination of each party's arguments is essential. Implementing these changes demands education, resource allocation, and a commitment to dismantling long-standing inequities. Indiana's history of adapting to challenges gives hope for the necessary reforms to rectify these issues.

ACKNOWLEDGMENTS

We extend our gratitude to the St. Joseph County Courts, especially Magistrates Doi, Hardtke, Raper, and Tamashasky, for their cooperation and openness during this project. Our thanks also to the Coalition for Court Access for facilitating the presentation of our preliminary findings and to the advocacy community for their insightful feedback and support. Special thanks are due to Florence Wagman Roisman, William F. Harvey Professor of Law at Indiana University, for her valuable comments and guidance during the drafting of this report.

ON COURT WATCHING

Through my experiences observing these proceedings in St. Joseph County I have encountered the deeply human side of a legal process obscured behind the formality of courtrooms. Witnessing everything from families losing their homes over minor rent disputes to the stark presence of law enforcement, these cases have unfolded a spectrum of human nuance and systemic challenges.

The questions most frequently asked of me by tenants reflect fundamental concerns: “Why did I get two court dates?,” “How can I prevent getting an eviction on my record?,” “Why does my landlord claim I owe them \$10,000?” These inquiries, far from complex legal questions, highlight a dire need for clarity and guidance the current system fails to provide. The lack of understanding makes an already extremely stressful situation even more daunting, leaving tenants ill-equipped to navigate the proceedings or advocate effectively for themselves.

When I stepped into this role in 2022, I had no background in housing issues. It took me several months working full time in legal aid, often directly with Judy Fox, to feel like I understood the process. If someone with my background and resources finds this system challenging to navigate, how can we expect those without those privileges to fare? Though we have stopped data collection, I still go to court every week to speak with tenants, and the questions I am asked are always the same. I have more answers now, but the reliance on a sparse network of legal aid providers to educate everyone in need of information is untenable.

Moreover, the inconsistency in the application of eviction laws across different courtrooms presents a significant barrier to broad, effective tenant education. A recurring theme of this report is the unpredictability of this process, with variations not just from county to county but even from one judge to another within the same jurisdiction. This variability undermines efforts to empower tenants through education as advice that applies in one case may not hold in another due to differing interpretations of the law or procedures. There is a pressing need to standardize and educate within the judiciary itself. Ensuring that all courts adhere to a consistent application of eviction proceedings is crucial. Without this uniformity, even well-informed tenants find themselves at a disadvantage, unable to navigate the capricious nature of their legal challenges effectively.

Implementing an informational first hearing in the eviction process presents a strategic opportunity to enhance tenant understanding and participation. This would provide tenants with crucial knowledge about their rights and the eviction process, leading to better-prepared participants and fewer misunderstandings. Such an approach not only streamlines the court process but also reduces educational demands on legal aid and advocacy groups. Instead, these organizations can concentrate their resources on delivering direct legal services and outreach to engage tenants who do not appear for their hearings. Implementing this change would be a powerful step toward a more equitable and efficient legal landscape, ensuring that every tenant can navigate the eviction process with confidence and dignity.

Katherine Wines, Legal Navigator

¹ See *ie.* Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM.J.SOC. 88 (2012), Eric Seymore & Joshua Akers, *Building the Eviction Economy: Speculation, Precarity, and Eviction in Detroit*, 57 Urban Affairs Rev. 41 (2019).

² MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (Penguin Random House, 2016).

³ Eviction Lab, <https://evictionlab.org>.

⁴ *Id.* at *Top Evicting Large Cities in the United States*, Eviction Rankings. Coming in at 13, 14, and 18 respectively.

⁵ The FEAT tool was utilized to analyze some of the data in this study, <http://newamerican.org>, <https://www.newamerica.org/future-land-housing/eviction-and-foreclosure-data/about/the-foreclosure-and-eviction-analysis-tool-feat/>

⁶ Eviction Dashboard, <https://storymaps.arcgis.com/collections/cb395c1ffe0a454d84c530a797aa0201?item=1>.

⁷ Tom Davies, *Indiana Senate votes to override rental rules ban veto*, Associated Press, February 8, 2021, <https://apnews.com/general-news-031fc6e8070383fdbfc4eb9b045c39f9>

⁸ IND. CODE §32-31-11 *et. seq.* (2022).

⁹ A group created by the Indiana Supreme Court to “provide a focused and comprehensive organizational structure for Indiana’s civil legal aid programs.” See, Office of Judicial Administration: Coalition for Court Access, [Indiana Judicial Branch: Office of Judicial Administration: Coalition for Court Access](https://www.inbarfoundation.org).

¹⁰ The Indiana Bar Foundation’s mission is to “inspire and lead change to improve civic education and legal assistance for all Hoosiers.” Indiana Bar Foundation <https://www.inbarfoundation.org>

¹¹ Marilyn Odendahi, *At the touch of a finger: Indiana Bar Foundation deploying 120 kiosks to provide civil legal help*, Ind. Lawyer, November 23, 2022, <https://www.theindianalawyer.com/articles/at-the-touch-of-a-finger-indiana-bar-foundation-deploying-120-kiosks-to-provide-civil-legal-help>; Self-service Kiosks coming to every county, February 17, 2023, <https://www.wbiw.com/2023/02/17/self-service-kiosks-coming-to-every-county/>.

¹² See Appendix A to view the worksheet.

¹³ As observers had little experience with eviction proceedings, many things seemed abnormal and the worksheets often reflected that.

¹⁴ See Appendix B to view a list of variables, their definitions, their codes, and where they were sourced.

¹⁵ The information in these seven variables can only be collected through direct observation. These seven are: start_time, end_time, months_behind, unit_rent, total_owed, sealing, and testimony. Definitions in Appendix B.

¹⁶ If we chose to keep a data point that was different from the public record, a note was added into the notes variable explaining the discrepancy and why it was maintained as a data point.

¹⁷ Having a large sample size makes results more generalizable because it increases the likelihood the sample accurately represents the broader population.

¹⁸ Tenants in Indiana recently gained the right to seal certain eviction records from public view with the intention of making it easier for them to access rentals in the future. By not including tenant names, the dataset does not include any information that could link an individual to a case number that has been legally sealed, or could be sealed, from public view. Likewise, throughout this report tenant’s names are withheld when referring to specific cases.

¹⁹ Tracking demographic information based on observation only can quickly become problematic. Observer bias, gender fluidity, and other issues make it difficult to ascertain this information. To accurately gather this information, observers would need to ask parties to self-identify before leaving court. As possession is overwhelmingly granted in the landlord’s favor, we found it inappropriate to ask tenants to self-identify after losing their homes.

²⁰ See, *i.e.* Understanding Geographic Identifiers (GEOIDS), United States Census Bureau, <https://www.census.gov/programs-surveys/geography/guidance/geo-identifiers.html>

²¹ St. Joseph County, Indiana, U.S. Census Bureau, https://data.census.gov/profile/St._Joseph_County,_Indiana?g=050XX00US18141..

²² We did not track the decisions based on which judicial officer presided. This is because, unlike in other courts, one judge does not usually follow the case from beginning to end. The judges rotate on the bench and whomever is on duty will hear the case. The court record specifying who presided over a case did not always match who actually sat in judgment in the hearing.

²³ Foreclosure and Eviction Analytic Tool (FEAT) allows you to upload data. The data is then run through a series of analytic tools that you can use to interpret your data. See, FEAT, *supra* note 5.

²⁴ IN Depth Profile: STATS Indiana, https://www.stats.indiana.edu/profiles/profiles.asp?scope_choice=a&county_changer=18141; US Census Bureau QuickFacts, <https://www.census.gov/quickfacts/fact/table/stjosephcountyindiana/PST045222>.

²⁵ U.S. Census Bureau QuickFacts, <https://www.census.gov/quickfacts/fact/table/stjosephcountyindiana/PST045222>.

²⁶ See, IN Depth Profile: STATS Indiana and US Census Bureau QuickFacts *supra* note 24.

²⁷ U.S. Census Bureau QuickFacts, *supra* note 25.

²⁸ See, U.S. Census Bureau QuickFacts *supra* note 25,

²⁹ Indiana Demographics, <https://www.indiana-demographics.com>

³⁰ Evictions can be filed in either South Bend or Mishawaka, but they will all be reassigned to the South Bend Small Claims Court unless the tenant lives in Mishawaka and the attorney's office is located within a certain geographic boundary surrounding the city of Mishawaka. St. Joseph LR71-AR1-107. In 2023, approximately 86% of all the evictions were heard in the South Bend claims' court. <https://publicaccess.courts.in.gov/ICOR>. So, while an apartment complex in Mishawaka accounted for some of the highest eviction filings, the cases were brought in the Small Claims Court in South Bend and not Mishawaka because of the location of the attorney.

³¹ These apartment complexes file larger numbers of evictions than most other landlords. However, if you look at the evictions as compared to the number of available rental units, neither is evicting a large percentage of their tenants.

³² FY 2023 Fair Market Rent Documentation System,

https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023_code/2023summary.odn; Jordan Smith, *Average rent in St. Joseph County top \$1000 for the first time. Here's where it's highest*, South Bend Trib. April 14, 2023,

<https://www.southbendtribune.com/story/news/2022/06/06/indiana-rent-south-bend-area-st-joseph-county/9821566002/>.

³³ FRED, Economic Data, U.S. Census Bureau, Burdened Households (5-year estimate) in St. Joseph County, IN [DP04ACS018141], Fed. Res. Bank of St. Louis, December 31, <https://fred.stlouisfed.org/series/DP04ACS018141>

³⁴ Eviction Tracking, South Bend, Indiana, <https://evictionlab.org/eviction-tracking/south-bend-in/>.

³⁵ See, *i.e.*, Matthew Goldstein, *The Stigma of a Scarlet E*, N.Y. Times, Aug. 9 2021,

<https://www.nytimes.com/2021/08/09/business/eviction-stigma-scarlet-e.html>; Lauren Fung, Isabella Remor, Katie Fallon, Nyla Holland, *Masking the Scarlet "E"*, Urban Institute, August 3, 2023,

<https://www.urban.org/research/publication/masking-scarlet-e>.

³⁶ See, Desmond and Seymore & Akers, *supra* note 1.

³⁷ This number increases significantly if you include children and other unnamed parties, though we had no way to determine how many people were living in the households.

³⁸ IND. CODE §32-31-11 *et. seq.* (2022); see *i.e.*, Ko Lyn Cheabgm *Had an eviction filing harm you? You might be able to expunge it from your record*. Indianapolis Star, July 5, 2022;

<https://www.indystar.com/story/news/local/marion-county/2022/07/05/indiana-evictions-new-law-helps-conceal-evictions-records/7786875001/>.

³⁹ IND. CODE §32-31-11-3(c) (2022).

⁴⁰ *Id.*

⁴¹ IND. CODE §32-31-10-4 (2022).

⁴² IND. CODE §32-31-10-3 (2022).

⁴³ IND. CODE §32-31-10-4 (b)(2022).

⁴⁴ We know this because upon seeing the tenant was not informed during their hearing, observers would leave the courtroom to make sure tenants were given information about eviction sealing. One of the goals of the tenants' rights desks manned by volunteers from the Housing is a Hum.an Rights coalition is to inform tenants of rights they may be unaware of.

⁴⁵ Observers would often witness tenants meeting with opposing counsel. These meetings are the last opportunity for the parties to work out an agreement before going before the court, and tenants typically agree to the landlord's conditions. These agreements are frequently agreed possession orders where the tenant agrees to move out by a certain date. The tenant gains very little from these agreements. If tenants were more familiar with the ability to seal eviction sealings, they could negotiate a dismissal for themselves in exchange for their moving out and seal this record.

⁴⁶ IND. CODE § 32-30-2-1, *et seq.* (2007); see also *Reynolds v. Capps*, 968 N.E.2d 789 (Ind. Ct. App. 2012), *Morton v. Ivacic*, 898 N.E.2nd 1196, 1199 (Ind. 2008); *Nylen v. Park Doral Apartments*, 535 N.E.2d 178, 183 (Ind. Ct. App. 1989).

⁴⁷ In most cases, the tenant would have received notice of a landlord's intent to file an eviction before the case is filed. Indiana Code 32-31-1-6 provide that a landlord can terminate a lease for nonpayment after giving a tenant a 10-day notice to pay.

⁴⁸ *Morton v. Ivacic*, 898 N.E.2nd 1196, 1199 (Ind. 2008).

⁴⁹ April Kuehnhoff, Ariel Nelson, Chi Chi Wu, & Wesley Ward, *No Way Out: Consumers Share Their Experiences with Rental Debt Collectors*, National Consumer L. Center, October 2022, <https://www.nclc.org/resources/unfair-debts-with-no-way-out/>

⁵⁰ Most evictions in St. Joseph County are bifurcated with an immediate possession hearing held first and a damages/final possession hearing held approximately a month later. Some Notice of Claims only has one date because either the landlord did not request immediate possession or damages. See Notice of Claim, Appendix C.

⁵¹ IND. R. SMALL CLAIMS CT. 2(B)(4).

⁵² The Fair Debt Collection Practices Act (FDCPA) regulates actions to collect debts. 15 U.S.C. 1692. Lawyers filing eviction actions are subject to the FDCPA. *Kowuto v. Jellum Law, P.A.*, 2023 WL 3435118 at 2 (May 12, 2023). It is a violation of 1692e(2)(A) to misrepresent the amount of the debt. At least one seasoned debt collection lawyer, who also represents landlords, suggested that always representing the debt as “\$10,000” regardless of what is owed, is a violation.

⁵³ “How are they claiming I owe them \$10,000?” is easily the most frequent questions observers are asked by tenants while in court. Only a handful of landlords actually asked for and obtained a judgment of \$10,000.

⁵⁴ IND. R. SMALL CLAIMS CT. 2(B)(4).

⁵⁵ The Notice of Claim must also include information notifying the parties of certain rights and responsibilities. Most litigants use the form available on the Court’s website. The required information is present on the sample form, but in an abridged format and condensed in a very small print paragraph following the information regarding the date and time of the bench trial. It is not easy to find this information and not easy to read once found, giving rise to questions on accessibility to justice. The placement of this information immediately following the trial date could create tenants to believe these warnings and requirements only apply to the bench trial, although this was not something that was studied.

⁵⁶ 14th Amendment, United States Constitution; Article 1, Indiana Constitution.

⁵⁷ Sometimes the plaintiff would simply dismiss the case. Other times the tenant appeared at the hearing despite the lack of service and the hearing was held without mention of the issue.

⁵⁸ Ironically, small claims’ court rule 5 requires tenants to give landlords at least 7 days’ notice of a counterclaim. IND. R. SMALL CLAIMS CT. 5 (1998).

⁵⁹ In the Indiana Supreme Court, Cause No. 21S-MS-19, Order Amending Rule for Small Claims, July 15, 2021,

⁶⁰ IND. R. SMALL CLAIMS CT. 8(C)(2) (2021).

⁶¹ IND. R. SMALL CLAIMS CT. 8(C)(4) (2021).

⁶² IND. R. SMALL CLAIMS CT. (C)(4)(a) (2021).

⁶³ IND. R. SMALL CLAIMS CT. 8(C)(5) (2021).

⁶⁴ IND. R. SMALL CLAIMS CT. (C)(6) (2021).

⁶⁵ This number may be artificially high. During the months we were collecting data in the court, the court’s instructions to landlords on how to file complaints incorrectly stated on their website that landlords were required to have an attorney for claims over \$1500, rather than the new limit of \$6000 imposed in 2021. We contacted the court to inform them of this error and it was corrected in most places, though there is still at least one form which contains incorrect information. <https://www.sjcindiana.com/DocumentCenter/View/27294/Handout--Filing-an-Application-for-Immediate-Possession>

⁶⁶ One of the issues with Small Claims courts is the different way the magistrates handle the same set of facts. As states, one of the magistrates had the practice of asking every tenant if they wanted an attorney. Other magistrates would usually continue hearings only if the tenant asked for time to find a lawyer, though this was less common and such requests were not always granted.

⁶⁷ IND. CODE §32-30-3-3. This is exceptionally rare and was not requested in any of the cases in this study; nor has it ever been seen by Professor Fox who has represented tenants in St. Joseph County Courts for thirty years.

⁶⁸ IND. CODE §32-31-6-1 *et seq.* This too is rare. Although the statute requires a hearing to be held within 3 days of the filing of a request for immediate possession. The Court has interpreted this to be 3 days from the time they “accept” the filing, which means for practical purposes it is rarely three days.

⁶⁹ IND. CODE §32-30-3-4 (2002)

⁷⁰ IND. CODE §32-30-3-5(a)(2) (2002).

⁷¹ IND. CODE §32-30-3 *et seq.* (2002)

⁷² IND. CODE §32-30-3-4 (2002) ; IND. CODE §32-31-6-4 (2002).

⁷³ Immediate possession is technically that, immediate. However, as a practical matter, the tenant is advised to move immediately. The landlord must secure a writ to force the tenant out if they fail to move. This usually takes two days. Once the sheriff arrives, he will give the tenant’s 48 hours to move.

⁷⁴ The Addison on Main v. [name withheld], 71D07-2307-EV-001435.

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- ⁷⁵ IND. CODE §33-29-2-4(b)(1) (2021).
- ⁷⁶ IND. CODE §33-20-2-4(2021). There is, however, an ambiguity in the statute in that (b)(1) talks of waiving a claim over \$10,000 and b (2) says the rent due may not be more than \$10,000 at the time of the filing. *But see, Klotz v. Hoyt*, 900 N.E.2d 1, 9 (Ind. 2009).
- ⁷⁷ The filing fee is \$87.00 if you file electronically and \$97.00 if you file a paper complaint. There is a \$28 fee for the sheriff fee, with a \$10 additional fee per defendant.
- ⁷⁸ See Appendix D for a comprehensive portrayal of case outcomes.
- ⁷⁹ IND. CODE §32-31-10-3 (2020).
- ⁸⁰ Marilyn Odendahi, *Cheap, easy, fast’: Evictions caused by debt, fueled by procedures*, Indiana Lawyer, October 13, 2021, <https://www.theindianalawyer.com/articles/cheap-easy-fast-evictions-caused-by-debt-fueled-by-procedures>
- ⁸¹ IND. CODE §32-30-2-1 (2002).
- ⁸² *Adams v. Holcomb*, 77 N.E.2d 891,893, 226 Ind. 67, 73 (1948).
- ⁸³ *See, i.e. Nylan v. Park Doral Apartments*, 535 N.E.2d 178, 183 (Ind. Ct. App. 1989); *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008); *Reynolds v. Capps*, 968 N.E.2d 789 (Ind. Ct. App 2012); *Flick v. Reuter*, 5 N.E.3d 372, 378 (Ind. Ct. App. 2014); *Johnson v Housing Authority of South Bend*, 204 N.E. 3d 940, (Ind. Ct. App. 2023).
- ⁸⁴ *Morton v Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008).
- ⁸⁵ *Johnson v Housing Authority of South Bend*, 204 N.E. 3d 940 (Ind. Ct. App. 2023).
- ⁸⁶ *Johnson*, 204 N.E.3d at 945-46.
- ⁸⁷ *Flick v. Reuter*, 5 N.E.3d 372, 378 (Ind. Ct. App. 2014).
- ⁸⁸ Eviction Tracking, *supra* note 34.
- ⁸⁹ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 118-119 (2012).
- ⁹⁰ *Id.* *See also* Seymore & Akers, *supra* note 1.
- ⁹¹ In the Matter of the Indiana Pre-Eviction Diversion Program, Supreme Court Case No. 22S-MS-308 (September 02, 2022).
- ⁹² IND. CODE § 32-31-10-4(b) (2020).
- ⁹³ IND. CODE §32-31-11-3(c) (2020).
- ⁹⁴ IND. CODE §32-31-11-1 (2020).
- ⁹⁵ Considering that legal professionals are seemingly having difficulty understanding the statute, it is hard to see how pro se litigants can navigate this alone.
- ⁹⁶ *Simon MBorothi v. [name withheld]*, 71D01-2306-EV-001196, filed June 21, 2023, St. Joseph Superior Court 1. It was mentioned previously that we are withholding the names of tenants in this report. This case truly illustrates the importance of this. This case is sealable. If we reveal the tenant’s name, we may undermine the very sealing statute we support by creating an eviction record where one may no longer exists.
- ⁹⁷ This illustrates another problem facing tenants. Sometimes they have moved out before or during the eviction hearing thinking this will prevent an “eviction.” Observers in court frequently must explain to tenants in the courthouse they already have an eviction on their record. As in this case, some judges will issue an eviction order even when there is no longer someone living in the property to evict.
- ⁹⁸ *MBorothi v. [withheld for privacy reasons]*, *supra* note 96.
- ⁹⁹ *JKF Real Estate Inv LLC v. [name withheld]*, 71D01-2308-EV-001651, filed August 21, 2023, St. Joseph Superior Court 1. There was a third case that could have similarly been reported as being won by the tenant. Instead, it was dismissed and reported as such in our findings. Had this not been dismissed, it would have been an even more ambiguous case for sealing. In this case, the judge did not exactly order anything. The hearing notes indicate the tenant agreed to move and the landlord was “to return 1600” to the tenant, though the notes do not exactly order the landlord to do this. Was this a win for the tenant when there was no explicit finding or order? We will never know. *SFR3 v. [name withheld]*, 71D07-2308-EV-001745 filed August 28, 2023, St. Joseph Superior Court 7.
- ¹⁰⁰ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
- ¹⁰¹ *Id.*
- ¹⁰² Yet can you really say the case is pending when the landlord only ever asked for possession and that has been resolved?
- ¹⁰³ The case was eventually sealed by the court. To honor the rule’s language and intent the name and cause number are not being disclosed.
- ¹⁰⁴ Email sent from Florence Roisman to Judith Fox, January 14, 2024, 10:40 am on file with authors.
- ¹⁰⁵ *Id.*, quoting *Bounds v. Smith*, 430 U.S. 817, 821-22 (1977).
- ¹⁰⁶ *See, i.e.* 71D04-2306, EV-001210; 71D07-2307-EV-001299; 71D01-2307-EV-001319.

¹⁰⁷ See 71D08-2307-EV-001418, 71D02-2308-EV-001643, 71D04-2306-EV-001129, 71D03-2306-EV-001130, and 71D04-2306-EV-001131.

¹⁰⁸ IND. CODE §32-30-3-8 (2002).

¹⁰⁹ See Figure 6, pp. 17.

¹¹⁰ Simon MBorothi v. [name withheld], *supra* note 95, *Hearing Journal entry entered July 18, effective August 7, 2023*

¹¹¹ MBorothi v. [withheld for privacy reasons], *supra* note 96.

¹¹² *Noble v. Alis*, 474 N.E.2d 109, 112 (Ind. Ct. App. 1985).

¹¹³ MBorothi, [withheld for privacy reasons], *supra* note 96.

¹¹⁴ *Noble*, 474 N.E.2d at 112.

¹¹⁵ To determine if a breach is material the courts look at the following factors: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;(d) the likelihood the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Collins. V. McKinney*, 817 N.E.2d. 363, 375 (Ind. Ct. App. 2007).

¹¹⁶ *Collins*, N.E.2d. at 370.

¹¹⁷ *Ironwood Village Apartments v. [name withheld]*. 71D04-2303-0EV-000594, March 23, 2023, St. Joseph Superior Court 4.

¹¹⁸ *Id.*

¹¹⁹ As a “pending” case with no activity since June 30, more than 180 days ago, it does technically fit in the parameters of Ind. Code §32-31-10-4 as a case that could be dismissed and then sealed. But it is not clear that it fits that definition either.

¹²⁰ *Village Green v. [name withheld]*, 71D05-2304-EV-000730, April 19, 2023, St. Joseph Superior Court 5.

¹²¹ *Id.*

¹²² Hallway hearings are essentially settlement conferences without judicial involvement. If the parties can come to an agreement, they submit it to the court. If not, they may request a hearing in front of a judge.

¹²³ *Id.*

¹²⁴ Here are just a few examples: *KO Rental Properties, LLC v. [name withheld]*, 71D05-2304-EV-000706 (judgment in the order \$5025 as compared to \$5035 in docket sheet); *Horse Whisperer LLC. v. [name withheld]*, 71D04-2304-EV-000720 (judge’s order is for \$8866.74 plus costs. The costs on the docket are for \$87, making a total of \$8953.74 compared to \$8891.74 reported on the docket sheet) *TAC Management LLC v. [name withheld]*, 71D01-2304-EV-000712 (judge’s order is for \$2870 plus court costs, fees and \$500 attorney’s fees for a total of \$3559 compared to the clerk’s entry of \$3059).

¹²⁵ A few examples include *Varin /Regency LLC v. [name withheld]*, 71D04-2306-EV-001158 (the court order awards a judgment of \$6600.95, but the clerk records a \$0 balance); *Kirkpatrick Management Company as m/a for Jamestown Homes of Mishawaka v. [name withheld]*, 71D07-2306-EV-001231.

¹²⁶ The Notre Dame Clinical Law Center has had several clients in exactly this situation.

APPENDICES

APPENDIX A: DATA COLLECTION WORKSHEET

Date: / / Case #: _____

Start Time: : Judge: _____

End Time: : Type of Hearing: **POSSESSION** or **DAMAGES**

***** DO NOT GUESS! LEAVE SPACES BLANK IF YOU ARE UNSURE *****

PLAINTIFF PRESENT?	Yes, LL with attorney.	Yes, LL without attorney.	Yes, designated representative with attorney	Yes, designated representative without attorney	No, plaintiff is not present
DEFENDANT PRESENT?	Yes, tenant present with attorney.		Yes, tenant present without attorney.		No, tenant is not present.
DID THE TENANT HAVE A LEASE?	Yes, they have a current lease that has not expired.	No, on a month-to-month tenancy.	Contested Explain:	How much is the rent for the unit? /mo	
REASON FOR EVICTION FILING	If non-payment of rent...			If lease violation...:	
	<ul style="list-style-type: none"> How many months behind is the tenant according to the LL? 				
	<ul style="list-style-type: none"> Did the tenant disagree with the amount LL claimed is owed? Yes No 				
<ul style="list-style-type: none"> Total money owed, according to LL? 					No
WAS POSSESSION GRANTED?	Yes, possession was granted to the LL.	Yes, IMMEDIATE possession granted to the LL.		Yes, possession granted to tenant.	No, case continued until... Case was dismissed .
Did tenant mention attempting to access rental assistance? Explain.	Date of Possession ordered by judge:	How much was the bond set by the LL?	Was the tenant told they could pay a deposit to stay immediate possession until damages hearing?		Was the tenant given an opportunity to give testimony during the hearing?
			Yes	No	Yes

APPENDIX B: CODEBOOK

Variable Name	Definition	Code	Sourced
ID	unique identification number for each individual case included in the dataset	number	assigned by coder
case_number	case number for the eviction		docket, provided by clerks at courthouse
date	date of the Monday when the case was added to the dataset	date	docket, provided by clerks at courthouse
days_since	number of days since the hearing was added to the dataset	number, in days	today's date - date when case was added to the dataset (by formula)
court	county number of the court	number	case number
mag_observed	magistrate who presided over the hearing when it was initially observed and added to the dataset	last name of the magistrate who heard the observed case	docket, provided by clerks at courthouse
present	shows whether the case was observed directly	0 - if case was not observed directly 1 - if the case was observed directly	determined by coder, based on whether there is a completed worksheet or schedule of observer
observer	initials of the court watcher(s) who recorded data via worksheet	text	determined by coder
address	address of the unit involved with the eviction	text	MyCase
zip	zip code of the unit	number	MyCase

Variable Name	Definition	Code	Sourced
named_parties	number of named parties on the eviction filing	number	MyCase
plaintiff	name of plaintiff in the eviction case	text	MyCase
notice	type of service given to defendant	1 - copy service 2- personal service 3 - no service 4 - no record of return service	MyCase
notice_to_hearing	number of days from the date the defendant was serviced notice of the eviction filing and the first hearing date	number, in days	MyCase
possession_request	type of possession requested of the court	1 - immediate 2 - final/permanent 3 - emergency	MyCase
dismissed	whether the case was dismissed before or during the observed hearing	0 - not dismissed 1 - dismissed without prejudice 2 - dismissed with prejudice	observation and MyCase
continuance	whether the outcome of the observed hearing was a continuance	0 - was not continued 1 - continuance was ordered	observation and MyCase
continuance_date	date of the next hearing, following the continuance	date	observation and MyCase
continuance_time	time of the next hearing, following the continuance	time	observation and MyCase
scheduled	time the hearing was scheduled to begin	time	docket, provided by clerks at courthouse
start_time	time the hearing actually began	time	observation only
end_time	time the hearing ended	time	observation only

Variable Name	Definition	Code	Sourced
late	how many minutes after the scheduled time the hearing actually began	number, in minutes	scheduled - start_time
duration	duration of the hearing	number, in minutes	end_time - start_time
plaintiff_app	how the plaintiff appeared for the hearing	0 - did not appear 1 - owner with attorney 2 - owner without attorney 3 - designated representative with attorney 4 - designated representative without attorney 5 - attorney only	observation and MyCase
def_app	how the defendant appeared for the hearing	0 - did not appear 1 - appeared with attorney 2 - appeared without attorney	observation and MyCase
valid_lease	whether or not the tenant current lease term, or if they were on a month-to-month agreement	0 - tenant was on a month-to-month 1 - tenant had valid signed lease 2 - status of agreement contested	observation and MyCase
unit_rent	cost of the rent for the unit each month	number, in dollars	observation, occasionally MyCase (attorney only)
nonpayment	indicates whether the reason for eviction is non-payment of rent	0 - violation was not non-payment of rent 1 - violation was non-payment of rent	observation, sometimes Notice of Claim

Variable Name	Definition	Code	Sourced
violation_explain	explanation of lease violation if nonpayment coded as 0	text	observation, sometimes Notice of Claim
months_behind	how many months behind in rent is the defendant, if the reason for eviction is non-payment	number, in months	observation only
total_owed	total amount plaintiff claims are owed by tenant, if the reason for eviction is non-payment	number, in dollars	observation, rarely MyCase
possession	outcome of possession hearings	0 - case dismissed 1 - final possession ordered to plaintiff 2 - immediate possession ordered 3 - no relevant parties, hearing couldn't continue 4 - case was continued 5 - possession ordered, but conditional on agreement 6 - possession ordered to tenant 7 - tenant moved, all reset to damages 8 - cannot tell 9 - possession granted after tenant had vacated	observation and MyCase
immediate	total cost of bond paid for immediate possession, if possession coded as 2	number, in dollars	observation and MyCase
date_poss_ordered	date of the hearing when the court ordered the defendant is to return possession back to the plaintiff; can be different	number, in days	observation and MyCase

Variable Name	Definition	Code	Sourced
	than the day the case was initially observed		
mag_poss	magistrate who presided over the case where possession was ordered, can be different than the magistrate who presided over the case when it was initially observed	name	MyCase
counter	if possession coded as 2, indicates whether the tenant posted the counter bond to remain in the unit until the damages hearing	0 - defendant did not pay the counter bond 1 - defendant did pay the counter bond	observation and MyCase
agree_explain	if possession coded as 5, details the agreement struck between the parties regarding the issue of possession	text	observation and sometimes MyCase
poss_date	if possession granted to plaintiff, date the court ordered the defendant is to return possession back to the plaintiff	date	observation and MyCase
sealing	whether or not the magistrate presiding over the hearing informed the defendant about the possibility of eviction sealing; only coded for cases where the defendant appeared	0 - court did not inform tenant about eviction sealing 1 - court did inform defendant about eviction sealing	observation only
testimony	whether or not the magistrate presiding over the hearing allowed the defendant to provide testimony during the hearing; only coded for	0 - court did not allow the tenant to give testimony 1 - court did allow the tenant to give testimony	observation only

Variable Name	Definition	Code	Sourced
	cases where the defendant appeared		
damages	whether or not the case had a damages hearing scheduled as part of the proceedings	0 - no damages hearing was scheduled 1 - damages hearing was scheduled	MyCase
post_poss_hearing	indicates at what point along the eviction process the case was dismissed, if at all	0 - not dismissed 1 - dismissed with prejudice before possession ordered 2 - dismissed without prejudice before possession ordered 3 - dismissed with prejudice after possession ordered 4 - dismissed without prejudice after possession ordered 5 - possession ordered, no damages hearing scheduled 6 - dismissed at possession hearing	MyCase
damages_date	date of the damages hearing, if scheduled	date	MyCase
damages_time	time of the damages hearing, if scheduled	time	MyCase
mag_damages	magistrate scheduled to preside over damages hearing, if scheduled	name	MyCase
8C	indicates whether the appearance of the plaintiff violated Indiana Small Claims Rule 8C	0 - does not apply 1 - broke 8c 2 - compliant with 8c 3 - cannot determine	MyCase
notes	general notes from court watching, MyCase records, etc	text	any

Variable Name	Definition	Code	Sourced
notes_combined	notes from cases that had multiple possession hearings and were observed more than once	text	dataset
num_observed	number of times the case has been on the court's docket on a Monday when data collection occurred	number, in times observed	dataset
status	indicates the current status of the case	0 - dismissed 1 - possession resolved, damages pending 2 - possession pending until damages 3 - possession pending for continuance 4 - possession pending due to issue with service 5 - possession pending agreement 6 - possession for plaintiff on appeal 7 - possession for defendant on appeal 8 – open unknown reason 9 - concluded 10 – no defendant appearance at hallway hearing, no updates 11 – Plaintiff to file Motion of Default Judgment (trial) 12 – on appeal 13 – Plaintiff to file Motion of Default Judgment (hallway hearing) 14 – waiting to be reset by plaintiff	MyCase

Variable Name	Definition	Code	Sourced
		15 – continued generally for 8c violation 16 – pending motion of dismissal from plaintiff 17 – had conditional possession agreement, no updates or orders since proposed possession date 18 – no notes about damages hearing	
sealable	indicates whether the case is sealable according to the interpretation of the statute by the court	0 - not sealable 1 - sealable, dismissed before possession ordered 2 - sealable, dismissed after possession ordered 3 - sealable, decision for defendant 4 - record sealed	MyCase
diversion	indicates whether the case is marked as confidential because the plaintiff agreed to enter into a voluntary diversion program	1 - diversion was accepted	observation only
conclusion	indicates the final conclusion of the case	0 - dismissed without a possession order 1 - dismissed after possession ordered 2 - no possession ordered, but damages owed to plaintiff 3 - no possession ordered and no damages owed by defendant	MyCase

Variable Name	Definition	Code	Sourced
		4 - possession ordered and damages owed to plaintiff 5 - possession ordered but no damages owed to plaintiff 6 - possession ordered but no damages hearing scheduled 7 - not yet concluded 8 - not concluded for no clear reason 9 - possession granted to plaintiff, damages awarded to defendant 10 - no possession decision, damages to defendant	
dam_plaintiff_app	how the plaintiff appeared for the damages hearing	0 - did not appear 1 - owner with attorney 2 - owner without attorney 3 - designated representative with attorney 4 - designated representative without attorney 5 - attorney only	MyCase
dam_def_app	how the defendant appeared for the damages hearing	0 - did not appear 1 - appeared with attorney 2 - appeared without attorney	MyCase
type_judgment	type of judgment ordered in the damages hearing; only coded if the case had a damages hearing scheduled	0 - default judgment for plaintiff 1 - agreed judgment for plaintiff 2 - judgment on the merits for plaintiff	MyCase

Variable Name	Definition	Code	Sourced
		3 - motion for default judgment granted for plaintiff 4 - no damages granted to either party 5 - awarded to defendant	
dam_to_def	amount of damages awarded to the defendant at the damages hearing	number, in dollars	MyCase
dam_to_plaintiff	amount of damages awarded to the plaintiff at the damages hearing	number, in dollars	MyCase
court_costs	whether court costs were awarded to the plaintiff as part of the court's judgment	0 - court costs were not awarded 1 - court costs were awarded	MyCase
sheriff_fee	whether sheriff's fees were awarded to the plaintiff as part of the court's judgment	0 - sheriff's fees were not awarded 1 - sheriff's fees were awarded	MyCase
attorney_fee	whether attorney's fees were awarded to the plaintiff as part of the court's judgment	0 - attorney's fees were not awarded 1 - attorney's fees were awarded	MyCase
pro_supp	whether the case has moved into the proceeding supplemental process	0 - no proceeding supplemental 1 - proceeding supplemental has begun	MyCase

APPENDIX C: SAMPLE NOTICE OF CLAIM

ST JOSEPH SUPERIOR COURT
 SMALL CLAIMS DIVISION – SOUTH BEND
 ST JOSEPH COUNTY, STATE OF INDIANA
 112 S. LAFAYETTE BLVD., SOUTH BEND, IN
 46601 CLERK'S PHONE: (574) 235-9635

NOTICE OF CLAIM

CAUSE NO: _____

_____ Plaintiff	_____ Defendant # 1
_____ Street Address	_____ Street Address
_____ City, State & Zip Code	_____ City, State & Zip Code
_____ Telephone	_____ Telephone
_____ Email	_____ Email
_____ Plaintiff's Attorney	_____ Defendant # 2
_____ Street Address	_____ Street Address
_____ City, State & Zip Code	_____ City, State & Zip Code
_____ Telephone	_____ Telephone
_____ Email	_____ Email

Plaintiff(s) ask judgment against the Defendant(s) in the sum of \$ _____, court costs and a final order of possession of real estate. The basis of the claim being asserted is as follows: _____

IF THE CLAIM IS ON ACCOUNT, AN ITEMIZED STATEMENT IS ATTACHED. IF THE CLAIM ARISES OUT OF A WRITTEN CONTRACT (INCLUDING A LEASE), A COPY IS ATTACHED.

To the best of my knowledge, I sign under the penalties for perjury that the Defendant(s) is/are NOT now serving in the armed forces of the United States. I also affirm under the penalties of perjury that the Defendant(s) does not have a legal disability.

Plaintiff or Attorney

*All parties must provide the clerk with a new telephone number and address if their contact information changes.

ORDER OF THE COURT

This claim has been filed against you. You must appear in St. Joseph Superior Court 112 S. Lafayette Blvd Ct House #2 South Bend, IN in person (pro se) or by your attorney for **BOTH** of the following hearings:

IMMEDIATE POSSESSION OF REAL ESTATE: _____ at _____ a.m./p.m. (At this hearing Plaintiff will try to prove you should be evicted prior to the entry of judgment in this case).

BENCH TRIAL: _____ at _____ a.m./p.m. (At this trial the Plaintiff will try to prove you owe the Plaintiff money ("damages") for back rent, damage to the property, etc.).

If a Defendant is a corporation or partnership, different rules may apply (See reverse side). Bring any witnesses and all documents you have which concern this claim. If you do not appear, a default judgment may be entered against you. If you appear and dispute the claim, a date will be set for a contested trial. Even if you do not dispute a claim, you may appear on this date to set up a payment plan, if you wish. You have a right to demand a jury trial. You must demand a jury trial by filing a written affidavit identifying the questions of fact in dispute and that the request is made in good faith not later than ten (10) days of receiving this notice. If the Court grants your request, you must pay the required fee within ten (10) days. Failure to make a timely request, or to pay the fee timely, constitutes a waiver of the right to a jury trial. Once a request for a jury trial is granted, it cannot be withdrawn without the consent of the other party.

Amy Rolfes/_____
Clerk

IMPORTANT INFORMATION IS CONTAINED ON THE BACK OF THIS DOCUMENT

Updated 2023-03-27

YOU MUST CONTACT THIS COURT 24 HOURS BEFORE YOUR HEARING TO VERIFY DATE AND TIME

ADDITIONAL INFORMATION TO THE DEFENDANT

CONTINUANCES. If you cannot appear on this date, you must contact the Small Claims Court Clerk at the address or phone number on the front. You may be instructed to file a written Motion for Continuance. The Clerk has the form if you need one. Requests for a continuance may be given for good cause and are more likely to be honored if they are made promptly and well in advance of the date on which you are to appear on this claim.

CORPORATIONS, LIMITED LIABILITY CORPORATIONS, PARTNERSHIPS, AND SOLE PROPRIETORS. If the suit is against a corporation, limited liability company (LLC), partnership, or sole proprietor ("business entity") and the amount claimed exceeds \$6,000, the business entity must appear by an attorney. If the claim is for \$6,000 or less, a (non-lawyer) full-time employee of the business entity may represent it. However, to do this, certain documents must be completed before the trial date. The Clerk has the forms. If the documents are not completed and filled out before the trial, the judge may not allow the corporation to be represented by an employee who is not a lawyer.

COUNTERCLAIMS. If you have a counterclaim against the plaintiff, you may file a counterclaim. You must, however, file it with the Clerk early enough so that the plaintiff receives it at least seven (7) days before the trial date. Like claims, counterclaims are subject to the same jurisdictional maximum amount. If you claim more than that, ask the Clerk for assistance.

**RETURN OF SUMMONS
CERTIFICATE OF MAILING
(If Applicable)**

I hereby certify that on the _____ day of _____, 20____ I mailed a copy of this Notice of Claim to each of the defendant(s) _____ by certified mail requesting a return receipt signed by the addressee only addressed to each of said defendant(s)

_____ at the address(s) furnished by the plaintiff.

DATED _____, 20____

Clerk

By _____
Deputy

**RETURN BY SHERIFF OR OTHER PERSON OF SUMMONS
(If applicable)**

I hereby certify that I have served the Defendant with Notice of Claim:

1. By delivering on the _____ day of _____, 20____, a copy of Notice of Claim to each of the following defendants: _____
2. By leaving on the _____ day of _____, 20____, for each of the within named defendants _____ a copy of the Notice of Claim at the respective dwelling house or usual place of abode with _____ a person of suitable age and discretion residing therein.
3. _____ and by mailing a copy of the Notice of Claim to _____ at _____ the last known address of the defendant(s)
4. This Notice of Claim came to hand this _____ day for _____, 20____. The within named _____ was not found in my bailiwick this _____ day of _____, 20____.

Mileage \$ _____
Fees \$ _____
Total \$ _____

Sheriff

By _____

Updated 2023-03-27

APPENDIX D: CASE OUTCOMES TO DATE

