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Katherine Alonzo

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Katherine Alonzo ✍ 5 days ago 4 min read

How Summary Eviction Proceedings Fail Individuals Facing Housing Discrimination

Every year, over three million American households are threatened with eviction^[1] from their homes.^[2] The consequences of eviction are “dire” and affect “every facet of life” that go beyond someone’s physical safety and livelihood.^[3] For instance, evictions may leave people unhoused, “[fracture] the integrity of their families, [crush] their livelihoods, [damage] their mental and physical health and their safety, [deprive] them of their place in community and, ultimately, [tear] apart the fabric of their communities.”^[4] While Americans of all backgrounds face evictions, there are often large racial, ethnic, and gender disparities among those who face eviction with Black Americans, women, and those with children being the most vulnerable.^[5] Specifically, “[n]early a quarter of Black tenants live in a county where the eviction rate for Black tenants is double the rate for white tenants.”^[6] Additionally, Black women with children were threatened with eviction at a rate of 28% while those without children faced a rate of 16%.^[7]

While these groups are particularly vulnerable to the threat of eviction, the Fair Housing Act affords them with protection as it makes it unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of race, color, religion, sex, familial status, or national origin.”^[8] Despite this protection, it can be difficult to detect discrimination in evictions because landlords usually have non-discriminatory reasons for evicting tenants meaning that “when a tenant exhibits eviction-warranting behavior, the landlord’s actual motivation for the eviction is nearly impossible to demonstrate.”^[9] As a result, many tenants who have valid claims under the Fair Housing Act either struggle to bring the claims or cannot prove them.^[10] Oftentimes, during the eviction proceeding, plaintiffs bring a separate action in federal court seeking an injunction barring the landlord from continuing with the eviction proceeding.^[11] However, when plaintiffs seek to do this, they are usually barred by the Anti-Injunction Act which serves to prevent federal courts from enjoining state court proceedings.^[12] While the Anti-Injunction Act provides limited exceptions to the blanket prohibition on federal courts enjoining state court proceedings,^[13] courts generally find that such exceptions do not apply to plaintiffs seeking to enjoin state court eviction proceedings commenced by private landlords.^[14]

The combination of the Anti-Injunction Act’s broad scope and courts’ tendency to narrowly construe the Act’s exceptions prevents federal courts from properly addressing tenants’ claims of discrimination in eviction proceedings. Eviction proceedings are designed to move cases quickly through the court system and thus “traditional aspects of civil litigation are cut out of the process” resulting in weak notice requirements that often lead to default judgments and significant limitations on defenses, counterclaims, discovery, and motion practice.

[15] Given the imbalance of power eviction proceedings create between tenants and landlords, tenants who face possible discrimination are not able to meaningfully benefit from the protections of the Fair Housing Act when they are forced to present their claims in such proceedings. Accordingly, it is critical for federal courts to have the ability to halt these eviction proceedings and address a tenant's claims under the Fair Housing Act in a separate action.

[1] Eviction is a legal process by which a landlord attempts to remove a tenant from a rental unit. Emily A. Benfer, Robert Koehler, Alyx Mark, Valerie Nazzaro, Anne Kat Alexander, Peter Hepburn, Danya E. Keene & Matthew Desmond, *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During the Pandemic*, HOUSING POLICY DEBATE (Jun. 10, 2022), <https://www.tandfonline.com/doi/full/10.1080/10511482.2022.2076713>.

[2] Juan Pablo Garnham & Deanna Pantín Parrish, *Evictions Can Kill: How US Communities are Trying to Break the Cycle of Violence*, THE GUARDIAN (Dec. 10, 2023, 11:00 AM), <https://www.theguardian.com/society/2023/dec/10/housing-evictions-physical-violence-alternative-programs> (“In a typical year, American landlords file 3.6 [million] eviction cases.”)

[3] Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SEATON HALL L. REV. 1, 5 (2022).

[4] *Id.* See also Corianne Payton Scally, *The Fair Housing Act is Critical to Ensuring Evictions Aren't Driven by Discrimination*, URBAN INST. (Apr. 23, 2018), <https://www.urban.org/urban-wire/fair-housing-act-critical-ensuring-evictions-arent-driven-discrimination>.

[5] David Rutan & Renee Louis, *To Root Out Segregation, Biden Must Tackle Evictions*, BLOOMBERG (Jul. 12, 2021, 9:25 AM), <https://www.bloomberg.com/news/articles/2021-07-12/evictions-are-a-part-of-housing-discrimination>.

[6] *Id.*

[7] Genesis Obando, *Adult Renters with Kids Have Highest Eviction Rates in US*, NJ SPOTLIGHT NEWS (Oct. 9, 2023), <https://www.njspotlightnews.org/2023/10/adult-renters-with-kids-have-highest-eviction-rates-in-u-s/>.

[8] 42 U.S.C. § 3604(b).

[9] Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R. - C.L. L. REV. 115, 141-42.

[10] *Id.*

[11] See, e.g., *Kristopher v. Stone St. Properties, LLC*, No. 13-CV-566, 2013 WL 499752 (S.D.N.Y. Jan. 29, 2013); *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307 (E.D.N.Y. 2012); *273 Lee Ave. Tenants Ass'n by Sanchez v. Steinmetz*, No. 16-CV-6942, 2017 WL 11508017 (E.D.N.Y. Oct. 3, 2017).

[12] 28 U.S.C. § 2283 (“A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”); see, e.g., *Kristopher v. Stone St. Properties, LLC*, No. 13-CV-566, 2013 WL 499752 (S.D.N.Y. Jan. 29, 2013).

[13] *Id.*

[14] See, e.g., *Sierra v. City of New York*, 528 F. Supp. 2d 465, 468 (S.D.N.Y. 2008).

[15] Kathryn Ramsey Mason, *Housing Injustice and the Summary Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 391, 393 (2022).