

**Testimony submitted to the Joint Committee on Housing  
In support of S.864 An Act Promoting Access to Counsel and  
Housing Stability in Massachusetts**

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Good afternoon. My name is Daniel Daley and I am a senior housing attorney at MetroWest Legal Services in Framingham. Thank you for the opportunity to testify in support of the access to counsel bill (Senate Bill 864) to protect both tenants with low incomes and small landlords.

I want to tell you about an actual case that came to me which shows how unfair outcomes can be in evictions when tenants with low incomes don't have an attorney to represent them. I wish I could say that this case is unique, but unfortunately, it is not. These types of cases, where evictions are preventable, can happen on a regular basis in every housing court.

The housing judges that I mostly see do a great job in trying to protect all the litigants that come before them. However, judges are not allowed to give legal advice to an unrepresented litigant. The same is true for housing specialists who must remain neutral during a mediation. As a result, in cases where tenants with low incomes are not represented by an attorney, **they are truly alone.**

The real imbalance has to do with the fact that nearly every landlord has an attorney and nearly every tenant does not. According to housing court statistics, landlords are represented at a very high rate, in excess of 90%. **For the cases that my office prioritizes, public and subsidized housing cases, 100% of the landlords have an attorney.** The attorneys they hire are all experts in landlord/tenant law, as housing is a specialty field. **By contrast, as much as 96% of tenants go unrepresented.** Some programs are designed to help close this obvious imbalance, but they're not close to permanent or comprehensive solutions like the access to counsel program would be.

My case is an example of how bad things can get if this imbalance is not addressed. I met my clients after they received a "48-hour" execution notice to leave their home. It was urgent. The execution, which is the final order from a judge to evict and force someone to leave their apartment, meant that the moving truck would be arriving soon. The reason for the eviction started several months earlier. My clients, a married couple, had been living in public housing with their 7-year-old daughter for five years. Family public housing units are very

hard to get with a current waiting list of 184,000 households and a wait that can take many years to reach the top.

Late last year, my clients' only car broke down and they could not afford to fix it. Without the family car, the husband lost his job because he could no longer travel to and from work. **Practically every family in this situation is only a major car repair from suffering the same fate.** Consequently, my clients fell behind on their rent, which was \$1,150 per month.

The husband provided the housing authority with a letter of separation from his employer to request a lower rent change. The housing authority should have adjusted his rent. However, the housing authority told him that it was too late as they had already decided to evict and contacted their attorney. My clients were scared with no idea on how to remedy this crisis.

By the time the eviction case reached the court, the rent balance was several thousand dollars. My clients went to the court by themselves hoping to come up with some way to stay in their home as they had no place to go and absolutely no way to afford a private apartment. They were terrified at the prospect of being evicted with a young child.

At court, the landlord's attorney took over. He gave my clients little hope and fewer options. He told the couple that they had to leave and that the judge would evict them with no extra time. My clients hadn't filed an Answer form, which would have told their side of the case, because they didn't know that they could or even how to do it or what to say. With the grim options presented to them by the housing authority's attorney, my clients were overflowing with fear. The attorney offered them 60 days to find a new place to live if they agreed to sign a move out agreement on the spot, and my clients took it. They took it because, in their minds, they didn't have a choice.

The agreement was terrible. My clients didn't understand how bad the agreement was. The agreement meant that they would lose their public housing unit and never get a public housing unit again (or not for a very long time). They had a money judgment that would follow them for 20 years if not paid (including a very high statutory interest). The money judgment would go on their credit report and prevent them from finding another apartment to rent (even if they could afford it). Perhaps most devastating, my clients didn't understand that because they lived in public housing, by signing the agreement, that for three years they would not qualify for any state-aided emergency shelter, the safety net for homeless families. The agreement was worse than they even imagined.

The sixty days went by in a flash, they had not found any viable housing option, and the housing authority had a sheriff serve them with the 48-hour notice. More panic set in for the family. Fortunately, at this 11<sup>th</sup> hour, they found their way to legal services, to an attorney.

My review of the case revealed multiple defenses to the eviction, all of which an unrepresented tenant would have little idea about. For example, the housing authority wrongfully refused to recertify their rent after the husband lost his job at the end of last year. They had another defense that would have allowed them to cure any rent balance with rental assistance. They also had a very strong procedural defense because the housing authority used the wrong type of notice to terminate the tenancy. My clients were entitled to a notice that contained information about rental assistance, but they didn't get one. This alone was a fatal defect that would require the court to dismiss the case.

I filed emergency motions with the court to cancel the 48-hour move-out notice and to dismiss the case based on the defective paperwork. Understanding the potential defenses, the court cancelled the move immediately and this brought the housing authority and their lawyer back to the negotiation table. However, this time the housing authority agreed to recertify my clients' rent retroactively to when he lost his job, cooperate fully with a rental assistance application, and re-instate their tenancy so that they could keep their public housing apartment.

In this case having an attorney leveled the playing field so that it wasn't so lopsided. It resulted in a fair outcome, one that would have happened initially with an access to counsel program. This story occurred very recently, but over my years practicing, I've seen many more just like it. Earlier this year my office put together a briefing booklet with other cases where having legal representation made a difference, [Investing in Justice and Housing Stability Through Access to Counsel](#).

There are few things more devastating for a family than an eviction. This is especially true when you consider the impact on children and family members with physical or mental health impairments. It is for these reasons that I urge you to report favorably S. 864.

Thank you for your time and consideration.