



Getting Landlords and Tenants to Talk

The Use of Mediation in Eviction

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Eviction is a traumatizing and destabilizing event that can put families on a path to financial, health, and social challenges. After an eviction, families often struggle to find high-quality housing and may end up in a less safe neighborhood with fewer opportunities.¹ Parents may lose their jobs because of the instability that evictions create and have difficulty finding a new one, further exacerbating the crisis (Desmond and Gershenson 2016). Children can be forced to move to new schools or experience other educational disruptions, which in turn can negatively affect their achievement (Clark 2016; Vásquez-Vera et al. 2017). Therefore, intervening during or before an eviction crisis occurs is key for reducing the hardships that families face, and mediation has been an important tool for empowering better outcomes.

Despite their negative effects, evictions are relatively common. In 2016, US landlords filed an estimated 2.3 million evictions, which correspond to roughly 1 filing for every 20 renter households.² Though not every filing results in eviction, the disruption caused by a filing can spur many challenges that families must negotiate. Moreover, the burden of eviction is disproportionately borne by households that are lower income, including those that are Black or Latinx (Greenberg, Gershenson, and Desmond 2016). According to Hartman and Robinson (2003), “numerous studies have shown that those who are evicted are typically poor, women, and minorities.” A New York City study, for example, found that half of those facing eviction in housing court had incomes below \$10,000 and that 86 percent were Black or Latinx (Community Training and Resource Center and City-Wide Task Force on Housing Court 1993). In cities across the United States, the unequal burden of eviction compounds the challenges

these households already face, perpetuates a cycle of economic distress, and reduces opportunities for wealth building.

Mediation is an underused tool that allows communities to reduce the prevalence and negative consequences of evictions. It is an opportunity for parties to talk through disputes that may lead to an eviction and come to a resolution that leaves both parties better off. It is often used when both sides in a conflict have an incentive to work through it and identify a solution. Additionally, mediation can be used with other tools for helping families facing housing instability, such as legal support and financial assistance.

Because it facilitates discussion between the landlord and the tenant, mediation could address the most common reason behind eviction filings, the nonpayment of rent. A landlord filing for an eviction is not necessarily motivated by a desire to remove tenants; in some cases, a landlord is using the filing or the threat of eviction as leverage so the tenants will pay their rent (Garboden and Rosen 2019). Nevertheless, nonpayment of rent is a legal cause for eviction, and a filing pursued through court may result in displacement. Mediation can help landlords and tenants explore more mutually acceptable options such as an extended rent payment plan that allows tenants to remain in their unit and landlords to receive their payment (Lindsey 2010). Using mediation techniques to approach a conflict between a landlord and tenant can resolve a case before a trial, prevent the parties from accruing any court or attorney fees, and repair the relationship.

Yet, little research has examined the effectiveness of mediation in the eviction prevention process. Without much documentation on best practices and lessons learned, the places that have seen the value of mediation from their community-level experiences have challenges advocating for additional resources and policy change to support expanding their work. Eviction mediators³ face difficulties justifying the importance of their work as a key eviction prevention strategy with the lack of knowledge among families they could serve and policymakers who can enable resources for them to do more. According to eviction mediation providers we spoke with, if providers offer mediation, it is typically after an eviction is filed, which means that opportunities to intervene as soon as a crisis arises are few or nonexistent. In an effort to expand the knowledge available to practitioners and potential participants, this brief examines how mediation is used in housing courts and why mediation is a promising alternative to traditional court proceedings; it also elevates best practices for using and expanding the use of landlord-tenant mediation as part of eviction prevention strategies.

BOX 1

The Janice Nittoli Practitioner Fellowship

The Janice Nittoli Practitioner Fellowship was developed with support from the Rockefeller Foundation to offer a leading practitioner the opportunity to use evidence-based decisionmaking to advance their organization's mission and goals. Practitioners are partnered with senior researchers at the Urban Institute to address inequities and promote social and economic development in their communities.

The 2019 fellowship was awarded to Ellen Sahli, president of the Family Housing Fund, a nonprofit based in Minnesota that seeks to expand access to decent and affordable housing. She is exploring how to connect families with eviction diversion services before a crisis and an eviction filing happens. This brief is part of the work to explore ways to help preserve the relationship and keep families in their homes. See more on the fellowship at <https://www.urban.org/janice-nittoli-practitioner-fellowship/our-fellows/ellen-sahli>.

Methodology

In November and December 2019, we interviewed representatives from 14 organizations involved in mediation programming. Our sample⁴ was 10 local mediation providers and 4 researchers who could offer a national perspective. The mediation providers brought experiences from urban, rural, and suburban areas across the US. The four national experts brought perspectives from large universities and were law professors who have worked on and written about mediation and alternative dispute resolution, including in housing disputes.

All interviewees could speak to mediation in the court system in civil cases and to mediation's role in housing court and landlord and tenant disputes. However, some mediation programs were well established in the landlord-tenant space, while others were just beginning to extend their services to that area. The interviews were designed to increase our understanding of the mediation process in housing court and determine how programs were recruiting mediation participants, what cases were best suited for mediation, what partnerships were crucial for a successful mediation, and what prevented programs from expanding their services. However, one key limitation to our process was the difficulty in recruiting a representative sample. Policies, processes, norms, and resources can vary widely from jurisdiction to jurisdiction. Although we attempted to obtain a diverse sample of interviewees to be able to examine variation across jurisdictions and extract generalizable findings, not all major cities, counties, or states are represented in our sample. Additionally, because we interviewed only one organization in each metropolitan region, our findings are skewed to that organization's experiences. Where possible, we linked the experiences shared by interviewees to the broader theory of how mediation works in eviction processes to develop the insights described in this brief.

Background on Mediation

Mediation is a type of alternative dispute resolution, which includes a range of strategies and techniques for settling disputes with a third party, typically outside a courtroom. In mediation, a neutral intermediary helps conflicting parties jointly resolve their concerns (Beer and Packard 2012). When successfully implemented, mediation empowers the two parties, rather than a judge or other authority, to determine the outcome (McCorkle and Reese 2018). Mediation is often a better space for parties to explore the relational and emotional elements of a dispute and ensure that they feel heard. As a result, mediation is particularly appropriate for conflicts that involve ongoing relationships, such as divorce, child custody disputes, and disagreements among families or communities. Evictions often stem from a similar breakdown in communication between a tenant and a landlord, but mediation is an underused strategy in housing-related disputes.

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Mediation generally works best when both parties want to find a mutually agreeable outcome and preserve the relationship. In writing about mediation in general, Fisher and Ury (2011) recommend that parties avoid taking strong initial positions because the tendency to “dig into one’s position” can make it difficult to agree to a solution that differs from where one began. This means that both parties need to be flexible and willing to work through problems. Through mediation, each party can be brought to understand the pressures and limitations faced by the other, and this understanding allows for a negotiated agreement (Fisher and Ury 2011).

Mediators can use many techniques to get parties to reach an agreement. But factors beyond the mediator’s control may influence a case’s outcome. In a 2017 review of research on mediator techniques, the American Bar Association found that drawing causal inferences about techniques across studies was difficult. Among the strategies reviewed, different techniques can yield different results depending on the scenario. Negative effects included a reduced likelihood of settlement or the filing of more adversarial motions, while positive effects included strengthening of the disputants’ relationships and joint goal achievement (ABA 2017). The following are some techniques the American Bar Association reviewed:

- **Pressing or directive styles and actions.** Mediators who used a direct or pressing style were found to either increase the likelihood of achieving settlement or have no effect. However, some studies found that criticism of the disputants could have a negative effect on the relationship and outcome.

- **Offering recommendations, suggestions, evaluations, or opinions.** Providing recommendations, suggestions, and the like was generally found to have a positive effect or no effect on a case's outcome.
- **Eliciting disputants' suggestions or solutions.** Drawing suggestions from the disputants was generally seen as having a positive effect on a case and was associated with a greater likelihood of reaching a consent order and a decreased likelihood of a post-mediation enforcement action.
- **Giving more attention to disputants' emotions, relationship, and sources of conflict.** Mediators had mixed success reducing the emotional tensions or controlling hostility, but giving attention to emotions, relationships, and sources of conflict had a positive or no effect overall.
- **Working to build trust and rapport, expressing empathy or praising the disputants, and structuring the agenda.** Mediator strategies to build trust generally had a positive or no effect on outcomes. However, process-focused strategies such as summarizing, reframing, or using a facilitating style had mixed success (positive, negative, or no effect).
- **Using pre-mediation caucuses.** The success of pre-mediation caucuses or meetings was mixed. Pre-mediation could be useful for building trust but was associated with negative outcomes when used to try to get parties to accept settlement proposals.

Mediation in Landlord-Tenant Disputes

Mediation could be a powerful tool in landlord-tenant disputes for two related reasons: (1) evictions are harmful for all parties involved and (2) negotiated agreements are possible. In addition to lost rent, landlords can lose hundreds of dollars in the court process through filing fees to serve an eviction summons and attorney fees. In Boston, for example, HomeStart, a homelessness prevention organization, estimated that the cost of eviction averaged more than \$6,000 for private landlords and \$10,000 for the Boston Housing Authority.⁵ Following an eviction judgment in most jurisdictions, a landlord must pay the fee for a writ of possession and an additional fee for forced relocation.⁶ Tenants face costs related to moving and the loss of their belongings and security deposit, along with other negative consequences associated with forced moves, including moving farther from work, into less safe neighborhoods, and into substandard housing (Desmond and Gershenson 2016). Tenants may also need to miss work to attend a court hearing, which can be an additional burden depending on their job flexibility. Moreover, a decision that results in eviction means that a tenant must find a new home, and regardless of the outcome, tenants will have a negative mark on their rental history after going through a formal court proceeding. This can make finding safe, decent housing difficult.

Not every dispute is solvable through mediation, and parties can stop the process at any time and move forward with court proceedings. But mediation can help deescalate landlord-tenant disputes by removing them from the intensity of the courtroom. And if mediation leads to a compromise, it can be cheaper than eviction for both landlords and tenants and leave both parties better off. Even if the

compromise is for the tenants to leave, they might do so without an eviction, which is better than leaving with an eviction.

Moreover, mediation can be a platform for repairing the relationship between a landlord and tenant and allows each party to raise issues the other party might not be aware of. Listening to and humanizing another person is easier in mediation than in a courtroom setting. Many disputes can be traced to a communication breakdown between the landlord and tenant. For example, a landlord may be unaware of a tenant's financial difficulties, and the tenant may feel uncomfortable sharing that information. Or if tenants have been behind on rent, they may feel uncomfortable raising maintenance issues. These communication breakdowns can lead to negative feelings on both sides that must be repaired for the relationship to move forward. A courtroom presided over by a member of the judiciary is generally not a place where relationships are repaired, and the landlord-tenant relationship may be damaged further in such an inflexible and adversarial setting. When mediation is integrated into the process ahead of a hearing, parties have the opportunity to work through their issues.

Consider a landlord-tenant dispute in which the tenant has missed two rent payments. The landlord could use the court to enforce their right to evict the tenant for nonpayment of rent. In court, a decision might favor the landlord. However, all parties might be better off with the opportunity to discuss the situation and pursue an alternative outcome or agreement. A mediator could help the landlord and tenant understand each other's needs and constraints so that a mutually agreeable solution could be developed ahead of a court hearing. Through mediation, the landlord might learn that the tenant had suffered a temporary setback but will be able to pay rent if given an extended timeline through a repayment plan. The tenant might learn about constraints on the landlord—perhaps that a mortgage payment is due on the first of the month—and an acceptable time frame for repayment. Rather than focusing on the rights of each party, a mediator will consider the parties' interests. A landlord may have an interest in solving a dispute quickly and cost-effectively, and through mediation, the landlord and tenant can negotiate a compromise that saves time and money.

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As a method of eviction and homelessness prevention, mediation is most appropriate for households facing temporary, crisis-generated housing instability. Mediation can buy time for tenants to find a new home, earn money for rent, or access financial resources that would allow them to stay in their current home—activities that can stabilize their housing situation (Culhane, Metraux, and Byrne 2011). However, mediation can also be used in cases in which households face a more permanent financial crisis—such as a chronic health condition that limits employment—that may make the rent unaffordable over an extended period. In these cases, mediation can soften an exit by leading to a move-out plan that avoids a formal eviction.

Power Imbalances in Landlord-Tenant Disputes

A major power imbalance between two parties involved in a dispute can make mediation difficult or unworkable, so considering the power dynamics inherent in a particular dispute is important. In landlord-tenant disputes, the landlord is typically in a stronger position. The genesis of most disputes—the tenant owing the landlord money—automatically places the tenant at a disadvantage because the landlord can evict the tenant. Moreover, tenants are likely facing financial shortfalls, while landlords are more likely to have access to financial resources, even if they are smaller landlords.

Landlords are also overwhelmingly more likely than tenants to be represented by a lawyer in eviction proceedings (Hartman and Robinson 2003). Matthew Desmond (2015) estimates that nationwide, 90 percent of landlords have access to an attorney but only 10 percent of tenants do. The number of tenants with access can fluctuate depending on the jurisdiction. In New York City, for example, before a 2017 right to counsel law passed, only 1 percent of tenants were represented (NYC HRA 2018). Access to legal information and representation can have a huge effect: tenants who have access to lawyers or other legal services are significantly less likely to experience an eviction (box 2).

BOX 2

Right to Counsel

In housing courts across the country, tenants are rarely represented by counsel, while the majority of landlords are (Desmond 2015; Engler 2010). Under this imbalance of representation, tenants frequently lose their cases in court and face eviction from their homes.

Research has shown that when tenants have representation in court, they are more likely to avoid eviction. A study in Boston found that two-thirds of tenants with full representation were able to stay in their homes, compared with only one-third of tenants without representation, and a study in the New York City borough of Manhattan found that the number of warrants for eviction decreased 77 percent when tenants had access to legal defense (Boston Bar Association Task Force on the Civil Right to Counsel 2012; Stout Risius Ross 2016). Attorney assistance can reach beyond eviction prevention; it can also help keep an eviction off a tenant's record, negotiate extended time for tenants to move out, reduce the amount of money owed to a landlord, and help tenants apply for resources such as rental assistance.^a

In the face of this disparity in representation, cities have begun to implement a right to counsel. In 2017, New York became the first city to pass legislation committing to make legal services available to all tenants facing eviction in housing court. Since then, Philadelphia; Newark, New Jersey; Cleveland; and San Francisco have established programs.

New York City's Office of Civil Justice with the Human Resources Administration is leading the program's administration to tenants with incomes less than 200 percent of the federal poverty level. Access to counsel is rolling out zip code by zip code until 2022 (NYC HRA 2018).

It is too soon to determine the effects of right-to-counsel programs; however, primary findings point to positive outcomes. A 2013 study in Manhattan found that an estimated 5,237 families could have avoided stays in the shelter system if they had been provided counsel. A year after the program's implementation in New York City, the Office of Civil Justice found that approximately 34 percent of tenants in eviction proceedings were represented by counsel (NYC HRA 2018).

Right-to-counsel policies show promise in enabling tenants to remain in their residences. As these programs spread within and across cities, lessons will be learned about how cities fund and staff the initiatives.

^a Kriston Capps, “New York City Guarantees a Lawyer to Every Resident Facing Eviction,” *CityLab*, August 14, 2017, <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

Mediators must remain neutral parties. They cannot, for example, give legal advice or tell the landlord or tenant to do something. However, they are not without tools to navigate power imbalances between landlords and tenants. Mediation itself can be empowering for tenants who may otherwise feel unable to bring up issues. According to Davis and Salem (1984), mediators have several ways to navigate power imbalances. First, mediators can create a space that allows for an open conversation, ensure that parties have an equal voice in the discussion, and allow participants to explore a range of options. Second, mediators can model behaviors that they expect participants to follow, such as showing respect and treating others equally. Finally, mediators can encourage participants to share knowledge that the other party might not be aware of.

What Counts as Success?

The organizations we interviewed measured success based on whether the two parties came to an agreement. Success was not measured on whether an agreement was in “the landlord’s favor” or “the tenant’s favor.” Agreements could include a plan for the tenant to repay the landlord, but also a plan for the tenant to move out of the housing. Interviewees noted that including moves as part of the definition of success was important because a move through mediation is less destabilizing than a move through eviction. In some cases, because of job losses or other factors, tenants may simply be unable to afford the home they are in. Through mediation, they can negotiate a smoother transition that allows them to avoid the negative mark of having been evicted:

“If it’s something where people’s good jobs went away and the rent is just not attainable, the challenges that you’re going to experience and the consequences...we can avoid that and negotiate a move out with dignity.” —Eviction mediation provider

“Our ideal is to have both people walk away happy. You don’t want one person to walk away happy and the other person to walk away devastated. Our model is facilitative to allow people to make the decisions they want to make and do no harm. When both people are a little unhappy, you breathe a sigh of relief, when there is that power imbalance.” —Eviction mediation provider

A mediation’s success can also be determined by whether the parties involved in the dispute remain out of the court system. Some practitioners we interviewed checked court records to determine whether tenants faced a subsequent filing from their landlord. One interviewee determined that of the tenants who went through the mediation process, 86 percent did not return to court that year and likely avoided subsequent evictions.

Findings on Mediation and Mediation Programs

The semistructured interviews with mediators and experts on mediation yielded insightful findings on best practices, flexibility to conduct mediation in and out of the court system, and considerations for expanding mediation programs. This section summarizes the key reflections from our interviewees. Proponents of mediation recognize its potential to resolve disputes between landlords and tenants (box 3). As mediation gains prominence in housing courts, our interviewees share insights about the factors that are hampering their success and strategies that are strengthening their impact.

BOX 3

Mandatory Mediation

The use of mediation is widely accepted in civil court cases, in particular those in family and small claims court. Some federal district courts mandate that civil cases consider alternative dispute resolution methods such as mediation.^a In other courts, certain kinds of disputes are automatically referred to a third-party mediation.^b For example, North Carolina requires that cases involving contested child custody and visitation be sent to mediation before or concurrent with a case's court hearing.^c

Mediation gained prominence in the housing realm during the 2008 foreclosure crisis. Ten state and local governments implemented mediation programs for borrowers and mortgage servicers during the foreclosure process, some voluntary and some mandatory. During this time, the City of Philadelphia mandated mediation for homeowners facing foreclosure. Foreclosure notices contained a form that directed homeowners to call a Save Your Home Philly Hotline to begin mediation (Jakabovics and Cohen 2009).

The foundation of mediation is the willingness of both parties to resolve a conflict. If landlords and tenants are coerced into mediation, they may feel as though they no longer have self-determination in the process. Mediation can then seem like another court procedure, and willingness to resolve the dispute—a core feature of mediation—may not be participants' main motivation. Although there is some tension around court-mandated or -suggested mediation, use of the tool increases when it is recommended by a judge or referee (Quek 2010).

Under some processes, mediation is a built-in step of the court filing process or a strong suggestion from a judge. When parties are required to attend a mediation session, they are not required to reach an agreement and may proceed with a formal hearing if they wish to. Mediation and other alternative dispute resolutions could lighten the dockets in active housing courts, where judges can face 40 to 60 cases a day.^d

^a See “Summaries of Each Federal District Court’s Local ADR Rules” on “Compendium of Federal District Courts’ Local ADR Rules,” US Department of Justice, updated March 11, 2020, <https://www.justice.gov/archives/olp/compendium-federal-district-courts-local-adr-rules>.

^b “How Courts Work,” American Bar Association, September 9, 2019, https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/pretrial_conference/.

^c “Child Custody and Visitation Mediation Program,” North Carolina Judicial Branch, accessed March 24, 2020, <https://www.nccourts.gov/programs/child-custody-and-visitation-mediation-program>.

^d N. R. Kleinfield, “Where Brooklyn Tenants Plead the Case for Keeping Their Homes,” *New York Times*, May 20, 2018, <https://www.nytimes.com/interactive/2018/05/20/nyregion/landlord-tenant-disputes-housing-court.html>.

Referrals Come from Many Places, but Mostly through the Court System

The court system champions mediation and is a common referral point for many mediation cases. Interviewees reported that in many communities, judges encourage parties to try mediation before continuing with formal court proceedings. These mediation services providers are often physically present in the courthouse, allowing them to engage with landlords and tenants on the day of their trial. When sending eviction summons, some courts include flyers containing information about mediation and contact information for mediation services:

“We are moving towards something called presumptive mediation. All those filed would be presumed good for mediation. Basically, an opt-out system instead of an opt-in.” —Eviction mediation provider

“We work with the court as well. The calendars are usually far too large for the judge to get through. Every contested case gets referred to mediation. We don’t have a problem pitching mediation because that’s what the court does.” —Eviction mediation provider

Interviewees also worked to build out other points of referral through tenant organizations, government offices, social services, and community organizations. Tenants who are behind on rent may seek assistance from a local social service group for other financial challenges (e.g., behind on car payments, no money for food) and can be referred into mediation if they are in a dispute with their landlord.

Mediation Typically Happens in the Court System

Because the court system plays a crucial role in referring and recruiting mediation clients and the courthouse is the most common point of contact for tenants and landlords, mediation often occurs in the courthouse on the day of an eviction proceeding. Interviewees reported that they may meet with landlords or their attorneys and tenants in the hallways between courtrooms or in the courtroom itself as they attempt to work out an agreement. Although this practice meets clients where they are, it can create challenges to facilitating effective mediation. For one, tenants are worried about losing their homes, and that stress can make advocating for their rights difficult. Additionally, meeting in this manner can reduce the amount of time available to find a solution:

“Community mediation lasts about two hours, can be one session or many sessions....The cases we divert from the court [are] about two hours and one session. In the court, there is time pressure—45 minutes to an hour and those are one time.” —Eviction mediation provider

Eviction Mediators See Benefits to Moving Mediation Earlier in the Process

The mediation providers we interviewed reported that offering mediation before an eviction is filed can be advantageous to all parties. One interviewee said: “The earlier you catch [the crisis], the better. Ideally, you want to catch it before they wind up in housing court. If we get them in court, it’s harder to repair the relationship.” Interviewees identified numerous benefits of pre-filing mediation, including that parties are more open to alternative solutions before filing than afterward; interviewees said that

parties' positions tend to harden in court. In addition, mediation tends to be less expensive than going through the court processes and can lead to better outcomes for tenants. Even if a tenant ultimately moves, mediation can lead to terms that are suitable for both the landlord and tenant:

“With eviction cases, with all that lead-up, by the time a landlord finally files, their eyes are popping at how much money is owed. The sooner you get in, they might be more amenable, less frustrated.” —Eviction mediation provider

“Pre-filing, the field is a little more even for both. That clock hasn't started to tick yet. It's a little bit easier to have a more realistic conversation on how to move forward....If the landlord has invested in an attorney and taken time off work and is set on wanting the tenant out, at that time, the only conversation we can engage in is how long the tenant can stay before they move out.”
—Eviction mediation provider

Despite the benefits of pre-filing mediation, interviewees said that most mediation occurs post-filing for their organizations. Interviewees said identifying clients was the biggest obstacle to intervening early. Several interviewees noted that tenants are the parties who know ahead of time that a rent payment will be missed and that tenants often have strong reasons for waiting to inform their landlords. For instance, tenants may hope that money will come through before the first of the month. They also may rightly fear that mentioning their financial difficulties to the landlord could result in negative actions, such as the landlord's being less responsive to a maintenance request. Several interviewees highlighted that pride plays a role as well; most people want to pay their debts on time and have difficulty asking for help. For example, one interviewee stated:

“Some tenants might be fearful of alerting landlords early. They're afraid of ticking the landlord off. They sometimes think that they will get a job and lightning will strike before rent is due. I don't think that's a crazy thing to imagine for yourself. There might need to be an incentive, like the ability to access emergency assistance.” —National researcher

Tenants, Landlords, and Service Providers Are Generally Unaware of Mediation

Interviewees overwhelmingly reported that a significant barrier to greater use of mediation for dispute resolution was a general lack of awareness about the option. Interviewees said that this was the case among landlords, tenants, and service providers. Interviewees also reported that even when one party has a general idea about mediation, there can be additional barriers, such as getting the time off work and finding child care to then be able to go to a mediation appointment. This general unfamiliarity limits the number of potential clients. Furthermore, when people have some awareness of mediation, they generally understand it as a service provided in the court setting. There is even less knowledge about accessing mediation services in a community setting before eviction.

Additionally, service providers and other potential partners in the housing and eviction-prevention space do not completely understand how eviction may complement or supplement their services. Further education among potential partner organizations could help build pathways to productive partnerships:

“People are trying to figure out what mediation is. Social service providers think in terms of meeting the need quickly. What we offer is a little more preventative, less crises. We need to help people understand this is the piece that we offer and this is how our piece can fit in. You can offer the crisis piece and we work through the long-term relationship piece.” —Eviction mediation provider

Misconceptions Can Influence How Tenants and Landlords Approach Mediation

Interviewees reported that tenants’ ideas about what is and is not allowed during the eviction process can be inaccurate. Although laws vary among jurisdictions, interviewees reported several common misconceptions among tenants, including that tenants cannot be evicted during the winter, that tenants cannot be evicted if they have small children, and that tenants can simply withhold rent for repairs to the unit. Given these misconceptions, tenants and landlords may feel that engaging in mediation is unnecessary or that mediation may not solve their issue.

Individual Landlords and Small-Scale, For-Profit Companies Tend to Be More Open to Mediation

The mediators we interviewed noted that landlords with many properties are less likely than landlords with only a handful of properties to engage in mediation. Interviewees cited several reasons for this. Landlords with many properties and property management companies are more likely to be corporate or absentee landlords and are therefore more likely to be represented in court by a lawyer. Lawyers, unless otherwise instructed, can feel that they lack the authority to deviate from the eviction proceedings and strike a deal with a tenant through mediation. One interviewee also noted that in their community, most landlords with many properties were represented by lawyers who were generally opposed to mediation because they think mediators advocate for tenants.

On the other hand, landlords with only one property or a handful of properties are more likely to have community ties or a personal relationship with the tenant. As noted previously, a desire to maintain the relationship is a key motivator and enabling factor for a successful mediation. This makes smaller landlords more flexible and approachable even if they have a lawyer. Additionally, landlords with only one property or a handful of properties typically operate with thin margins and have an incentive to find the most cost-effective solution.

The Laws and Norms around Eviction Vary in Each Jurisdiction, Making Eviction Prevention Complex

Interviewees noted that how the eviction process and rules are set up can be crucial to the effectiveness of mediation. In particular, the time frame for how a case unfolds can help or hinder mediation. One interviewee who provides legal aid to tenants noted that the court’s timeline can be used to push the parties to an agreement in mediation. In their community, they can ask for up to 10 extra days after the original summons and for an adjournment of seven days. In that time, the tenant is likely to be paid again, potentially twice, and they can use the money to pay rent. If instead the landlord moves forward

with eviction, the landlord will lose the current month's rent and any additional months' rent while looking for a new tenant plus any related fees. This timeline can therefore create a strong financial incentive for the landlord to make a deal with the tenant. Alternatively, one interviewee noted that in their community, the volume of cases heard by the courts each day creates a need for judges to render faster judgments and reduce the amount of time allotted to a case. In that jurisdiction, it can be difficult to get a postponement to extend the amount of time a case can be worked on through mediation.

Recommendations and Opportunities

The primary need identified across interviews was to build an ecosystem of eviction prevention strategies that support mediation. Building this ecosystem requires three interrelated and interdependent strategies: awareness, access, and resources. Tenants, landlords, community groups, and other stakeholders need more information about the benefits of mediation and when, how, and why to connect with mediation providers. Through greater awareness, people can make better decisions and access services before the point of crisis, which can lead to more pre-filing mediation. Awareness needs to be paired with access, however. People must be able to access the help they need when they need it. Access needs to be expanded not only to pre- and post-filing mediation, but also to other services that support mediation. Finally, for access to be practical, these systems need more resources. Mediation providers need greater resources to expand awareness of and access to mediation services and to connect with people before eviction notices are filed. Tenants need financial resources to cover rent and legal assistance to know their rights and be able to advocate for themselves in the process, including during mediation. In the long term, tenants may also need access to other services, such as employment support.

Within this framework of awareness, access, and resources, we present the following four recommendations.

Build Relationships in the Community

Building relationships with various organizations—landlords, government agencies, and nonprofits—can help mediation providers expand awareness of and access to mediation services, hopefully reaching clients before an eviction is filed. Each type of organization can refer clients and help connect mediation providers with tenants for pre-filing mediation. Many of these organizations provide complementary services, such as legal or financial assistance, that help increase the effectiveness of mediation.

RELATIONSHIPS WITH LANDLORDS

Several interviewees noted that their mediation organizations have built relationships with landlords, particularly those with fewer properties, who have become more willing to use mediation in the future. Mediation offers numerous benefits to landlords who prefer to avoid the costs associated with the eviction process, but many may not know about it.

There may be opportunities to engage with landlords who have more properties and have used mediation less frequently. Working with larger organizations can have challenges, but the benefit of doing so is the ability to insert mediation into more cases and to potentially expand pre-filing mediation. For example, a landlord with many properties such as a housing authority could institute a “mediation first” policy or disseminate information about the benefits of mediation among its tenants, empowering tenants to come forward if they are having difficulty making rent:

“That’s why we work to help the landlord understand how a mediation agreement can be crafted in a way that says if a tenant misses one payment, they can immediately flag and move on with the eviction. Landlords are reluctant if they don’t understand that an agreement can give them protection.” —Eviction mediation provider

“Our hope is that we can do some outreach to some of the larger landlords and that will help get the word out and once the landlords start to participate in the program. We spoke to a group in Boston and that was their advice. Once you get one to two on board, then the word will get out and landlords will reach out and contact you.” —Eviction mediation provider

RELATIONSHIPS WITH SOCIAL SERVICE ORGANIZATIONS

Social service organizations can augment the capacity of mediators by providing needed services. The majority of evictions stem from nonpayment of rent, and perhaps the most important service is emergency assistance. The availability of emergency assistance gives the tenant more negotiating power at the mediation table. This assistance allows tenants to pay rent they owe and is a motivating factor for landlords to engage in the mediation process. As one interviewee noted:

“We will put the tenant in touch with emergency resources. We do enormous work with folks that provide emergency resources. We work closely with that organization so we can communicate with the landlord. We help facilitate an approval letter and some kind of documentation from the funding source. Not just ‘the check is in the mail.’” —Eviction mediation provider

RELATIONSHIPS WITH LEGAL AID ORGANIZATIONS

The power asymmetry between landlords and tenants, along with tenants’ unfamiliarity with parts of the law, can make it difficult for tenants to advocate for an agreement that is in their best interest through mediation. Effective mediators remain neutral, and although they can provide legal information, they cannot provide legal advice. Other organizations can fill that gap through legal assistance and by ensuring that both tenants and landlords understand their rights. Many mediation providers we spoke to partnered with legal aid organizations and pro bono lawyers. Recently, communities have begun expanding access to counsel during eviction procedures to represent tenants in the courtroom. Tenant attorneys can also be advocates in the mediation process.

“It’s a collaborative effort....A good legal information system plays a big role, pro bono attorneys or us—getting information on rights and responsibilities that tenants and landlords have is important before a discussion can happen.” —Eviction mediation provider

Increase Awareness of Eviction Mediation through Campaigns

Almost all interviewees noted an information scarcity among tenants and landlords on the benefits of mediation. Greater awareness of mediation would help increase the number of people served and allow landlords and tenants to access mediation before an eviction is filed. Interviewees overwhelmingly agreed that pre-filing mediation has the greatest potential to reduce costs, prevent evictions, and repair landlord-tenant relationships.

A few strategies can be used to overcome this gap in information. The most direct would be a public awareness campaign for tenants on both mediation and their rights and responsibilities. This strategy could educate a large number of people and direct them to resources and organizations that provide assistance:

“We do the workshops at homeless shelters, churches, CBO [community-based organizations], and that has helped to teach people how not to shoot themselves in the foot. We are not legal aid. We don’t call our workshops come learn your rights...but learn how the eviction process works.”
—Eviction mediation provider

If strong relationships are in place, social service-oriented organizations can be key allies for mediation providers. These organizations can be sources of referrals for mediation providers.

Increase Access to Services through Online Mediation

One interviewee noted that they had had success reaching clients and lowering the cost of mediation through online platforms. More organizations can post information in an easy-to-read and easy-to-access format, such as lists of the top things to know, step-by-step guides, and explainer videos. Laws and regulations can be daunting and dense for even the most educated audience. Making that information more accessible can help give tenants a strong foundation in their rights. It could also connect tenants with mediation services before they miss a rent payment and an eviction is filed.

Additionally, online platforms such as Zoom can facilitate mediation between people who may not be able to meet in the same place. This could be particularly helpful for tenants and landlords in rural areas and areas with poor transit connections and for people with demanding schedules.

Identify Local Policy Changes That Can Make More Supports Available

Local governments can help reduce evictions by providing more financial resources to people facing evictions, whose primary obstacle to covering their rent is often simply a temporary shortfall in cash. Providing them with financial help can stave off eviction, saving communities money and people from the negative consequences of eviction. The amount of assistance required is significantly smaller if it can be deployed before court proceedings begin:

“Mediation can solve [the simple cases] by connecting people to resources and buying time before the landlord begins the court process. Services that are free or low cost will encourage tenants and landlords to participate and might begin to close the equity gap because Black and brown households are most likely to get evicted by their observation.” —National researcher

For people who have more complex needs, such as underlying health issues or persistent unemployment, connection with other resources in the community can help them achieve housing stability. By connecting mediation with these services, mediation providers can serve as an entry point.

Conclusion

Although greater access to, awareness of, and support for mediation in landlord-tenant disputes can ameliorate the effects of evictions, other policy solutions are still needed. The eviction crisis is in many ways an outgrowth or symptom of the housing affordability crisis. Nationwide, 47 percent of renter households are cost burdened, paying more than 30 percent of their income toward rent, according to the Harvard University Joint Center for Housing Studies. Moreover, 11 million renter households are severely cost burdened, paying more than 50 percent of their income toward rent (JCHS 2019). For many of these households, an unforeseen emergency—such as a job loss or medical emergency—pushes them over the edge, their housing becomes unaffordable, and they miss their rent payment, triggering an eviction.

Mediation can be an excellent tool to address the immediate issue between the landlord and tenant, but it cannot end the cycle of poverty, eviction, and homelessness that is a reality for many people. More people need access to safe, stable, and affordable housing. Increasing the supply of affordable housing can have numerous benefits, including reducing the number of evictions and the number of people ending up in homelessness.

Notes

- ¹ Emily Peiffer, “Why We Need to Stop Evictions Before They Happen,” *Housing Matters* (blog), Urban Institute, July 25, 2018, <https://housingmatters.urban.org/feature/why-we-need-stop-evictions-they-happen>.
- ² See “National Estimates: Eviction in America,” Eviction Lab, May 11, 2018, <https://evictionlab.org/national-estimates/>. Population and household information is from the 2016 American Community Survey.
- ³ We use the terms “eviction mediator” or “eviction mediation provider” in this brief, but some organizations may refer to themselves as “housing mediators” or “landlord-tenant mediators.”
- ⁴ The interviewees shared perspectives from several states, including California, Florida, Minnesota, New York, North Carolina, Ohio, Pennsylvania, and Washington. They also provided comments on the national and regional landscapes of mediation in eviction prevention.
- ⁵ For more information on HomeStart’s estimates, see “Eviction Prevention,” HomeStart, accessed March 24, 2020, <https://www.homestart.org/prevention>.
- ⁶ For examples, see “Milwaukee County Sheriff’s Office Steps for the Eviction Process,” https://www.milwaukeejusticecenter.org/uploads/1/0/9/0/109072171/eviction_checklist.pdf; and “Eviction Procedure—Property Owner’s Guide,” Cook County, Illinois, <https://www.cookcountysheriff.org/courts/civil-services/eviction-procedure-plaintiffs-guide/>.

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