

OREGON'S SAFE HARBOR FOR TENANTS: ROCKY SHOALS IN EVICTION DIVERSION

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Research Team

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Executive Summary

In an effort to mitigate the impacts of the Covid-19 public health emergency, throughout 2020 and into 2021 novel public health emergency programs were initiated, including a variety of federal, state, and local ‘moratoriums’ on residential evictions for nonpayment of rent. As the moratoria began to sunset, additional ‘post-pandemic’ eviction diversion and tenant protection programs were created to buffer the ‘tsunami’ of evictions that were expected.

Oregon’s eviction diversion program, the so-called ‘safe harbor period’ for nonpayment eviction cases, was put into place in July 2021 to maintain some protections for tenants after the state moratorium on nonpayment evictions ended. The key provision of Oregon’s ‘safe harbor’ provision is a delay in eviction proceedings for tenants who have provided proof that they have applied for emergency rent assistance through the Oregon Emergency Rent Assistance Program (OERAP). The ‘safe harbor’ lasts for 60 to 90 days, a time period meant to give enough time for funds from OERAP to be disbursed to the landlord for any rent owed, current and arrears, at which point they should return to court to have the case dismissed. If rent assistance has not been approved and paid, the eviction proceedings can resume.

This research tracks Oregon eviction cases from July through September, 2021, to assess the implementation of the safe harbor policy. This research examines each stage of the eviction process to assess how knowledge, communication, and power affect eviction and tenant displacement. We collect data for the 1,138 nonpayment evictions at each documented stage of the eviction process including: court filing data; document review; and courtroom observation of cases (in Multnomah County only).

Key outcomes of Oregon eviction cases:

Only 27% of tenants with nonpayment eviction cases got the ‘safe harbor’ setover. The final outcomes of these ‘safe harbor’ cases remain unknown until they return to court after their setover expires.

At least 29% of tenants were displaced by eviction cases when we account for judgments for eviction for default or non-compliance with stipulated agreements, and other judgments without safe harbor.

25% of cases ended in a default judgement against a tenant for failure to appear at one of their court dates.

10% of tenants made stipulated agreements without using the tenant protections available by law. Agreements included requiring tenants to repay current and/or back rent; and included move-out dates that could have been prevented with the safe harbor law.

32.7% of nonpayment were dismissed. A case dismissal appears to be a positive outcome for a tenant; there is no eviction judgment and the record of the case can be expunged. However, we observed that in many dismissed cases, the tenant does not remain housed.

Even with substantial resources available in the state for compensating landlords, tenants have to be aware, proactive, present, and assertive at all steps in a legal proceeding in which they have the least knowledge and experience of any of the parties. Instead, our analysis of eviction cases from July through September shows several ways that tenants can be run aground on the way to safe harbor. Even for tenants who have navigated the safe harbor process, they are not safe from eviction. While over 44,000 households applied for emergency rent assistance, by the late fall, the pace of disbursement was not adequate to divert an eviction in 60 days. The failure to move OERAP funds quickly to clear tenant arrears compounds the procedural barriers for tenants. The failure to design a policy to accommodate delays in payment is a problem that is especially troubling at a time when there is more emergency financial assistance for tenants than during any normal time.

Recommendations:

Our research approach to analyzing Oregon's post-moratorium eviction landscape finds that there are serious obstacles to eviction prevention that rely on tenants' finding resources and asserting their rights in communication or negotiation with landlords. The following are recommendations for policy and research to reduce evictions and improve tenant stability:

- *Eliminate the time limits on safe harbor*
To ensure that tenants who are in the queue for rental assistance now remain stably housed, the state should eliminate all time limits on the safe harbor set-over. Tenants with open eviction cases should be prioritized for funding disbursement.
- *Civil right to counsel*
Tenants need attorneys in eviction cases to mitigate the power imbalances in the landlord-tenant relationship that are exacerbated in court. An effective civil right to counsel would provide legal counsel, at no expense, for eviction cases and would assign that attorney as early as possible to avoid tenant default.
- *Rent assistance and systems connections*
The large infusion of federal funds has allowed Oregon to have a large-scale emergency rent assistance program for the first time. In the future, the state should maintain the program, at a scale commensurate with more routine needs. Landlords filing a nonpayment eviction complaint should be required to participate in diversion, including applying for rent assistance for their units.
- *Continuing research that centers tenant experience*
Because landlord-tenant law and court practices vary widely by state research and policy development has to be specific to context. Building a picture of the eviction proceedings and policy levers is possible with a multi-methods and inter-disciplinary partnership that includes direct observation of documentation and procedures. Research that centers on tenants as the least advantaged in the court system produces analysis that considers how communication, knowledge, and power shape the outcomes of eviction proceedings.

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'Post-pandemic' eviction diversion and tenant protection programs are an opportunity for evaluation in many different contexts to assess how policy design and implementation can best support housing stability. Oregon's eviction diversion program, the so-called 'safe harbor' for nonpayment eviction cases, was put into place in July 2021 to maintain some protections for tenants as the state moratorium on nonpayment evictions ended. By following eviction cases from the notice of termination through adjudication in the early stages of evictions after the moratorium, we can assess this kind of policy and the opportunities and challenges for designing and implementing diversion policies to prevent evictions and displacement.

BACKGROUND: OREGON EVICTION PROCEDURES AND TENANT PROTECTIONS

Oregon's landlord-tenant policies have been substantially revised over the past 3 years, with increased protections for tenants; the establishment of 'just cause' eviction law in 2019 created a foundation for pandemic emergency protections and research. Prior to 2019, there were relatively low rates of Forcible Entry and Detainer court cases (FED, the legal term for the eviction summons) compared to other states tracked in national databases. From 2016 through 2019, FED cases in the state ranged from 17,000 to 19,000 per year; with about one-third of the cases occurring in Multnomah County (Portland). However, local policymakers and advocates were aware that there were invisible evictions occurring at high rates: many rentals used month-to-month lease agreements that could be terminated at any time with no stated cause, which meant tenants were perpetually at risk of displacement with no recourse. In 2018, the statewide renters' rights hotline reported receiving 2,500 calls per month from renters with no-cause evictions.¹ Without any court record, these no-cause terminations could not be accounted for in administrative datasets, leaving many housing displacement cases invisible to the state. The no-cause eviction crisis prompted a change in policy and as of 2019, Oregon eviction law SB 608² established 'just cause' eviction for most tenants in the state. For non-payment cases, the notice period to vacate is 72 hours before the landlord can file an FED complaint and summons. With SB 608, a no-cause eviction can be issued for a tenant in a month-to-month lease during their first year of tenancy; otherwise, notices of termination must be issued for cause or for 'landlord-based' reasons such as sale of the unit.

Covid-19 Emergency Eviction Moratorium

Oregon's landlord-tenant law has undergone several rounds of changes during the Covid-19 public health emergency period, both through executive action and legislation. During most of 2020, landlords could not send tenants a notice of termination for nonpayment of rent and also could not evict tenants without cause in their first year of renting.³ Additionally, evictions for 'landlord reasons' like renovating the unit or moving a family member were prohibited to

prevent landlords from surreptitiously evicting non-paying tenants. These protections were put in place in March 2020 and renewed twice before the end of the year. During the state moratorium from late March through December 2020, there were 2,453 eviction cases filed.⁴

In the final legislative act at the end of December 2020, the state legislature made a significant change to the state moratorium for 2021: landlords were permitted to notice tenants and file cases for nonpayment, along with 'landlord reasons.' Tenants could get a nonpayment eviction case dismissed by providing their landlord and the court a declaration of Covid-19 related hardships. With this change, there was an increase in eviction complaints in 2021 across all causes, and 59% of FED cases ended in the tenant household being displaced.⁵ In one-third of nonpayment cases during the period of January through June of 2021, the tenant did not provide the Covid-19 hardship declaration to claim protection and was displaced by an eviction judgment or agreed to pay rent, despite there being a 'pause' on rent arrears collection.⁶ Tenant organizations and legal services organizations readied for the end of the state moratorium and what was expected to be a crush of nonpayment evictions; the Census Pulse survey at the end of May 2021 reported 20% of Oregon renters had 'slight' or 'no' confidence they would be able to pay the next month's rent.

As of July 1st, 2021, Oregon's state moratorium on nonpayment eviction ended. After some weeks of confusion about the extended CDC moratorium and other federal action, Oregon courts have been processing FEDs for nonpayment since mid-July. Eviction cases for all causes have reached 1,000 per month; still fewer than the pre-pandemic average of 1,500 per month in late 2019 and early 2020, but with steady increases month over month. Over 2021, eviction case filings for nonpayment have increased from 70 to 80 per month before July to 480 cases in September.

Extending 'Safe Harbor' for Oregon tenants into 2022

Oregon tenants still have a number of protections created by SB 278, passed at the end of the Oregon state legislature's session in June. SB 278 limits nonpayment eviction cases to current rent only, providing a grace period that lasts until the end of February 2022 for rent arrears accumulated from April 2020 through June 2021. The extension of a grace period for rent arrears, meaning tenants need only pay the current month's rent to remain housed, is likely the most important factor in lower than usual eviction filings.

The second key provision of SB 278 is a 'safe harbor' provision that creates a delay in eviction proceedings for tenants who have applied for emergency rent assistance through the Oregon Emergency Rent Assistance Program (OERAP), the federally-funded program for Covid-affected low-income renting households. When a tenant gets a summons to court for eviction, they can claim 'safe harbor' if they have applied for emergency rent assistance. When the tenant

provides proof of having applied for OERAP, the eviction case will be ‘set over’ or rescheduled for a later date: at least 60 days later for the state; with an extra 30 days in Multnomah County (which includes Portland). This ‘safe harbor’ is meant to give enough time for funds from OERAP to be disbursed to the landlord for any rent owed, current and arrears, at which point they should return to court to have the case dismissed. The eviction case remains open during the safe harbor with a new ‘first appearance’ date scheduled. As of the end of October, there were over 44,000 applications to OERAP. The process of an eviction under the current state law is outlined in Table 1.

TABLE 1. <i>PROCESS OF EVICTION IN OREGON, JULY 2021-</i>
<p>> <i>Notice of Termination (“Eviction Notice”)</i></p> <p>The tenant receives a notice of termination (an eviction notice) by ‘nail and mail’—hand-delivered, or attached to the front door and sent by first class mail. The notice must include the cause and the amount of time the tenant has to vacate the unit.</p> <p>As of July 1, 2021, to be valid: A nonpayment notice may only include current rent; any arrears from April 2020 through February 2022 are not valid grounds for a notice. The notice period for nonpayment is 10 days. The nonpayment notice must include information about Oregon’s Emergency Rental Assistance Program and SB 278, the ‘safe harbor’ for tenants who have applied for assistance.</p> <p>The notice must also conform to routine statutory standards, including providing a statement of how the tenant can ‘cure’ the notice (by payment or conduct).</p> <p>If the tenant ‘cures’ or moves out, the eviction process ends. The landlord can pursue monetary compensation in small claims court.</p>
<p>> <i>FED Summons & Complaint</i></p> <p>If the tenant has not moved out at the end of the notice period, the landlord files the Forcible Entry & Detainer complaint with the court, creating an eviction case.</p> <p>The tenant receives a summons with a date for a First Appearance. In August, 2021, the Chief Justice of the Oregon Supreme Court issued an order to all county circuit courts that the First Appearance for a nonpayment eviction case should be scheduled at least 21 days after the FED filing date, but not more than 30 days from the filing date, in order to provide time for tenants to seek emergency rent assistance.</p>

> *First appearance*

The first appearance is a preliminary hearing to determine if and how the case will proceed.

>> *Default Judgment for Failure to Appear*

The tenant (defendant) does not appear and as a result, a default judgment of eviction is entered for failure to appear.

>> *Dismissal*

A dismissal can occur when the landlord (plaintiff) does not appear; or if the landlord asks for a dismissal (because they have been satisfied that the tenant has vacated the unit or otherwise settled the issues).

A dismissal should be issued when the judge finds the notice of termination or the complaint not legally valid; whether that is argued by a tenant's attorney or is recognized by the judge.

>> *Stipulated Agreement*

The judge may require the parties attempt to seek agreement through a short conference, possibly with a mediator, where they may make a stipulated agreement, which sets conditions of compliance in order for the case to be dismissed at a later date.

The compliance time frame for those conditions, which can include changed conduct, payment, or moving out, can be up to six months.

- A stipulated agreement to move out provides a time period within which the tenant must vacate the unit; no minimum time is set by law.
- A stipulated agreement to pay rent owed can include any rent arrears and late fees.

If the terms of the agreement are not satisfied, the landlord can file a Declaration of Non-compliance, which triggers a hearing and potentially an eviction judgment if the tenant is found to have not met the terms of the stipulated agreement.

>> *Safe Harbor*

Under SB 278, the tenant may request that the case be postponed —'set over'-- because they have applied for emergency rent assistance. The tenant must have provided proof of application to the landlord, who confirms receipt, in order for the tenant's 'safe harbor' claim to be recognized.

The case is not dismissed, but receives a *rescheduled First Appearance*. The rescheduled First Appearance is 60 days later, unless the case is in Multnomah County, which has a 90 day setover period. (*After the study period, Washington County also added a month to the state policy for a 90 day setover period).

>> *Set for trial*

If no agreement can be reached at the first appearance, the case may be scheduled for trial.

> *Setover First Appearance after Safe Harbor*

At the new First Appearance, any outcome may occur: default, dismissal, stipulated agreement, or scheduling a trial. If the tenant's application for rent assistance has been approved and the landlord has either received funding or confirmation of approved funding, the case can be dismissed. However, if rent assistance has not been disbursed, the landlord is not obligated to agree to wait for funds before the eviction proceeds.

> *For judgment of eviction against the tenant - writ of execution*

If the tenant does not move by the date set by the court in a judgment against them, the landlord can initiate a writ of execution. Once issued, the writ is executed by the county sheriff, who will forcibly remove the tenant and their belongings and the landlord can change the locks in a 'set-out' or 'lock-out.'

The safe harbor policy provides an opportunity to investigate eviction diversion during the Covid-19 recovery period and also to consider how to design policies that can intervene in eviction while short-term emergency rent assistance is deployed. This report assesses the early implementation of the safe harbor approach from July through September, 2021, as nonpayment eviction filings increased in the state. From July through September 2021, only 27% of tenants with nonpayment eviction cases got the 'safe harbor' setover. About one-third of eviction cases were dismissed. However, in over 36% of nonpayment cases, the SB 278 protections did not provide 'safe harbor' from eviction. These cases ended in judgments of eviction or with stipulated agreements in which tenants agreed to scheduled rent payments or move out dates without applying for assistance. In order to understand these outcomes, this research examines each stage of the eviction process to assess how knowledge, communication, and power affect eviction and tenant displacement.

RESEARCH APPROACH AND DATA

The research approach is *phronetic* social science, which asks researchers to consider what is going on and what ought to be going on to achieve just outcomes. This approach puts emphasis on micro-practices—the everyday communications, decisions, and activities through which policy is carried out—with particular attention to power dynamics.⁷ This research pays attention to the specific context of eviction in Oregon courts, incorporating the perspectives of tenants and legal services attorneys to support the identification and analysis of practices and procedures. Our deeply contextual and multi-methods approach reflects the conclusion of Nelson et. al (2021) that eviction is a heterogeneous process that varies between and within states; with filing

procedures and the legal record, landlord strategies, formal and informal courtroom procedures identified as shaping the eviction experience along with basic legal issues like ‘just cause’ standards.⁸ By observing the eviction process from court filings through the judgments, we identify key points at which landlords’ actions, tenant agency (or lack thereof), and judges’ instructions can be determinative of outcomes. The process of eviction is complicated; to understand how to prevent displacement from eviction, we need to better understand the dynamics at each stage.

Oregon’s safe harbor policy relies on a series of actions taken by landlords, tenants, and judicial officers, in a legal process in which tenants have the least amount of experience and power. The analysis of FED complaint filings, first appearance hearing procedures, and stipulated agreements is informed by a conceptual framework and empirical literature that recognizes the tenant as having a particular material, political, and legal status in relation to the landlord. Indeed, our ability to conduct research on eviction is itself affected by the power dynamics of landlord-tenant legal relations. This section discusses the context-specific dynamics of power in terms of knowledge, communication, and legal status at each stage of eviction analyzed in this paper.

Power and procedure in eviction-- and eviction research

Understanding power—the ability to control outcomes, to set terms of negotiation, and even to frame our definitions of eviction—is essential for our understanding of eviction. Power is part of the dynamic between landlords and tenants, and the rights and responsibilities accorded to each. It is also revealed through a legal and policy landscape that sets the terms of the eviction process and also obscures eviction from the administrative and research record. In Oregon, the difficulties with tracking evictions as a factor in housing instability includes unrecorded events, difficult-to-access records, and even the lack of a basic role of rental housing units in the state.⁹

The basic relationship between landlord and tenant is that the former owns and has direct control over the shelter and home of the latter. The term ‘landlord’ is used loosely here to mean not only the owner of a specific rental unit, but to encompass property managers in multifamily housing and managers who are contracted by small-unit owners to provide professional services. It is also important to recognize the industry associations that provide landlords with technical and legal assistance¹⁰, including model leases, standardized eviction notices, and referrals to landlord attorneys and eviction agents.

Landlords are initiators of the rental agreement, which sets the terms of the lease and should outline the rights of the tenants. Furth-Matzkin (2017) finds that most leases “could not be read and easily understood by a layperson without legal assistance” (p. 12). Furthermore, they find it is common for rental leases to include misleading information, to omit statements of tenant

rights, and to include unenforceable provisions—with every lease analyzed failing to disclose the majority of provisions concerning tenant's rights and remedies.¹¹ A tenant seeking to challenge lease terms would need to have awareness of the law and be in a position to negotiate with the unit owner; or to provide a defense in eviction court if the unenforceable lease terms are used as the basis for eviction.

Similarly, landlords (property managers, agents) initiate evictions with a notice of termination; which in Oregon precedes the Forcible Entry and Detainer lawsuit that is the mechanism by which landlords can legally 'repossesses' the housing unit. While the notice of termination is a required part of the legal process of eviction, it is not submitted to any administrative body, so tenants who are displaced at this stage are not counted as having been evicted. Indeed, researchers have no way to account for these notices except through reports from renter-serving organizations like hotlines or 211 systems, which can provide some information about renters who receive notices and avail themselves of these services. This invisibilization of displacement is a significant challenge for understanding the scope of eviction in Oregon.

Because the notice of termination must be included when a landlord files an FED complaint, we can see that some number of eviction notices are legally invalid: they don't correctly list cause and cure, provide wrong notice periods, or fail to include required information about tenant rights. Tenants receiving invalid notices may vacate without knowing there could have been grounds for a dismissal; we would not be able to record those events as displacement.

Even with valid, complete notices, tenants may not know or understand what their rights are and they may not notice or understand the information about the 'safe harbor' protection. The required information in an eviction notice includes legal and technical language and is not required to be provided in any language other than English. Oregon does not require any standardized form for the notice or order of information, so it may be difficult for a tenant to find a model to help interpret the information.

We cannot see incidents of conflict or harassment from landlords at the time of notice. Harassment or hostile communications from landlords were reported by one-third of tenants in the Portland Metro area in a survey in July 2020.¹² Even with professional and appropriate communication, the affective experience of receiving an eviction notice likely interferes with comprehension and decision-making.

The FED complaint is filed by the landlord or their agent, attorney, or property manager. When used to carry out eviction, agents and property managers are experienced professionals who are adept at navigating the court system, unlike most tenants. Landlords are far more likely to be represented by an attorney in eviction court, which confers an advantage in these complex and high-speed legal proceedings. The conclusion in the research literature is that providing tenants

with attorneys has an impact on reducing eviction and displacement.¹³ However, there is no national policy equivalent to the 'right to have an attorney provided for you' that the Gideon court case created for criminal charges.

The low rates of tenant legal representation compound the barriers to just resolution that arise from the time and place of eviction court cases. Attorney Rasheedah Phillips describes tenants as experiencing "time poverty," a systemic disadvantage for people with jobs that afford little control over their work schedule, complicated and informal child care arrangements, unreliable transportation, and other conflicting demands on time.¹⁴ When the tenant is late for an eviction court hearing, even by minutes, they can be recorded as a 'failure to appear' and be issued a judgment to evict. During the Covid-19 pandemic, time conflicts include time to log into and troubleshoot the internet platforms for virtual court sessions; intermittent or slow internet connections; or an inability to get to a location where the internet can be accessed.

In some cases, tenants and landlords negotiate a settlement agreement that might result in a case being dismissed if the tenant meets conditions. With or without mediators, these agreements can reinforce power imbalances and end in tenants not exercising their rights.¹⁵ Mediation that does not account for power, differential knowledge, and access to legal counsel maintains the advantage of the landlord to negotiate outcomes that continue that status quo.¹⁶ Tenants are pressured to accept settlements that will result in the dismissal of the eviction case because of the implications of having an eviction judgment on the record, even if the case itself might have been invalid or without merits. Hare (2020) concludes: "For many, an unlawful detainer poses a nearly insurmountable barrier to future housing. Limiting access to eviction records that inaccurately and unfairly allow a landlord to blackmark a tenant is essential to eliminating systemic obstacles to negotiation and empowering tenants to mediate (p. 150)."

Not all notices of termination result in an FED case; not every FED case results in the judgment of eviction; and not all judgments of eviction end in the tenant being locked out by law enforcement officers. However, there are many ways that tenants are displaced along the entire process; and housing instability is not fully understood without accounting for the precariousness and uncertainty that renters face from the moment of an eviction notice, and even before. Garboden and Rosen (2019) describe the threat of eviction as a powerful tool for landlords, particularly in nonpayment cases. They find eviction case filing can operate as a mechanism of debt collection and control, even when there is no formal judgment of eviction.¹⁷ The informal and formal threat of eviction, they write, "has important consequences on the tenant's rental experience, providing an omnipresent signifier for poor renters that a house is not a home" (p. 657-8).

Data in this study

We collect data at each documented stage of the eviction process. This research uses court filing data, document review, and observation of cases to assemble the experience of eviction cases (Table 2 summarizes the data used in this research). These data are assembled by a partnership among Portland State University's Center for Urban Studies and Homelessness Research & Action Collaborative; and Oregon Law Center attorneys who are the primary legal aid service in the state. We access the Oregon Judicial Department database for all eviction cases filed in Oregon circuit courts¹⁸, and review the noticed cause to identify nonpayment cases. This database includes all the documentation provided to the tenant as an eviction notice, allowing review of the communications; for select case outcomes we also reviewed to assess whether the filing itself appears legally valid (in accordance with the Oregon statutes governing pandemic evictions). Each case is tracked through the events logged by the OJD, for 1,318 nonpayment cases filed in the state from July 1st through September 30th. In Multnomah County, Oregon's biggest county that includes Portland, we partner with a court case observation team from Don't Evict PDX, a grassroots community organization. The observation team collects data points about the tenant, landlord, any agents or attorneys present, and the judge's instructions; the observations occur via the court's online WebEx system in use since mid-2020. Observers collected data for 241 out of Multnomah County's 557 nonpayment cases. Table 2 lists the data available for each stage of the eviction process.

In this study, we refer to a notice of termination, eviction cases, eviction judgments, and displacement. The *notice of termination* is what many colloquially refer to as the eviction notice, but it does not create a legal record. The *eviction case* is the FED complaint and all of the proceeding activities that take place at the courthouse. An *eviction judgment* is the legal record of a judgment for the plaintiff landlord, which gives them possession of the unit and orders the tenant to vacate. The tenant is evicted. This eviction judgment can occur at the first appearance (as in a default judgment for failure to appear); after a trial (the tenant provides an unsuccessful defense); or after a hearing for non-compliance with a stipulated agreement. *Displacement* due to eviction occurs in a broader set of circumstances than an eviction judgment. Displacement that is tracked in this study occurs when there is an eviction judgment at first appearance (full count in the dataset); when a tenant has agreed to vacate the unit in order to achieve a dismissal of the case (partially measurable when discussed on the court record); and when an eviction judgment occurs after the tenant does not comply with the stipulated agreement (full count in the dataset, when compliance dates mature).¹⁹ We understand this to be an undercount of tenants displaced by the eviction process in its entirety; there is additional displacement we cannot measure when a tenant vacates the unit upon receiving an eviction notice, before an FED case is filed. We additionally track outcomes in which the tenant has not activated the protections available under SB 278 and other Oregon law; for example, when they have made a stipulated agreement that includes terms that would not have been enforceable as a judgment, such as paying rent debt or moving out without the 'safe harbor' time period. While the tenant is a party to that agreement,

the potential, if the tenant cannot comply with its terms, is for a judgment of eviction that could have been avoided. These stipulated agreements are observations where there is potential for displacement and eviction judgment; although most are not tracked to the final outcome in this time period.

<i>TABLE 2. EVICTION PROCESS DATA IN THE STUDY</i>	
Eviction Process	Data availability and analysis
Notice of Termination ("Eviction Notice")	Notices are not recorded unless there is a court-filed Forcible Entry and Detainer complaint and summons. It is unknown how many evictions occur when tenants vacate in response to a notice.
FED Summons & Complaint (eviction case)	All FED cases in Oregon, date, address, and party names are retrieved from the Oregon Judicial Department (OJD) court docket. FED complaints include notice documents as delivered to the tenant. <ul style="list-style-type: none"> Causes listed in the complaint Amount of rent at issue in nonpayment cases Inclusion of SB 278-required information for tenants
First Appearance	OJD-recorded data for cases that have had a first appearance hearing: <ul style="list-style-type: none"> Date of first appearance Attorney representation for each party Outcome of appearance (confirmed by legal services attorneys) New date for setover first appearance Court observation: (56% of Multnomah County cases were observed ²⁰) <ul style="list-style-type: none"> Mode of tenant appearance Requests for language interpretation Tenant assertion of protections under federal or state law, including SB 278; response by landlord Judge's instructions to all parties

Stipulated agreement	Stipulated agreement documents are filed with OJD. Terms and compliance date for agreement (confirmed by legal services attorneys)
Judgment	For cases that are completed, the final judgment is recorded from OJD.

OVERVIEW OF FILED AND PENDING EVICTION CASES, JULY THROUGH SEPTEMBER 2021

Nonpayment eviction filings restarted in Oregon in July under the SB 278 conditions (with some interruption for the extended federal moratorium). The expectation was that because of grace periods in leases, the July 4th holiday, and the ten-day notice period, eviction filings would begin to increase after July 19th. By the end of September, there were 1,318 nonpayment eviction summons filed in the state. Of these, 877 were still pending a *final* outcome: these cases have not yet had a first “first appearance” ; or the first appearance was rescheduled under the safe harbor provision; or the case has an ongoing stipulated agreement.²¹ Table 3 shows the status of nonpayment eviction cases as of the end of September. Because nonpayment cases can only be filed on current rent, not arrears from March 2020 through June 2021, the average amount of owed rent claimed in these cases is just over \$1,600.

Nonpayment cases		Default: tenant failed to appear	Dismissal: no record of eviction	Stipulated Agreement: negotiated settlement to pay or move	Safe harbor: case set over for later hearing	Set for trial or trial judgment
July	365	21.6%	36.7%	13.7%	26.3%	1.7%
Aug	470	26.6	32.2	6.7	29	5.5
Sept	483	28.7	24.7	12.7	28.0	5.9
<i>Total</i>	<i>1318</i>	<i>25.1</i>	<i>32.7</i>	<i>10.2</i>	<i>27.8</i>	<i>1.3</i>

Source: OJCIN database and filing documents

When tenants do not appear in court, there is a default judgment for the landlord (an eviction), which occurred in a quarter of nonpayment cases. The 25% rate of default judgment due to tenant failure to appear is more than double the default rate for 2016 through 2019, when default judgments occurred in 10% to 12% of FED cases.

Ten percent of tenants made stipulated agreements without using the tenant protections available by law; some of these agreements would have not been enforceable via a judicial decision: they agreed to pay back rent (which could not be considered as a cause for eviction until March 2022); or agreed to pay current rent or to move out without applying for OERAP or requesting the additional setover time. Accounting for judgments for eviction for default or non-compliance with stipulated agreements, and other judgments without safe harbor, we assess that at least 29% of tenants were displaced by FED cases.

Multnomah County eviction cases make up just over 40% of the state's total (see maps in the Appendix for a geography of Multnomah County evictions). The County enacted its own eviction moratorium early in the Covid-19 pandemic, before the statewide moratorium went into effect. Multnomah County and the City of Portland have consistently had stronger protections for tenants and more resources available for rent assistance and legal representation, along with a concentration of community-based organizations, including those serving people of color and immigrant communities, which support low-income households. Multnomah County's additional assistance for tenants includes door-knocking to seek tenants who have received eviction notices, and staffing the courthouse with community-based organizations who can assist with applications to OERAP. Still, there are gaps in protections from eviction: a quarter of Multnomah renters defaulted due to failure to appear and 4% made agreements that are not required by law (see outcomes in Table 4). Observing court procedures reveals there are additional tenants whose FED case was dismissed, but did agree to vacate the unit without having the full benefit of the SB 278 tenant protections.

Given the scale of rental assistance available and the safe harbor diversion policy, these outcomes, with high default rates and additional tenants displaced through stipulated agreement, are troubling. Evaluating the multi-modal data for each documented stage of eviction cases can provide insights about the implementation of tenant protections. This research does not directly assess the process of outreach, application, and processing for the emergency rent assistance program, but the implementation of OERAP has become an issue that intersects for tenants whose cases proceed past the safe harbor period.

	All filed cases		Observed Cases	
		% of cases with a first appearance		% of observed
Default: Tenant Failed to Appear	103	24%	56	23%
Dismissal: No Record of Eviction	175	41%	46	19%
Safe Harbor: Case Set Over for Later Hearing	127	29%	117	49%
Agreement: Negotiated Settlement to Pay or Move	19	4%	13	6%
Judgment for Eviction	2	0%	2	1%
Judgment for The Tenant	2	0%	2	1%
Set for Trial	1	0%		
<i>Still Pending a First Appearance</i>	<i>127</i>			
Total	557		241	

PROCEEDING THROUGH THE EVICTION CASE TO ANALYZE OUTCOMES

The safe harbor eviction case delay requires actions at each step of an eviction case, by landlords, tenants, and judges. The policy assumes that each of the parties take the following actions:

- Landlords file valid cases for only current rent nonpayment, including providing information about rent assistance and 'safe harbor' to the tenant, they acknowledge receiving proof of the OERAP application from the tenant, and they return to court to dismiss the case if they do receive rent payments from the state.
- Tenants are aware of the OERAP program and the 'safe harbor' setover, can complete an application and provide acceptable proof, and are available and present in court if they do not have an attorney.
- Judges correctly apply the SB 278 law to prevent evictions for back rent and to reschedule cases for past the 60 to 90 day safe harbor; and validate the tenant's documented proof of OERAP application.

When these actions line up, the tenant should get a set-over of the eviction case, although not a dismissal—which would happen only at the rescheduled first appearance hearing, at which a judgment of eviction is still possible.²² In the following sections, we discuss each stage of the eviction case in turn, considering how the documents, court records and proceedings reveal how and why these cases can diverge from the process envisioned in the SB 278 policy. We assess the notice of eviction as filed with the FED case; the first appearance hearing outcomes; and the stipulated agreement as arenas for either displacement or diversion.

> Eviction notice in the FED summons and complaint

The eviction case is initiated in an FED complaint filing that includes the notice of termination provided to the tenant. These FED filings are the only place where we can directly observe eviction notices; this analysis cannot provide insight into the full scope of all notices that initiate evictions.

There is no standard required form for eviction notices in Oregon; but many landlords use templates from rental housing owner industry organizations. The forms are often filled in by hand. The notices may include fairly extensive documentation about the case, or a minimum of required information.

We reviewed all nonpayment FED filing documents for the state for two weeks in August and found that the standard language and formatting of the notice of 'safe harbor' protections and rent assistance availability did appear in nearly all the notices (see Fig. 1 for the notice text and formatting). However, the way this information is included in notices is not uniformly accessible

to tenants who are not familiar with legal terminology or who do not already know about the policies and assistance referred to in the text.

Barriers to effective communication include:

The text of the notification about 'safe harbor' and rent assistance funds is written at Flesch-Kincaid grade level 15. Advice for public information is to aim for a grade level of 7 or 8, in other words, text that is accessible to someone with less than a high school education.

The placement of this notification text is not consistent in the files: in some notices, the information is on its own separate page; in others it is broken across two pages; it may be placed early in the file or appear after many pages of other documentation.

In the document review, this notice was never found in any language other than English; instructions are to go to the Oregon Judicial Department website for language-specific information. This website for the state court system did not have any Covid-19-related tenant information nor multilingual information at the linked address through the end of October 2021.²³ The front page of this website had no direct links to landlord-tenant court information at all, although it could be accessed via a link to "self-help resources."

The notice does not include the name or logo for Oregon Housing and Community Services, the agency that is implementing the Oregon Emergency Rental Assistance Program, nor use the name OERAP, although the link to its web portal for the application is listed.

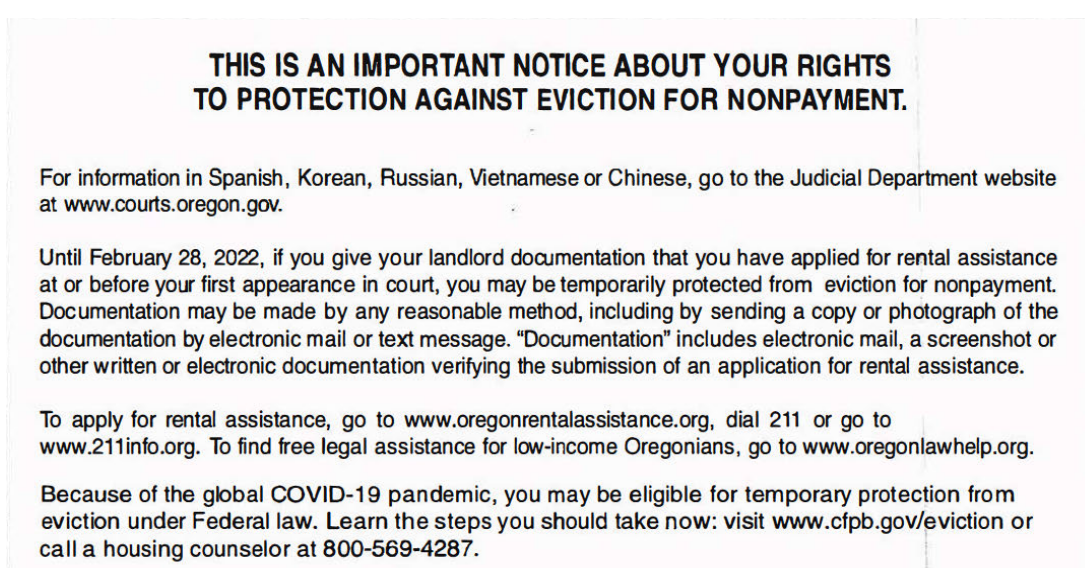


Fig 1. Notice of Oregon rental assistance and protection from eviction to be included with eviction 'nail and mail.'

Considering these communication issues, this notice is not likely adequate to inform tenants about what they can do about the eviction notice. State and local agencies, bolstered by philanthropic funding, began to partner with community-based organizations in August and September to increase outreach about the OERAP program and 'safe harbor' protections²⁴, but for tenants unconnected to those organizations, these paragraphs in the eviction notice may be the only information they receive. Outreach efforts are mostly targeted towards tenants who have received a court summons, because those are recorded with addresses, allowing for mailers and door-knocking as means of connecting to renting households. Some community organizations broadened their outreach to include more residents at buildings where FED summons had been served, but there is no way to communicate to all tenants who receive an eviction notice to more clearly explain the provisions in this text. There is also potential to decrease the tenant default rate by providing access to legal representation that alleviates the requirement to be present in court.

> *First appearance at court*

The first appearance in court for the eviction case determines the next steps in the process. When the tenant does not appear, there is a default judgment of eviction; when the plaintiff landlord does not appear, the case is dismissed. If both parties appear, they can agree to negotiate a stipulated agreement or the case can be set for a trial date. Under SB 278, the first appearance is an opportunity to confirm that the landlord has received proof of the tenant's application for rental assistance, which should reschedule the first appearance for 60 or 90 days in the future. There is also the opportunity, often encouraged by judges, for the landlord and tenant to have a short discussion or negotiate a 'stipulated agreement'—the terms under which the case could be dismissed later, if the tenant meets its conditions.

During the study period, there was variation in how county courts operated around the state as far as Covid-19 precautions and virtual hearings. Where tenants could appear virtually on a webex platform, it alleviates the need for transportation and travel time, parking, and being in an unfamiliar setting. However, the platform requires some technological capabilities, internet connection with sufficient power for video and sound, and can be awkward for communications. In particular, the negotiations for potential stipulated agreements have to occur outside of this platform, either by logging off and on again, or scheduling another time for the parties to return to have the agreement recorded. Each of these breaks, new platforms, and rescheduled dates is a chance for the tenant to miss a meeting or hearing and end up with an eviction judgment.

Tenants are only rarely represented by attorneys during proceedings. Attorneys are prepared to appear on behalf of the client, alleviating the need to be present for a case event. Tenants without attorneys are at a disadvantage when cases have multiple required appearances. The court hearings are during business hours, and for tenants with variable work hours, and transportation or child care schedules to coordinate, it can be difficult to make the schedule. When tenants are

not present for hearings or trial activities, there will be an eviction judgment by default for failure to appear.

While Oregon's legal aid providers have substantially increased their staffing and outreach in 2021, most tenants still do not have attorneys for eviction cases. From July through September 2021, only 7% of Oregon tenants were represented by a lawyer, which is higher than the 2019 rate of just 4% with a lawyer. Landlords were represented by a lawyer in 36% of cases. Landlords can also be represented by a professional property manager or by an eviction agent, who handles FED complaints professionally, including appearing in court, but is not a licensed attorney.²⁵

The first appearance is a critical juncture for an eviction case; the entire case can end at this hearing. The Oregon Judicial Department's self-help for tenants guide states, "Eviction cases move very quickly; you need to decide what to do before the first appearance date" and explains that no court officer can provide legal advice.²⁶ Before any interaction among landlord, tenant, and the judge occurs, there is the initial issue of judgments for failure to appear.

>Tenant failure to appear: default judgment

In 25.6% of nonpayment cases from July through September, the tenant defendant did not appear for the first scheduled event, and a default judgment of eviction was issued. The eviction becomes public record and will appear in future screening of the household for rental applications. Tenant default for failure to appear is the most unfavorable outcome for these cases, especially when the tenant would have been eligible for a set-over or even a dismissal, depending on the validity of the eviction case filing.

The reasons for tenant default are not discernable in this research, since there is no observable explanation—the tenant has simply failed to appear for their hearing. Some tenants could not make the scheduled court session time or could not access the online platforms that some counties continued to use to avoid Covid-19 transmission. The tenant might not appear because they don't think they have any defense or options; we assume some tenants are not informed about the potential for rent assistance, based on the review and evaluation of the notice format and language.

The rate of default judgments during this quarter far exceeds the typical failure to appear rate for Oregon eviction courts. One reason for this higher rate of default might be the much longer time between the summons and first appearance than is usual: pre-Covid-19, a nonpayment notice gave the tenant just 72 hours to vacate before an FED could be filed, and the standard practice was for a first appearance to occur within a week of the complaint date. After SB 278 came into effect, the Oregon Judicial Department standard scheduling was stretched to having a first appearance three weeks after the complaint date, after a ten day notice period, meaning there is a

month when the tenant might vacate the unit. The summons is intended to notify the tenant of the requirement to appear at the first appearance. However, there is no requirement for the landlord to verify whether the tenant remains in the unit before filing the FED or before the First Appearance hearing. If more tenants have time to relocate during this period and do not understand they are still obligated to appear to avoid an eviction judgment, that could explain a higher default rate.

>Dismissal and negotiated agreements

In 32.7% of nonpayment cases from July to September, the case was dismissed. A case dismissal is partially documented; we look at the filing documents and court observations to make sense of this outcome. A case dismissal appears to be a positive outcome for a tenant; there is no eviction judgment and the record of the case can be expunged. During the study period, it is likely that some of the case dismissals occurred because the landlord received OERAP payment. However, there are several circumstances under which a dismissed eviction case is not an indication that the tenant will remain housed.

In order to understand what happened in dismissed cases, we looked at 31 fully observed cases in Multnomah County to review documents and proceedings. This represents only about one fifth of the dismissed cases and may not be representative, but we assess these cases as examples of how landlords' and judges' actions are problematic mechanisms for protecting tenants from displacement in accord with the legal protections they are afforded.

In half of the cases, the plaintiff landlord requested the case be dismissed for no stated reason, or did not appear for the hearing at all. Half of these cases involved the same eviction agent representing the landlord. The plaintiff need not explain why the case is being dismissed; it could be because the tenant has either already moved out or they paid the noticed rent before the court date.²⁷ These may be reasonable responses to an eviction notice when no other options are available. However, reviewing the cases that were dismissed by judges in Multnomah County finds that there are not an insignificant number of cases in which a dismissal masks a tenant's having been displaced or making agreements that do not exercise their rights.

In 23% of the dismissed cases we observed in Multnomah County, the judge dismissed the case because the landlord's filing violated the emergency eviction statute. These violations included: giving a 72-hour notice instead of the 10 days required under the emergency statute; not including the SB 278 and rent assistance information in the notice; demanding back rent that is not due until March 2022 (recognized by the unusually large amount of rent claimed); or failing to acknowledge the tenant's Covid-related hardship declarations. These errors render an eviction notice invalid. These filing issues were discussed by the judges in the proceedings, explaining why the case was dismissed.

Additionally, in most of these invalid complaints, the judge provided specific coaching to the landlord on how to file the complaint correctly. The observation did not find any instances of a landlord being admonished for attempting to collect rent arrears still covered by the grace period, but did note a judge expressing ‘sympathy’ for the landlord’s lost rent revenue, a judge warning the court audience not to give advice to the tenant during the proceeding, and four instances of the judge sending the landlord and tenant to go discuss the case together to attempt to negotiate an agreement before the judge would decide how to proceed—in one case, after stating that the case was “supposed to be dismissed” due to violations of SB 278. In no instance did court observers record judges giving advice or instruction to tenants.

In these dismissed cases with notice problems, the tenant defendants were unrepresented. Most of the time, judges did dismiss the eviction case without the tenant having to question the summons on legal grounds. However, it is troubling that there were any instances of encouraging a negotiation over an eviction complaint that could not be enforced, given the lack of expertise most tenants have in the legal context (especially given multiple changes over the last 18 months).

The judges’ suggestion to discuss a settlement through stipulated agreement is a common feature of eviction court in Oregon. Tenants must be prepared at the first appearance to negotiate a stipulated agreement which is typically reached after a very short discussion ‘in the hallway’ (or, during the pandemic, in a conversation outside of the Webex platform) between the parties. Doing so without support of an attorney can lead to tenant displacement or their giving up protections they would have been able to claim. If the tenant is able to meet the conditions of the agreement, the case will be dismissed. If not, there will be a non-compliance hearing and eviction judgment, meaning a stipulated agreement remains a threat to housing stability, particularly when the tenant has negotiated from a defensive position and agreed to terms they will have trouble meeting. For example, tenants agreeing to vacate the unit quickly may find that having an open eviction case makes it extremely difficult to secure another lease. The compliance period for a stipulated agreement can be as long as six months, during which time there is an open eviction case for the tenant.²⁸ A stipulated agreement can also contain terms that would not have been enforced in a judgment. For example, if a tenant agrees to pay arrears from 2020 that cannot be part of an FED complaint until March 2022 and cannot meet the obligation, the non-compliance can result in an eviction judgment, even though that back rent would not have been included in a hearing in 2021.

Reviewing statewide nonpayment evictions, we found that in 10% of cases, the tenant made agreements that did not take into account SB 278 provisions, mostly in which tenants agreed to pay rent immediately without seeking assistance or a safe harbor set-over, including some cases where the tenant paid arrears that were covered by the extended grace period. All of the

agreements to vacate the unit by stipulated agreement had compliance deadlines of less than two weeks. The standard move-out agreement negotiated by a tenant attorney would be 30 days; none of the tenants who agreed to shorter terms were represented by a lawyer. Multnomah County observers captured twelve proceedings with stipulated agreements in which the tenant did not attempt to claim the safe harbor protection. In these cases, the possibility of using SB 278 protections was not suggested by the judge or plaintiff. The agreements were to pay current rent and/or arrears; to move out of the unit; or both.

FED case dismissals and stipulated agreements with tenant compliance do end with a tenant's eviction record being cleared. However, these outcomes do not guarantee that the tenant remains housed or has taken advantage of all the renter protections available. Reviewing filing documents and proceedings shows the degree to which landlords attempt evictions that contravene tenant protections. When a case is dismissed with instructions to the landlord on how to file correctly, that re-filing can happen immediately. Additionally, the number of invalid summons seen in court cases makes the high rate of tenant default even more troubling, as those households did not have the opportunity for their potentially dismissable case to be reviewed by a judge.

>Claiming safe harbor

About 27% of tenants with nonpayment eviction cases successfully claimed the safe harbor provision for renters who have applied for financial assistance, and those cases were rescheduled for a new first appearance hearing in two to three months. The policy requires that tenants produce proof of application and for their landlord to acknowledge receipt. The tenant does have to appear in court to confirm the claim and the judge sets the case over. Tenants seeking the setover have almost all been successful in pushing back their eviction cases and in Multnomah County, this process has been improved with courthouse assistance that can help tenants provide proof of application on site.

There are some challenges that tenants face in claiming safe harbor. Out of 117 observed safe harbor cases, there were 13 (11%) that included some dispute over whether the tenant had provided proof of the rent assistance application. The landlords in these cases were represented by an agent or attorney who would not confirm the proof of application at the first appearance. These cases were then set over for three to five days, when the tenant and landlord (or representatives) had to re-appear to confirm that the proof of application had been received and the case was eligible for safe harbor. There is no legal reason that the landlord's representative cannot confirm the proof of application, but defendant tenants without an attorney did not press this issue. Instead, tenants without attorneys had to coordinate another time to be present for a court hearing in order to avoid a default judgment. Ultimately, all of these 13 cases in Multnomah County were granted safe harbor, but across the state, there have been tenant defaults on these short set-overs.

Most importantly, the safe harbor provision is not a dismissal. The case is still open, appearing on tenant screening checks if they attempt to move. The first appearance is rescheduled for a date when the tenant must be present or there will be a judgment of default. The state's increased funding for legal aid services is an attempt to increase the number of tenants connected with attorneys who ensure that they will be represented at first appearance hearings to avoid a 'failure to appear.'

The assumption of the SB 278 policy is that within 60 days (90 days in Multnomah County), the landlord will have received funds from OERAP and the case can be dismissed. The tenant (or lawyer) is expected to appear at the new first appearance hearing; if the landlord has received payment, they can request the case be dismissed (or they may not appear themselves).

There is no further requirement for the landlord to accept any further case rescheduling if the OERAP payment has not yet been made by the state. It is at the landlord's discretion to decide to proceed; even if an application has been approved. If the funds have not actually been disbursed to the landlord, they may seek a judgment of eviction if the tenant is not up to date on rent. There is no additional setover time for the tenant whose application is in process or who has been approved but the payment has not been made, other than to attempt to negotiate an agreement with the landlord. There is no linkage between Oregon Judicial Division and Oregon Housing and Community Services procedures, nor a formal way to request an expedited payment to a tenant with a scheduled hearing.

This limited pause on eviction proceedings has created a new potential wave of evictions on the rescheduled first appearance. Besides the possibility of tenant default—a new hearing as a new opportunity to fail to appear—the speed at which the state has been able to disburse OERAP funds has not met the time limits of the safe harbor law. At the beginning of September 2021, according to the state OERAP dashboard, just 16% of the completed applications had been approved for funding.²⁹ Actual disbursements were even slower, with all processing times getting longer with huge increases in applications for assistance. There were over 10,000 applications from Multnomah County, but only 160 payments had been processed and accepted by landlords. County officials said that it would take until March 2022 to review all the applications and blamed the state's application system contractor for making it impossible to prioritize applicants with FED cases.³⁰ Based on the speed of application processing and payment, the applications pending at the beginning of September 2021 would have taken a *full year* to process and pay.

By the end of September 2021, Oregon Housing and Community Services made changes to their process for reviewing and approving renters' applications, accelerating application review and committing over two-thirds of the funds³¹. However, by the end of October, OHCS estimated

there were 11,200 renter households whose applications had been completed and in queue for more than sixty days, some who had applied as early as May.³² The lobbying groups representing landlords and property managers oppose extending the safe harbor period longer than sixty days; focusing instead on advocating for the state to speed up its payment processing.

THE ROCKY SHOALS IN OREGON'S SAFE HARBOR

Throughout the pandemic, Oregon extended its tenant protections for only a few months at a time. When the statewide eviction moratorium ended, the state legislature created a policy to provide a 'safe harbor' pause in eviction proceedings for tenants who sought rent assistance from the federally funded OERAP. In the abstract of policy-making, the safe harbor in SB 278 intended to protect tenants and compensate landlords. In practice, the safe harbor provision is a policy that 'works' if everything works—if tenants receive and understand the information; if they appear in court, with their proof of application; if the documents are confirmed and all parties agree that safe harbor applies. Even in this best-case scenario, preventing an eviction judgment required the state housing agency to also move quickly enough to disburse funds from emergency rent assistance to waiting landlords. Instead, our analysis of eviction cases from July through September shows several ways that tenants can be run aground on the way to safe harbor: first, if they do not receive or understand the notice of SB 278 protections, they may not appear in court and a default judgment is issued, an outcome occurring in over a quarter of cases. Tenants without representation make agreements to pay rent without applying for assistance, or to move out, even when they have the opportunity to claim harbor, in another 10% of cases. There is insufficient support for tenants in court proceedings, and even when evictions are dismissed, there is coaching by judges to landlords on how to file a new case.

Even with substantial resources available in the state for compensating landlords, tenants have to be aware, proactive, present, and assertive at all steps in a legal proceeding in which they have the least knowledge and experience of any of the parties. The problems with eviction filings that are not legally valid, tenant defaults, and negotiated agreements are problems of systemic power imbalances. The slow pace of emergency rent assistance and the failure to design a policy to accommodate delays in payment is a problem that is especially troubling at a time when there is more emergency financial assistance for tenants than during any normal time. The failure to move OERAP funds quickly to clear tenant arrears compounds the procedural barriers for tenants.

Because of the intermittently available eviction protections in July and the extended safe harbor in Multnomah County, along with some court closures due to the surging Delta virus, most of the rescheduled eviction cases will return to court in mid to late November. At that time, it will become more clear whether the timelines of eviction and OERAP are converging in a way that is supportive of tenant stability (if landlords will consent to waiting longer for funds) or if tenants

will be displaced even as they wait for rental assistance checks to be disbursed. Had the OERAP rollout gone smoothly, the safe harbor period might have been adequate. However, without a *timely* system of emergency rent assistance, an eviction ‘pause’ with a ticking clock will not support tenant stability. Expanding access to legal representation for tenants can reduce default judgments and support tenants’ ability to negotiate better stipulated agreements, even if those include being displaced by a move out agreement. However, even attorneys will not be able to prevent an eviction judgment if the tenant’s safe harbor time runs out while they await rent assistance and the landlord insists on proceeding with the FED.

Codicil on FED outcomes after the safe harbor has expired

Over 80% of safe harbor cases (approximately 325) are still pending at the end of October 2021, with scheduled hearings in November and December. Of the 74 cases that have been resolved, three-quarters of plaintiff landlords did receive payment and the cases were dismissed—as the law intended would happen. However, 19 cases (26%) ended with the tenant being evicted: 16 due to failure to appear (none of these tenants were represented by attorneys) and 3 where the landlord had not received payment and would not agree to reschedule or negotiate a settlement.

POLICY RECOMMENDATIONS AND RESEARCH IMPLICATIONS

In order to support tenant housing stability, policies for eviction diversion need to be designed to address the eviction process from its first notice through hearings and negotiations. Our research approach to analyzing Oregon’s post-moratorium eviction landscape suggests that there are serious obstacles to eviction prevention because currently they rely on tenants finding resources and asserting their rights in communication or negotiation with landlords. The following are recommendations for policy and research to reduce evictions and improve tenant stability, focusing on the implications of this research on eviction procedures following the Covid-19 moratorium period:

> Immediate changes to the safe harbor policy

Oregon Housing and Community Services and community-based organizations around the state have established fairly extensive outreach programs, including the Multnomah County staff who knock on tenants’ doors and meet them in court. These efforts have been important for increasing applications to OERAP and supporting tenants to request safe harbor protections. However, the state’s capacity to process applications and disburse funds has not kept pace with the eviction courts. The time limit on safe harbor is simply not long enough to protect tenants from eviction. As hundreds of setover dates approach in November and December, advocates are pushing the state to eliminate the time limit on ‘safe harbor,’ arguing that no one should be evicted while their application is still in the queue. In order to eliminate the risk of additional tenants being

displaced despite an approved rental assistance application, the state should eliminate all time limits on the safe harbor policy for OERAP applicants. Further, working together with legal services providers and on-site court support service providers, the state should prioritize OERAP payments for tenants with open eviction cases to prevent displacement when they return for the rescheduled court appearance.

> *Eviction records and systems*

Tenants who receive a notice of termination may not be aware of the OERAP program and how to request an eviction case set over. Without any record of the notice, service providers have no way to reach out to these tenants directly with emergency and longer-term support. It is also not possible to monitor notices to ensure that they include information about tenant rights. Tenants without information and support are likely to default because they simply do not know how to manage the termination notice. A significant change to Oregon eviction procedures would be to require eviction notices to be submitted to an administrative body, with an automatic expungement of the tenants' name and information from any records if there is no FED complaint or an FED complaint is dismissed. The first step in an eviction in Oregon is not currently visible to policymakers, tenant services providers, or researchers. Without recorded notices, we cannot accurately account for the scale of the eviction problem or know how many tenants are displaced at the eviction notice stage. Having all notices submitted and recorded would allow for outreach to tenants to provide support services, inform tenants of their rights, and help reduce displacement on invalid notices when tenants can be reached with information. It is also important that these records of eviction notice do not become a barrier for renters' future housing access; they must be expunged from any public record when there is no judgment to evict in an FED summons. There must also be regulation of records access by private companies that provide rental application screening services to avoid further tenant blacklisting.³³

> *Civil right to counsel*

Starting the legal record of pending evictions at the notice stage must work in combination with a right to counsel. Tenants need attorneys in eviction cases to mitigate the power imbalances in the landlord-tenant relationship that are exacerbated in court. Tenants may not know about or qualify for legal aid services or even understand what an attorney could do to support them in an FED case. An effective civil right to counsel would provide legal counsel, at no expense, for eviction cases and would assign that attorney as early as possible to avoid tenant default.³⁴ As Oregon's legal services providers have greatly increased their capacity starting in the fall of 2021, we expect to see an impact on tenant housing stability.

> *Rent assistance and systems connections*

The large infusion of federal funds has allowed Oregon to have a large-scale emergency rent assistance program for the first time. In the future, the state should maintain the program at a

scale commensurate with more routine needs. Clearly, Oregon Housing and Community Services needs the resources to build its capacity to allocate and disburse funding in order for emergency rent assistance programs to be effective.

Having a funding source is not sufficient as an eviction diversion program. Under the current Oregon model, the tenant has to be aware of the OERAP program, complete the application, and provide proof to the landlord and the court, on a fast timeline in an unfamiliar and stressful legal process. The eviction diversion program implemented by the City of Philadelphia during the pandemic creates a process where there is more onus on the landlord—the party with more power—to actively participate in seeking a housing stability outcome. Philadelphia landlords who want to file a nonpayment eviction case must first apply for rent assistance and participate in a diversion program that includes a 45-day pause and provides the tenant working with a housing counselor who assists them in any mediation.³⁵ Philadelphia has also recently passed a tenant right to counsel, adding to the mechanisms of protection for tenants. This multifaceted diversion approach places the landlord in a position of responsibility commensurate to the position of power to initiate an eviction. This is important for tenants, whose ‘time poverty’ includes a lack of capacity for seeking services in disparate agencies and organizations, filling out lengthy assistance applications that require extensive documentation and finding resources for submitting applications online.

>Continuing research that centers tenant experience

Because landlord-tenant law and court practices vary widely by state—and even vary by counties within states, and between judges in counties—research and policy development have to be specific to context. Building a picture of the eviction proceedings and policy levers is possible with a multi-methods and inter-disciplinary partnership that includes direct observation of documentation and procedures. Research that centers on tenants as the least advantaged in the court system produces analysis that considers how communication, knowledge, and power shape the outcomes of eviction proceedings. Tracking landlords who serve tenants with repeated notices of termination could provide insight to the power dynamics at play and alert the jurisdiction of landlord harassment. Tracking the rates of notices of termination within a building, or management company, or by small landlords (less than 4 units) could also provide important insight. There should be more research that includes the perspectives and voices of tenants who have experienced eviction and displacement to understand what kinds of interventions and supports would be effective to make renting more secure and stable.

¹ D. Aiello, L.K. Bates, T. Graziani, C. Herring, M. Maharawal, E. McElroy, P. Phan, and G. Purser. 2018. "Eviction Lab Misses the Mark." Shelterforce. Aug. 22, 2018. Retrieved from <https://shelterforce.org/2018/08/22/eviction-lab-misses-the-mark/>

² Idiosyncratically, housing policy conversations in Oregon tend to refer to the legislature bill numbers as shorthand; making reference to "SB 608" or "SB 278" rather than the concept title of these laws.

³ Oregon has a partial 'just cause' eviction standard but tenants on month-to-month leases can be evicted without stated cause in the first year of tenancy.

⁴ In comparison, there were 3,674 FED complaints filed during January through March 2020.

⁵ The total of cases that ended in default judgment against the tenant for failure to appear; a trial judgment for the landlord; or the tenants agreeing to move out.

⁶ It is unknown how many tenants were evicted at notice, vacating their units before an FED summons was issued.

⁷ Bent Flyvbjerg (2004) Phronetic planning research: theoretical and methodological reflections, *Planning Theory & Practice*, 5:3, 283-306, DOI: 10.1080/1464935042000250195

⁸ Kyle Nelson, Philip Garboden, Brian J. McCabe & Eva Rosen. (2021) Evictions: The Comparative Analysis Problem, *Housing Policy Debate*, DOI:10.1080/10511482.2020.1867883

⁹ For a discussion of the housing data landscape in Oregon, see Bates (2019), in Libby Porter, Desiree Fields, Ani Landau-Ward, Dallas Rogers, Jathan Sadowski, Sophia Maalsen, Rob Kitchin, Oliver Dawkins, Gareth Young & Lisa K Bates (2019) Planning, Land and Housing in the Digital Data Revolution/The Politics of Digital Transformations of Housing/Digital Innovations, PropTech and Housing – the View from Melbourne/Digital Housing and Renters: Disrupting the Australian Rental Bond System and Tenant Advocacy/Prospects for an Intelligent Planning System/What are the Prospects for a Politically Intelligent Planning System?, *Planning Theory & Practice*, 20:4, 575-603, DOI: [10.1080/14649357.2019.1651997](https://doi.org/10.1080/14649357.2019.1651997)

¹⁰ In Oregon, these organizations include Multifamily NW (representing mainly larger multifamily rental); the Oregon Rental Housing Association and the Rental Housing Alliance Oregon (small landlords and so-called 'mom and pops'); and several regional organizations; all of these provide member services including up-to-date information about landlord-tenant law changes and standardized forms for communicating with tenants.

¹¹ Meirav Furth-Matzkin, On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market, *Journal of Legal Analysis*, Volume 9, Issue 1, Spring 2017, Pages 1–49, <https://doi.org/10.1093/jla/lax002>

¹² Lisa K. Bates, 2020. "Stability, Equity & Dignity: Reporting and Reflecting on Oregon Tenant Experiences During the Covid-19 Pandemic." Report of the Portland State University Homelessness Research & Action Collaborative.

¹³ Holl, M., van den Dries, L., & Wolf, J. R. (2016). Interventions to prevent tenant evictions: a systematic review. *Health & social care in the community*, 24(5), 532–546. <https://doi.org/10.1111/hsc.12257>

¹⁴ Rasheedah Phillips (2021). "Reconfiguring space, time and justice for liberatory housing futures." Philadelphia Association of CDCs. <https://www.pacdcmagazine.org/possibilities/rasheedahphillips>

¹⁵ Rebecca Hare, Mitigating Power Imbalance in Eviction Mediation: A Model for Minnesota, 38(1) LAW & INEQ. (2020). Available at: <https://scholarship.law.umn.edu/lawineq/vol38/iss1/6>

¹⁶ Claire Baylis & Robyn Carroll, The Nature and Importance of Mechanisms for Addressing Power Differences in Statutory Mediation, 14 BOND L. REV. 285, 291–93 (2002);

¹⁷ Garboden, P. M., & Rosen, E. (2019). Serial filing: How landlords use the threat of eviction. *City & Community*, 18(2), 638-661

¹⁸ This analysis does not include evictions filed in a ‘justice court’ presided over by a Justice of the Peace. Oregon state law allows FEDs to be handled by circuit court (Part of OJD) or by justice court; county boards of commissioners can determine which court will receive eviction cases. Most counties using justice court are rural and have small populations, but the most populous and therefore most problematic for understanding how many evictions take place in Oregon is Clackamas County, which is part of the Portland metropolitan area. In these counties, only appeals of FED judgments appear in the OJD database.

¹⁹ We are not including eviction judgements after trial because during the months we are focused on, nonpayment cases very rarely proceeded to trial— just 1.6% of all nonpayment cases in the state had a trial from July through October 2021.

²⁰ The cases that were not observed were nearly all tenant default (failure to appear) or dismissed cases (which can occur when the landlord does not appear or the dismissal is requested). These outcomes occur very quickly, and are most likely to be missed if the observer is late to the session or has to step away and there is not a second team member available. Because these two outcomes are the least legible to the observation process (i.e. there is very limited discussion on the court record), we believe that missing these cases does not have a substantial impact on understanding what is occurring in the eviction process, but we are endeavoring to increase coverage in the future.

²¹ The stipulated agreement typically has terms with which the tenant must comply in order to have the eviction case dismissed. The agreement can be made for up to six months of compliance, extending the period of time that a case remains pending. If the tenant does not meet the terms of the agreement, there will be a noncompliance hearing and potential eviction judgment; for a compliant tenant, the landlord has to dismiss the case to end the eviction.

²² As of the end of October 2021, only 74 cases statewide have had this set-over first appearance. The majority of evictions in Oregon occur in Portland, the state’s biggest city, which is under the extended 90 day safe harbor period; these cases will resume in mid November.

²³ A review of the page on the Internet wayback machine and examination of the http header show the website was updated the first week of November; it now has a prominent and highlighted area linking to this notification language in English, Spanish, Russian, Chinese, Vietnamese, and Korean.

²⁴ <https://www.wweek.com/news/2021/10/20/as-the-eviction-freeze-ends-whether-or-not-someone-is-kicked-to-the-street-in-multnomah-county-is-up-to-four-people/>

²⁵ We do not yet have an accurate count of cases with an agent representative.

²⁶ FED Instructions for tenants is found at <https://www.courts.oregon.gov/forms/Documents/FED-Instr-Ten.pdf>

²⁷ The research team does not use the term ‘self-evict’ to describe a tenant’s moving in response to an eviction notice but without a court judgment. The eviction notice is a required step in the legal eviction process, and responding to it by moving should be considered an eviction that remains illegible due to the lack of administrative data collection at the notice stage.

²⁸ The research team will continue to track these cases for non-compliance outcomes.

²⁹ OERAP dashboard and timeline numbers calculated by the author based on the publicly available weekly ERA dashboard created by Oregon Housing and Community Services

<https://public.tableau.com/app/profile/oregon.housing.and.community.services/viz/OregonERAWeeklyReportDashboard/ExternalPaymentDashboard>

³⁰ <https://www.streetroots.org/news/2021/09/01/rent-assistance-still-delayed>

³¹ <https://www.streetroots.org/news/2021/10/20/federal-rent-relief-may-be-short-lived>

³² <https://www.wweek.com/news/2021/11/03/oregon-property-managers-tell-state-lawmakers-pay-the-rent/>

³³ For a more comprehensive discussion of approaches to sealing and expunging records, see Caramello, E., & Mahlberg, N. (2017). Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches. *Clearinghouse Rev.*, 1.

³⁴ The American Bar Association's principles for a civil right to counsel are found at:

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_10_5_revised_final_aug_2010.pdf; the [National Coalition for a Civil Right to Counsel](#) has additional information and writing on how a civil right to counsel could be implemented.

³⁵ The program is described more fully here: <https://eviction-diversion.phila.gov/#/About>