

Half the Battle is Just Showing Up:

Non-Answers and Default Judgments in Non-Payment Eviction Cases Across New York State, 2016-2022

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1. Introduction

Evictions can have serious negative consequences for tenants who experience them, with potential impacts on earnings, access to credit, and risk of homelessness (Collinson et. al, 2022). Despite these consequences, many tenants who receive an eviction filing either fail to formally answer the filing, or do so and then fail to appear in court.

When a tenant fails to answer or appear, a landlord can request a default judgment, which permits an eviction unless tenants are able to successfully challenge the judgment. Further, tenants who don't appear in court lose the opportunity to access services that are offered there and also lose the chance to assert their rights and raise counter claims. While policymakers at the local, state, and federal levels have recently devoted new attention to preventing evictions, those efforts have mostly focused on

expanding resources available to tenants during eviction proceedings in court, such as access to counsel laws. There has been surprisingly little policy attention on how to improve tenant answer and appearance rates in order to avoid default judgments and benefit from in-court services.

The goal of this brief is to describe the prevalence of tenant non-answers and default judgments, identify trends over time between 2016 and 2022, and explore variation in these rates in jurisdictions across New York State. We focus on non-payment cases (those filed for non-payment of rent) rather than holdover cases (those filed for any other reason, such as lease violations), as the vast majority of eviction filings in New York State are non-payment cases.

Our data reveal that non-answering and default judgments are quite prevalent in New York State. Eviction case data from



the New York State Office of Court Administration indicate that across covered jurisdictions, the majority (54 percent) of non-payment eviction filings go unanswered. Of these unanswered cases, approximately 20 percent (or 11 percent of all non-payment filings) result in a default judgment against the tenant. Among the cases in which the tenant initially answers, 11 percent (or 5 percent of all non-payment filings) result in a default judgment because the tenant later fails to appear in court. And importantly, these default judgments lead to a significant share of evictions: we estimate that a full 40 percent of issued eviction warrants across the state are the result of a default judgment.

We find that answer rates are fairly stable over time, with pre-pandemic answer rates hovering around 50 percent in New York City and 60 percent among other jurisdictions in New York State. (These shares flip in the pandemic period, with higher answer rates in New York City than in other jurisdictions.) However, these averages conceal considerable variation. Many cities have very low rates of unanswered cases, while another sizable set of cities have high rates of unanswered cases. We also find suggestive evidence that the universal access to counsel (UAC) program in New York City may reduce both non-answer rates and the likelihood that a non-answer results in a default judgment.

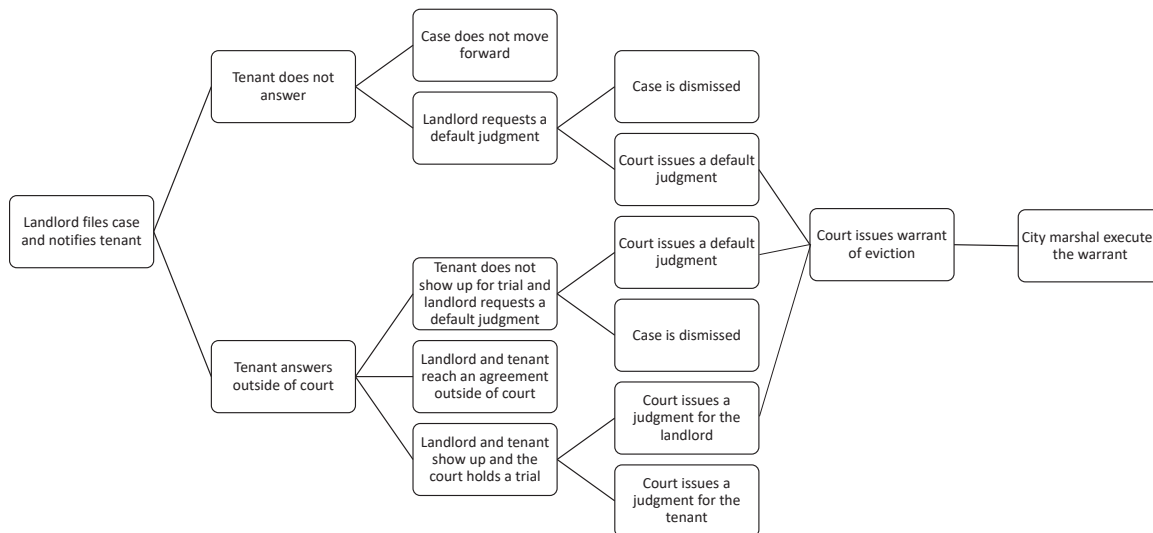
2. Background

There are several different ways an eviction case can result in a default judgment against a tenant in New York State. This section provides a brief overview of the eviction process in New York State and the various steps at which a tenant may face a default judgment.

Before a landlord can file a non-payment eviction case in New York State, they must first send the tenant notice by certified mail informing them that the rent is due, the months for which rent is owed, and the amount. The tenant then has 14 days to pay the rent before the landlord can begin a non-payment eviction case. The landlord commences the non-payment case by filing a petition with the court, after which the tenant has 10 days to answer the petition. An answer may be oral or in writing and contains the tenant's defenses. Depending on the jurisdiction, tenants may be required to answer either in advance of or at their hearing.

If the tenant fails to answer the petition, the landlord can request a default judgment against the tenant. The court will not issue a default judgment without such a request. In many cases, there are no additional proceedings reported in the court data after the initial filing, either because the landlord and tenant resolve the issue, the landlord gives up on pursuing the case, or the tenant leaves the unit before a formal eviction proceeds. Landlords can also request default judgments if a tenant answers but then fails to show up in court. In non-payment cases, courts do not hold hearings before entering default judgments.

Figure 1: Overview of Eviction Process



A default judgment is not always the last word in an eviction case. A court can vacate a default judgment if a tenant can provide both an excuse for failing to answer and one or more meritorious defenses. Common reasons that tenants present for not answering a petition or appearing in court include failure to receive the court summons, illness, misinformation from counsel or a court employee, incarceration, or inability to miss work. Meritorious defenses in the eviction case may include full or partial payment of rent, failure of the landlords to make repairs or provide services such as heat or water, or harassment by the landlord. A tenant can also seek to vacate a default judgment by showing that the default was obtained through fraud or deception. If a court accepts the tenant's reason for not answering, it will vacate the judgment and allow the tenant to present defenses at a later hearing.

Research on default judgments is limited. There is some evidence that Black and Hispanic tenants are more likely to receive default judgments (Dowdall et al. 2021). One study in Philadelphia also finds that the distance a tenant must travel to court is related to the likelihood of default: longer commute times to court are associated with an increased likelihood of default judgment (Hoffman and Strezhnev, 2022).

Prior research also finds that increased access to legal services is associated with lower default rates (Seron et al, 2001). In New York City, the rate at which tenants answered eviction filings began to rise as the city increased funding for legal services, even before the implementation of the city's Universal Access to Counsel program (Ellen et al., 2020). Although tenants who never appear in court are not able to access legal representation, the availability of legal services could affect tenants' decisions to answer and to appear in court in the first place. The availability of such legal services could also affect whether and how landlords choose to negotiate with tenants to resolve cases outside of housing court.

3. Data and Methods

Data for this analysis come from the New York State Office of Court Administration (OCA). The data include address-level case information including the filing date, case classification (non-payment or holdover), dollar amount sought in non-payment cases, answer date, and the type and date of any judgments. The data also include any follow-on actions including whether a judgment was vacated or re-issued or whether a warrant of execution is issued. The data cover cases filed between 2016 and the first half of 2022 in all city courts in New York State as well as the county courts of Nassau and Suffolk counties (Long Island). Cases against tenants living in smaller towns and rural areas are filed in county courts that are not captured in the data. Approximately 83 percent of renter households in New York State and 53 percent of renter households outside of New York City live in the 64 jurisdictions covered by the OCA data. The renter populations, housing stocks and economic conditions likely vary across jurisdictions, as can local housing court policies and practices, particularly important for our analysis.

To correctly identify the jurisdictions where cases are filed, we standardize and geocode the eviction case addresses.¹ We are then able to plot answer rates over time and compare answer rates and default judgments across New York State jurisdictions.

1. We first use the “postmastr” package in R to parse the elements of each address and standardize the address format. We then geocode the addresses using the Census Bureau geocoder. This returns a cleaned version of the address as well as additional geographic information including the city and census tract.

4. Results

Figure 2 shows quarterly non-payment eviction filing trends between 2016 and 2022 in New York City and other New York State jurisdictions. Both New York City and other jurisdictions started to see a decline in total eviction filings in 2019 (even before the pandemic), perhaps due to the passage of the Housing Stability and Tenant Protection Act, which strengthened tenant protections across the state, including additional steps that slow eviction cases.² The number of filings then dropped even more substantially in 2020 as pandemic-era moratoria and protections went into effect. Total filings remained low in 2020 and early 2021 but have since started to increase closer to pre-pandemic levels again, particularly outside New York City.

2. For example, the HSTPA increased the notice period for a written rent demand from three days to fourteen days (and eliminated oral rent demands as an alternative), and extended a tenant’s window for filing an answer in a non-payment proceeding from five days to ten days.

Figure 2. Total Non-Payment Filings by Quarter

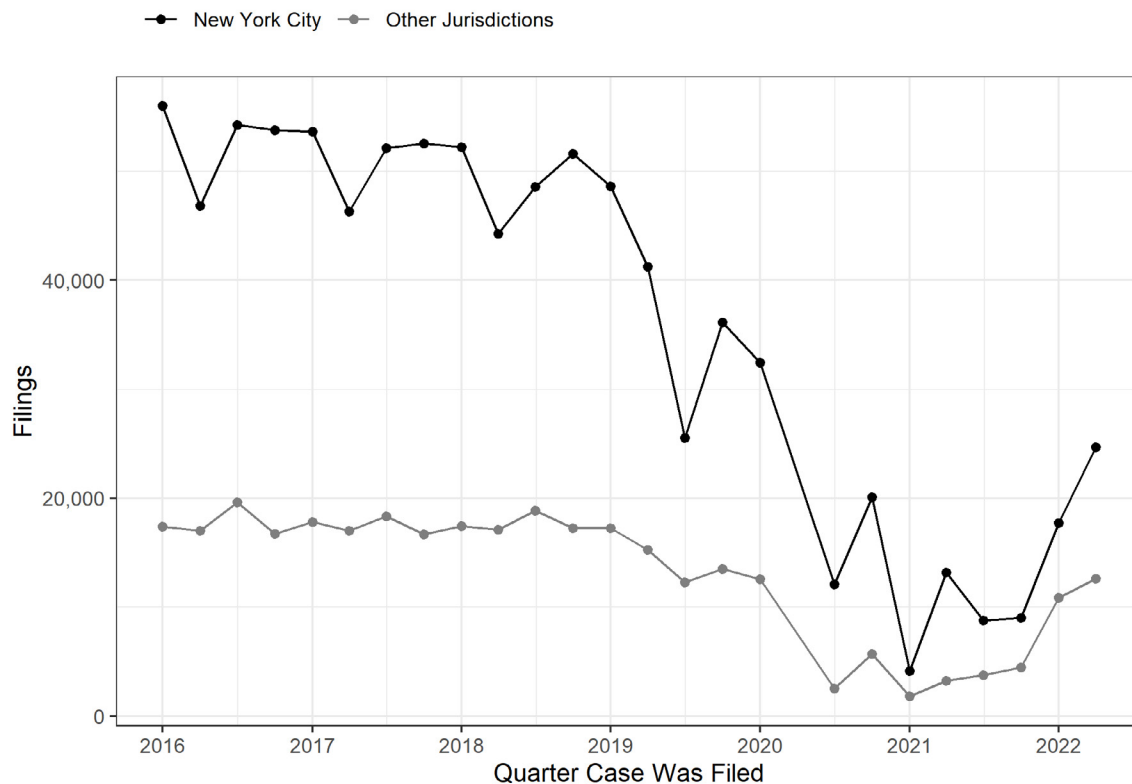


Figure 2 shows the total number of filings without accounting for the number of rental units within the jurisdiction. Filing rates (or the number of filings per 100 rental units) in the New York State jurisdictions more closely resemble New York City:

the average filing rate for New York City over the study period was 6.5 filings per 100 units while the average rate for the other jurisdictions was 5.9 filings per 100 units (though this rate ranged by jurisdiction from 0.8 to 27.3).

Figure 3 shows the shares of answered and unanswered cases that result in default judgments for all New York State jurisdictions across our full time period. Only 46 percent of filings are answered by the tenant. Of these, 10.8 percent (5 percent of all

filings) result in a default judgment. Among cases that are unanswered, a much higher share—20.3 percent (11 percent of all cases)—receive a default judgment. In total, 16 percent of all eviction filings result in a default judgment.

Figure 3. Share of Answered and Unanswered Cases that Result in Default - New York State, 2016-2022

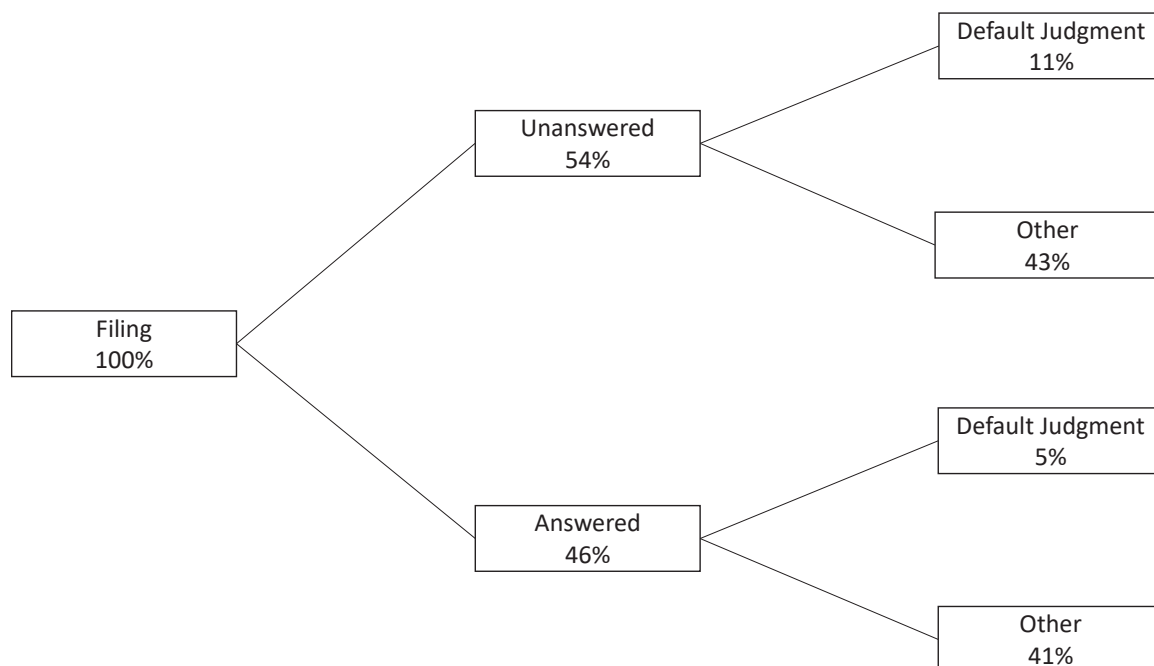
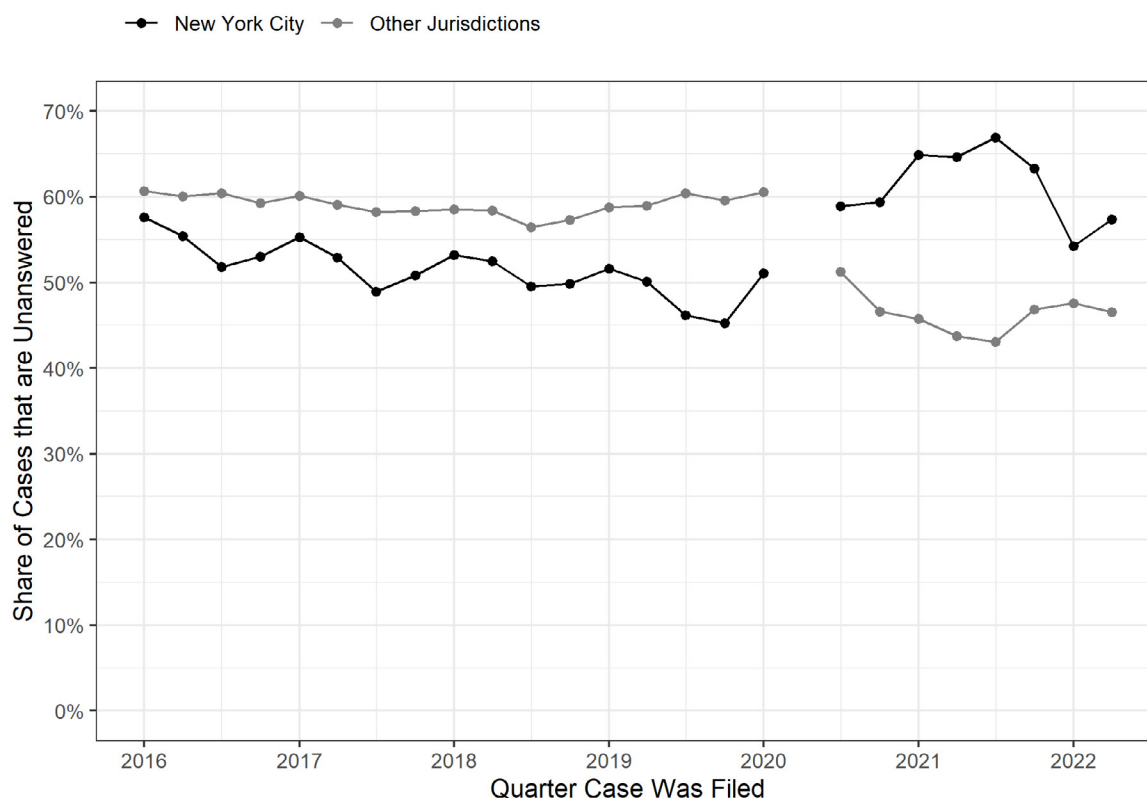


Figure 4 shows quarterly trends in the share of non-payment cases where tenants fail to answer, by quarter the case was filed. Non-answer rates have remained fairly stable over time, with non-answer rates hovering around 50 percent in the pre-pandemic years (2016-2019) in New York City and around 60 percent in other New York State jurisdictions. Since the start of the pandemic, however, the trends have diverged. Early in the

pandemic, non-answer rates increased in New York City, then decreased in the most recent year, while other jurisdictions saw the reverse. (Note that we omit the second quarter of 2020, because there were almost no filings in that quarter.) The fact that these patterns differ may suggest that local policies or practices in response to the pandemic mattered for the very first stage of eviction actions, responding to the filings.

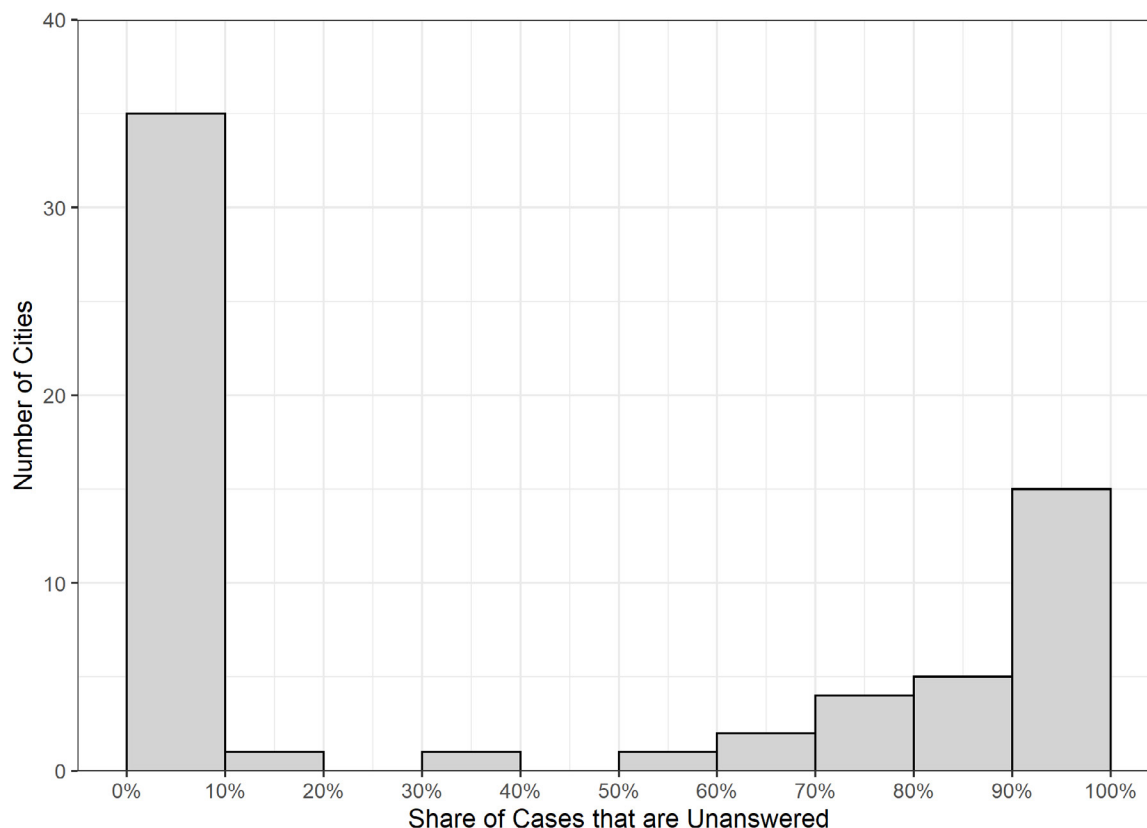
Figure 4. Share of All Non-Payment Cases Where Tenant Fails to Answer



However, these averages conceal quite a bit of variation. Indeed, the distribution of non-answer rates across jurisdictions is almost bimodal (as shown in Figure 5), with most jurisdictions either seeing very low non-answer rates (meaning most tenants answer) or very high non-answer rates (meaning most tenants fail to answer). While 35 of the 64

jurisdictions have non-answer rates between 0 and 10 percent, 20 jurisdictions have non-answer rates over 80 percent. Thus, the mean non-answer rate (as plotted above in Figure 4) is approximately 50 to 60 percent even though relatively few jurisdictions have non-answer rates in this range.

Figure 5. Share of All Non-Payment Cases Where Tenant Fails to Answer, by City



We observed no clear relationship between demographic and market conditions of jurisdictions and their answer rates. Smaller jurisdictions had slightly higher answer rates on average, though size seems to explain little of the observed variation. Answer rates generally range from the low single digits to 100 percent within each size quartile.

Figures 6 and 7 show the quarterly trends in the shares of unanswered and answered cases that result in default judgements against the tenant, respectively. Cases are plotted by the quarter in which the case was filed—thus, the drop in the first quarter of 2020 is largely explained by cases that were filed before the onset of the pandemic moratoria but which did not receive default judgements due to the moratoria going into place before a judgment was entered. As shown in Figure 6, the share

of unanswered cases that resulted in a default judgment in the pre-pandemic period (2016-2019) was somewhat higher in New York City (ranging from 21 to 30 percent) than in other New York State jurisdictions (ranging from 15 to 19 percent). Between mid-2020 and mid-2022, the share of unanswered cases that result in default remained well below pre-pandemic levels in New York City, while the share in the other jurisdictions fell but then rose above pre-pandemic levels by the end of 2021. The cause of this recent increase is unclear.

The share of answered cases that result in a default judgment hovered between 10 and 15 percent in both New York City and New York State jurisdictions throughout the pre-pandemic period. As in the case of unanswered cases, the default rate for answered cases plummeted in New York City

in 2020 and has remained low ever since, which may be explained by more tenants receiving legal advice as a result of the recent citywide expansion of access to counsel. By contrast, we see no decline

in the share of answered cases resulting in a default judgment in the other New York State jurisdictions. Indeed, the share rose above pre-pandemic levels in the second and third quarters of 2021.

Figure 6. Share of Unanswered Cases that Result in Default Judgment

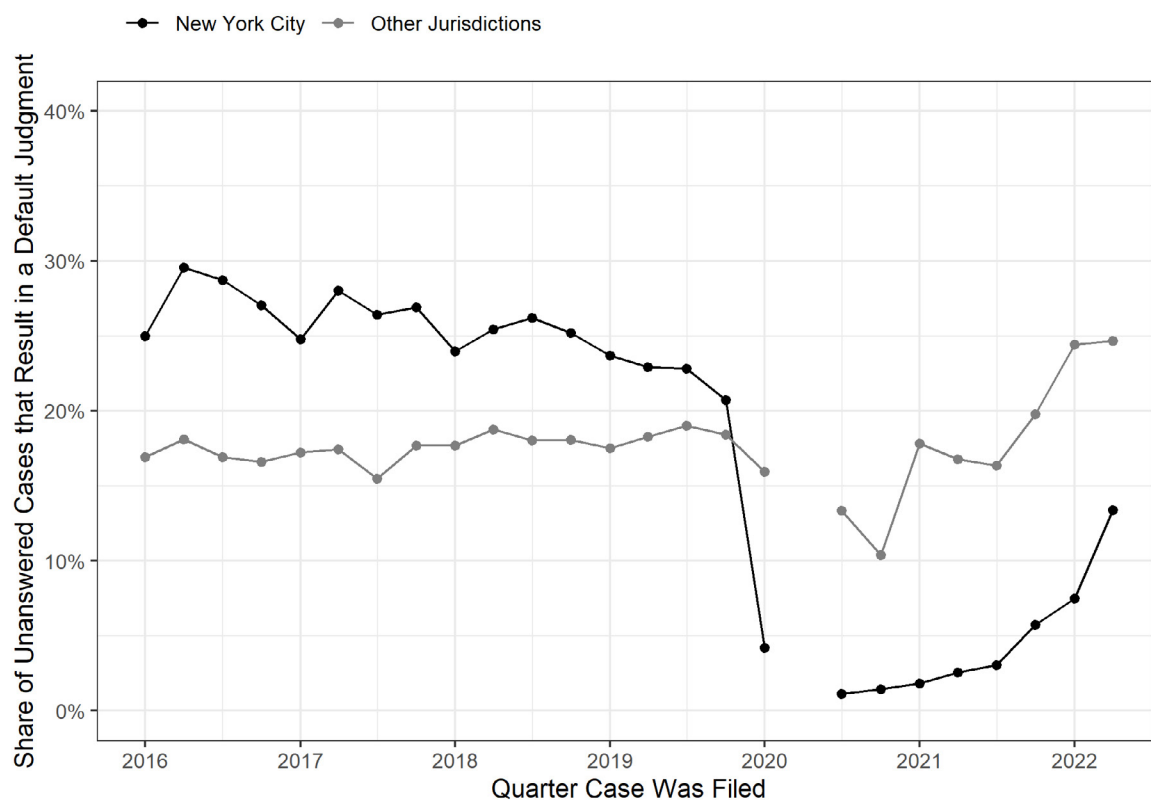
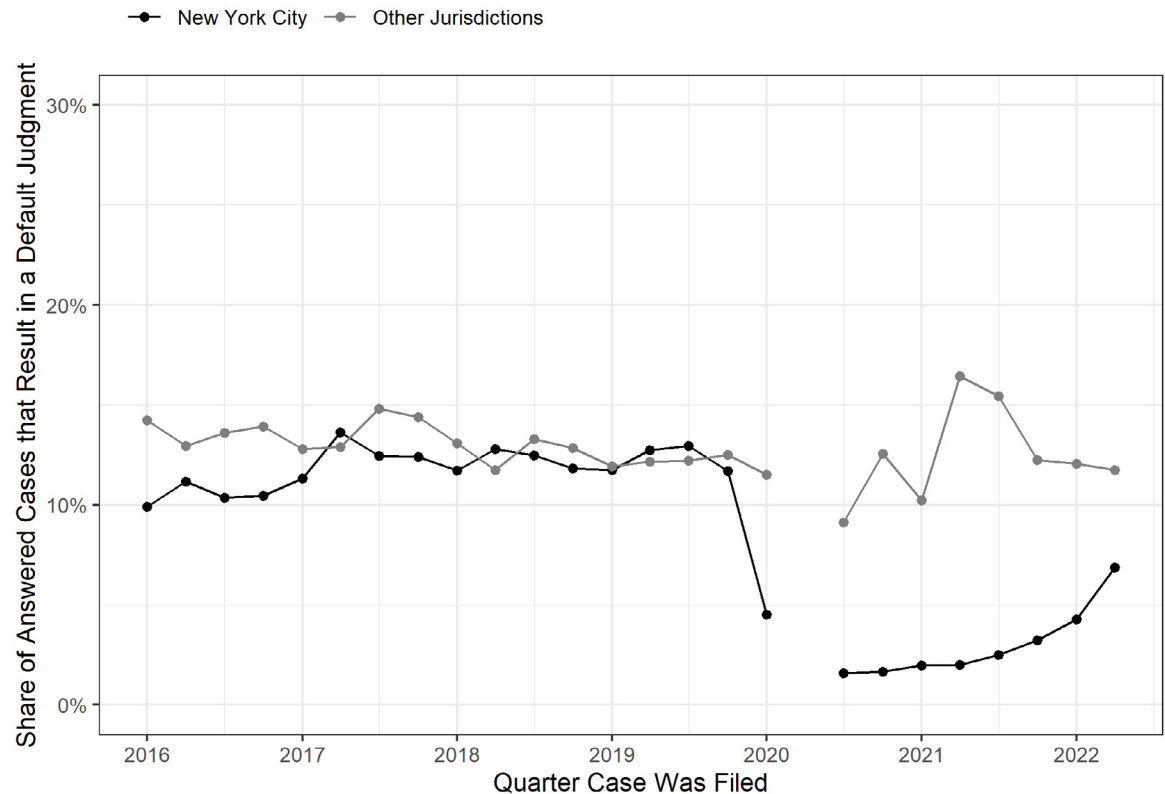


Figure 7. Share of Answered Cases that Result in a Default Judgment



Here too there are few clear patterns in the demographic or economic characteristics of jurisdiction by default rates.

Universal Access to Counsel

In 2017, New York City became the first jurisdiction in the country to enact a law guaranteeing access to counsel for all low-income tenants facing eviction. The program was rolled out in stages, by ZIP Code. Additional ZIP Codes were added each year, through 2019 (Ellen et al., 2020). In 2020, the City expanded the program to all ZIP Codes. Appendix Table A1 shows case-level regression results for New York City of a) failure to answer, b) whether an unanswered case results in a default judgment, and c) whether an answered case results in a default judgment. The regressions control for a variety of case and census tract characteristics, including whether the ZIP Code was covered by

UAC by the end of 2019, and if so, which cohort. This helps to control for pre-existing differences between the neighborhoods covered in each of the sequential cohorts. We find that in ZIP Codes where access to counsel (UAC) was in effect, tenants were more likely to answer filings, suggesting a greater engagement of tenants in the formal process prior to receiving legal services, perhaps in anticipation of receiving assistance once in court. In addition, cases in which tenants did not answer in ZIP Codes with access to counsel in place were less likely to receive a default, perhaps suggesting changes in the *landlord's* behavior in anticipation of tenants' receiving legal assistance. This could arise from landlords' increased willingness to settle informally or decreased interest in pursuing further in court. It is also possible that lawyers help tenants who initially failed to answer to explain why they failed to do so and challenge



defaults. Somewhat surprisingly, the presence of UAC is unrelated to the likelihood of default judgments in answered cases. However, access to counsel in court may affect other outcomes of the case, such as the likelihood of an executed eviction and the size of the monetary judgment (Ellen et al, 2020; Cassidy and Currie, 2022).

5. Discussion

Almost half of tenants who receive an eviction filing fail to answer or show up in housing court. Yet most eviction prevention policies are focused at the housing court stage and thus miss a substantial portion of tenants at risk of eviction, many of whom receive default judgments with no appearance in court. This suggests a need to explore and evaluate the efficacy of “upstream” interventions that connect tenants with services and information ahead of court appearances as well as alternative processes for eviction proceedings that might increase tenant participation, such as virtual court appearances.

New York City, the state of Texas, the city of Grand Rapids, the city of Philadelphia, and various other jurisdictions have explored the use of upstream eviction diversion programs that reach tenants before the court stage and provide services such as rental assistance, housing counseling, and legal assistance. Researchers at the Urban Institute interviewed the leaders of 47 eviction diversion programs implemented before and during the pandemic and noted that certain outreach strategies were particularly effective for reaching tenants at risk of eviction, including making radio public service announcements, posting notices at vaccination sites and local businesses, partnering with community-based organizations for referrals, and distributing outreach materials in languages other than English (Treskon et al., 2021).

In cases where the eviction does proceed to court, allowing tenants to appear virtually may also be a way to decrease default judgment rates. Over the course of the COVID-19 pandemic, housing courts in New York State shifted temporarily to virtual proceedings in eviction cases. Future research into whether the use of virtual proceedings increased the rate at which tenants respond in eviction cases may shed light on the degree to which the need to travel to court, and the particular difficulties of doing so for low-income tenants, drive rates of non appearance, and hence, default judgments. If, on the other hand, virtual proceedings do not substantially affect default judgment rates, those findings might suggest that other factors—such as a lack of clarity in communications from courts—compromise tenants’ answer rates.

Finally, our finding of an association between the roll-out of New York City’s Universal Access to Counsel program and reductions in both non-answer rates and default judgments (conditional on not answering) suggests that the availability of legal resources once in court may increase tenants’ answer rates and that the potential for representation may change landlords’ calculus on whether to negotiate with tenants. In other words, the existence of UAC via housing court may divert some cases to informal settlements.

Altogether, reducing evictions will require focusing more policy and research attention at understanding what drives and can increase answering rates. State and local policymakers should experiment with, and researchers should study, strategies that encourage and enable tenants to come to court as well as programs and resources that can reach tenants where they are. Future work will more fully explore the local policy and legal contexts that contribute to the variation in answer rates and default judgments as well as the efficacy of policy measures for potentially increasing answer rates and improving the ability of tenants to appear in court.

Appendix

Table A1. Case-Level Regression Results—New York City

	Unanswered		Default Judgment, Unanswered		Default Judgment, Answered	
Part of UAC1a Cohort	-0.008		0.043	***	-0.005	
Part of UAC1b Cohort	-0.005		0.023	***	-0.003	
Part of UAC2 Cohort	-0.004		0.021	***	-0.003	
Part of a UAC Cohort and Filed after UAC in Effect	-0.022	***	-0.044	***	0.002	
Intercept	0.600	***	0.227	***	0.147	***
N	685,129		350,440		334,668	
R Squared	0.026		0.051		0.010	
Additional controls included but coefficients not displayed: Amount sought, dummy for missing amount sought, Public Housing dummy, Census tract characteristics (poverty rate, share Black, share Hispanic, share foreign born, share with college education), time and quarter dummies (filing between March 16, 2020 and April 1, 2021; filing after April 1, 2021; calendar quarters), building size dummies (5-10 unit building, 11-50 unit building, 50+ unit building)						

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The Housing Crisis Research Collaborative aims to address the longstanding inequities in access to safe, stable, and affordable rental housing that have been laid bare by the COVID-19 pandemic. We provide policymakers at all levels of government with the data and analysis they need to design, implement, and evaluate more equitable and effective rental housing and community development responses to pandemic and the ongoing rental housing affordability crisis. For more visit: housingcrisisresearch.org

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