Technical Assistance Question of the Month: Eviction or Subsidy Termination Due to Damage to Unit Caused by Abuser

Q. Can a survivor be evicted or terminated from a federal housing subsidy program as a result of the damage that an abuser caused to her unit?

A. A domestic violence survivor may be threatened with an eviction or subsidy termination when her abuser causes damage to a federally subsidized housing unit. Advocates can make a number of strong arguments in favor of protecting the rights of survivors to maintain their federally subsidized housing.

Argument 1: The damage is a result of the abuser's acts of violence and, therefore, the survivor's assistance cannot be terminated under the Violence Against Women Act (VAWA). VAWA provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the victim's tenancy or rental assistance. In other words, a tenant cannot be evicted for reasons related to the violence committed against her. When an abuser causes physical destruction to the property, advocates should argue that the damage is directly related to the abuse and, therefore, no negative action may be taken against the survivor as a result. It is important to show a correlation between the property damage and the domestic violence because the law only protects victims when the damage is related to the domestic violence. In the case where the property damage was a direct result of a physical altercation between the abuser and survivor, advocates may have an easier time relating the property damage to the acts of violence. In other circumstances, advocates can argue there is a correlation by providing a statement from a domestic violence expert explaining the risk of harm the survivor would have faced if she reported the abuser's activity, or a statement from the survivor documenting the threats of retaliation she experienced when she tried to stop the abuser from damaging the property.

Argument 2: The damage is a result of criminal activity and, therefore, the survivor's assistance cannot be terminated under VAWA: VAWA explicitly prohibits survivors of domestic violence from being evicted or having their rental subsidies terminated as a result of criminal activity directly relating to the domestic violence. If the survivor is being evicted or her subsidy is being terminated essentially because of her abuser's criminal acts of vandalism, then VAWA could provide a strong defense. Applying a similar analysis as above, any damages that incurred as a result of the domestic violence would not be cause for eviction or termination.

Argument 3: Housing providers cannot hold survivors to a more demanding standard than other tenants. Under VAWA, housing providers cannot subject survivors to a more demanding standard than other tenants when determining whether to evict or terminate assistance. If, for example, there is information that other tenants have not been billed for similar damages, then there could be an argument that the housing provider is subjecting the survivor to a higher standard.

Argument 4: Fair housing laws prohibit an eviction/termination based on property damage resulting from domestic violence. The Fair Housing Act (FHA) does not explicitly prohibit housing providers from evicting tenants based on their status as survivors of domestic violence. However, since the majority of survivors are women, survivors may be able to use fair housing laws under a gender discrimination theory to challenge evictions or subsidy terminations that are related to acts of domestic violence committed against them. In 2011, HUD published a memorandum

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concerning the Fair Housing Act and domestic violence in which the agency suggested that evicting survivors for property damage caused by abusers could be illegal. Further, state and local fair housing laws may provide broader and more comprehensive coverage than the FHA and even include domestic violence survivors as a protected class.

Advocates may bring an FHA claim or defense under two major theories. First, a disparate treatment claim arises when a housing provider treats similarly situated men and women differently. An example would be a situation in which a landlord evicts a female tenant after she is involved in a loud argument with a cotenant, but does not evict a male tenant who has been involved in similar noisy disturbances. To succeed on a disparate treatment claim, a plaintiff must prove that the housing provider had a discriminatory intent or motive. This intent can be inferred from the fact that the housing provider treated male tenants differently from similarly situated female tenants. In *Meister v. Kansas City, Kansas Housing Authority,* 2011 WL 765887, slip op. (D. Kan. Feb. 25, 2011), the survivor alleged disparate treatment under the FHA when the housing authority terminated plaintiff's housing choice voucher because of damage to her unit, which the plaintiff argued was a result of domestic violence. A federal court ruled that the plaintiff survivor could proceed with her FHA claim for sex discrimination to challenge the Housing Authority's termination of her voucher and denied the housing authority's motion for summary judgment.

In addition, advocates may employ a disparate impact theory when challenging an eviction or voucher termination that resulted from an act related to domestic violence. Advocates can argue that housing policies that have a negative impact on domestic violence survivors in turn have a disparate impact on women. For example, where an apartment building has a policy that allows for eviction in the face of criminal activity, a survivor might bring a disparate impact claim or defense if survivors have been evicted as a result of domestic violence committed against them.

Resource

Memo from HUD, Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the VAWA (Feb. 9, 2011). http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf

Argument 5: The abuser is an intruder, not a guest, and, therefore, the survivor is not responsible for the property damage and cannot be evicted or terminated because of it. Substantial property damage may be grounds for an eviction or subsidy termination, including when the damage is caused by a guest. Guests are typically defined as a person staying in the unit with the tenant's consent. Advocates should argue that abusers are not guests where the victim did not give consent to enter the unit. Moreover, even if the abuser was a guest at the time of entry, the abuser ceases to be a guest the moment the violence begins. Advocates can further contend that tenants are not responsible for the damage done to their property by illegal trespassers. In addition, advocates should check the administrative rules for their jurisdiction to see if the PHA has a specific rule that states crime victims cannot have their voucher terminated when there is damage done to their home by an intruder. ■

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