

# HOUSING JUSTICE

National Housing Law Project

Newsletter March 2009

## Sexual Harassment and Housing

With increasingly tight rental markets, landlords hold increased power over whom they rent to and under what circumstances. Each year, tenants are subjected to sexual harassment by housing providers and their agents. Sexual harassment takes various forms. Examples of such harassment include requesting sexual favors in exchange for rent, making sexually derogatory comments, or constantly leering and staring at a tenant or potential tenant. When the harassment disrupts the tenant's right to enjoy his or her housing, federal fair housing laws, state, and local laws may protect the tenant. The following Q&A explains what statutes exist to protect tenants, what each of those statutes means, and how to enforce them.

### Q&A: Rights and Remedies of Tenants Who Have Been Sexually Harassed

#### **OVERVIEW OF LEGAL THEORIES AND REMEDIES**

##### Q. What statutes protect tenants?

- A.
- **42 U.S.C. § 3604:** This portion of the Fair Housing Act (FHA) prohibits discrimination on the basis of sex in the sale or rental of housing, including sexual harassment in housing.
  - **42 U.S.C. § 3617:** A landlord must not interfere with, coerce, threaten or intimidate tenants in the exercise of their rights under the FHA. This provision can apply where a landlord threatens or intimidates a tenant who fails to comply with sexual demands.
  - **Other provisions:** State and local anti-

discrimination laws are often used in tandem with FHA claims.

##### Q. What are the basic legal theories?

- A. Tenants may use three general claims to allege sexual harassment.
- **Quid pro quo harassment:** The plaintiff alleges that sexual favors were demanded in exchange for housing or housing benefits, such as continued tenancy, rent levels, and repairs.
  - **Hostile environment:** The harassment was so severe or pervasive as to alter the use and enjoyment of the plaintiff's home and to create an abusive living environment.
  - **Fair housing interference:** The plaintiff alleges that the defendant intimidated, threatened, or interfered with the plaintiff's exercise or enjoyment of rights under the FHA.

##### Q. Is the analysis similar to employment sexual harassment claims?

A. Most courts look to employment cases for guidance in deciding claims involving sexual harassment in housing. Accordingly, advocates bringing FHA sexual harassment claims will likely benefit from consulting with employment attorneys regarding potential strategies.<sup>1</sup>

##### Q. Who are the plaintiffs?

A. Potential plaintiffs include the aggrieved tenant, persons who lived with the tenant and were injured by the tenant's eviction or threatened eviction, and fair housing councils. An aggrieved tenant may include a

<sup>1</sup> Some commentators, and at least one court, have criticized the courts' reliance on employment cases, arguing that a tenant's expectations of privacy and security in the home differ from those expectations in the workplace. *Quigley v. Winter*, 584 F. Supp. 2d 1153 (D. Iowa 2008).

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person living in a homeless shelter.

### Q. Who are the defendants?

A. Potential defendants include the perpetrator of the harassment and possibly the perpetrator's employer. If an owner or property manager knew or should have known about the harassment and failed to remedy the situation promptly, the owner or manager can be held vicariously liable for the acts of the employee.<sup>2</sup>

### Q. What are the options for enforcement?

A. Options for seeking redress for incidents of sexual harassment include:

- **Administrative complaint:** Tenants may file a complaint with HUD or with the state's fair housing enforcement agency, within one year of the incident of sexual harassment.
- **Website:** For a list of cases in which HUD FHEO has issued discrimination charges, see <http://www.hud.gov/offices/fheo/enforcement/>.
- **Department of Justice litigation:** HUD may opt to refer a complaint to the Department of Justice if it finds that a complaint is of larger public importance. Based on the complaint, the Department of Justice may then file suit on behalf of the tenant in federal court. The tenant has a right to intervene in this suit
- **Website:** For a list of FHA sexual harassment cases filed by the Justice Department, see <http://www.usdoj.gov/crt/housing/fairhousing/index.html>
- **Filing a civil action:** Tenants may file a civil action in state or federal court, within two years of the incident of sexual harassment.

2 One court has held that a tenant stated a claim against a condominium owners association where the association was aware that another tenant had repeatedly shouted sexist epithets at her and threatened to rape and kill her. *Reeves v. Carrollsburg Condominium Unit Owners Ass'n*, No. 96-2495, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997). None of the reported decisions involving sexual harassment under the FHA involves tenant against tenant harassment.

### Statistic of the Month

In a 2005 survey of rape crisis centers and legal services providers, 58 percent had received at least one report from a tenant who was sexually assaulted or raped by a landlord, property manager, or property owner.

Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 CLEARINGHOUSE REV. 441 (2006).

### Q. What are the remedies?

A. Potential remedies for plaintiffs in FHA sexual harassment cases include:

- **Compensatory damages**, including compensation for emotional distress, relocation costs, and inconvenience.
- **Punitive damages**, in cases where the defendant intentionally or flagrantly violated the law.
- **Injunctive relief**, such as an injunction ordering the defendant to cease the harassment, to train employees, to prohibit eviction except for good cause, or to perform repairs or other actions that were the subject of the lawsuit.
- **Attorney's fees and costs**

### QUID PRO QUO CLAIMS

#### Q. What are the elements of a quid pro quo claim?

A. A plaintiff may establish a quid pro quo claim for sexual harassment by proving that:

- The plaintiff was subjected to a demand for a sexual favor;
- The plaintiff experienced the demand because of her sex; and
- Housing benefits were explicitly or implicitly conditioned on performance of the sexual favor.

One incident alone is sufficient to sustain a claim of quid pro quo sexual harassment. HUD regulations state that prohibited actions under the FHA include "denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors." 24 C.F.R. § 100.65(b)(5).

#### Q. What are some successful quid pro quo claims

- Quigley v. Winter, 584 F. Supp. 2d 1153 (D. Iowa 2008). Court found sufficient evidence for a jury to return a verdict finding harassment where facts suggested that landlord insinuated he would only return her security deposit if tenant engaged in a sexual act with him.
- Shellhammer v. Lewallen, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985). First federal case to hold sexual harassment violates the FHA.

#### Q. What is an example of an unsuccessful quid pro quo claim?

- Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993). Before moving into a manufactured home lot, the tenant repeatedly rejected the lot owner's

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requests for dates. After moving in, the tenant and owner argued over improvements to the property. The court rejected the tenant's quid pro quo claim, finding that the landlord's refusals to make the improvements were justifiable and that the tenant failed to establish a causal connection between the owner's actions and her rejection of his advances.

## **HOSTILE HOUSING ENVIRONMENT CLAIMS**

### **Q. What are the elements of a hostile housing environment claim?**

**A.** A plaintiff may establish a hostile housing environment claim for sexual harassment by proving that:

- The plaintiff was subjected to verbal or physical conduct of a sexual nature;
- The plaintiff was subjected to this conduct because of her sex;
- This conduct was unwelcome; and
- This conduct was sufficiently severe or pervasive to alter the use and enjoyment of the home and to create an abusive living environment.

### **Q. What constitutes severe or pervasive conduct?**

**A.** A plaintiff may need to demonstrate more than one incident of harassment to establish a hostile housing environment claim. Courts may consider the frequency of the harassing conduct; whether the harassment was part of a pattern and practice of conduct; whether the conduct extended beyond offensive remarks; and the severity of the conduct. Some courts have found that isolated or sporadic sexually inappropriate acts are not sufficiently pervasive and severe to constitute sexual harassment under the FHA.

### **Q. What are some examples of successful hostile housing environment claims?**

- Brillhart v. Sharp, 2008 WL 2857713 (M.D. Pa. July 21, 2008). Court found for tenant where housing provider grabbed tenant, pulled her legs apart, exposed himself, threatened to evict her if she pressed charges, and continued to harass her.
- Glover v. Jones, 522 F. Supp. 2d 496 (W.D.N.Y. 2007). Court found triable issue of fact where property manager repeatedly stated his desire to have sex with the tenant, put his tongue in her mouth, hugged her, put his arm around her,

and touched her breast.

- Beliveau v. Caras, 873 F. Supp. 1393 (C.D. Cal. 1995). Court found for tenant where housing provider, in one incident, grabbed her breast and buttocks in her home, noting that the home is expected to be a safe environment.

### **Q. What are some examples of unsuccessful hostile housing environment claims?**

- DiCenso v. Cisneros, 96 F.3d 1004 (7th Cir. 1996). Court rejected tenant's claim where the landlord once invited the tenant to exchange sex for rent, while touching the tenant's arm and back, finding it did not rise to the level of a hostile environment.
- Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993). Court rejected tenant's claim because the behavior at issue did not include sexual remarks or requests, physical touching, or threats of violence.
- Shellhammer v. Lewallen, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985). The court found that a tenant failed to establish a pervasive and persistent conduct creating a hostile environment where the plaintiff introduced evidence of two requests for sexual favors in a four-month period.

## **FAIR HOUSING INTERFERENCE CLAIMS**

### **Q. What are the elements of a fair housing interference claim?**

**A.** A plaintiff may establish a fair housing interference claim by proving that:

- She engaged in activity protected under the Fair Housing Act;
- The defendant subjected the plaintiff to an adverse action in the form of coercion, intimidation, threats or interference; and
- There was a causal connection between this adverse action and the protected activity

### **Q. What is an example of a successful fair housing interference case?**

- Grieger v. Sheets, 689 F. Supp. 835 (N.D. Ill. 1988). Court found for tenant where the landlord repeatedly demanded sexual favors from the tenant, the tenant refused the landlord's demands, and the landlord consequently refused to repair the tenant's home, damaged the property, threatened not to renew the lease, and forced the tenant to give up her dog. ■

## Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008)

This memorandum from HUD's office of Fair Housing and Equal Opportunity (FHEO) addresses general questions about sexual harassment in housing under the FHA. According to the memorandum, "HUD may publish a rule on this topic in the future." Among other things, the memorandum states:

- If an individual submitted to sexual conduct, that conduct still may have been unwelcome and a claim may be filed.
- Sexual harassment claims may be filed even if the victim did not experience the loss of a housing opportunity or some tangible economic loss.
- Sexual harassment does not have to be motivated by sexual desire to violate the FHA.
- A property manager who knows or should have known about sexual harassment perpetrated by his or her employees, agents, or contractors but fails to take action to stop it is directly liable for any resulting harm.
- Some courts have held owners and managers liable in situations where they knew of tenant-on-tenant harassment and did not take remedial action.
- It is a violation of the FHA for a female property owner or manager to sexually harass a male tenant
- It is a violation of the FHA for a property owner or manager to sexually harass a tenant even if the harasser and victim are the same sex.
- A sexual harassment victim is not required to follow the particular sexual harassment reporting procedures of the owner or manager.

## Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, 65 Fed. Reg. 67,666 (Nov. 13, 2000)

This proposed rule would have amended HUD's FHA regulations to establish the standards HUD will use in sexual harassment cases. Although HUD sought comments on the proposed rule, a final rule was never published. ■

## NEW RESOURCES: VAWA HOUSING TOOLKIT AVAILABLE

Dear LAV Grantees:

The National Housing Law Project has created an advocate toolkit outlining the housing provisions of the Violence Against Women Act of 2005 (VAWA). As you may know, VAWA's housing provisions apply to tenants living in public housing and Section 8 housing. VAWA protects tenants who are survivors of domestic violence, dating violence, and stalking. Under VAWA, applicants for such federally-subsidized housing cannot be rejected on the basis of their status as survivors of domestic violence, dating violence, or stalking. Further, these subsidized tenants cannot be evicted or have their subsidies terminated based on acts of domestic violence, dating violence, or stalking committed against them.

The toolkit is designed to provide advocates with an overview of VAWA's housing provisions and includes administrative guidance, recent legal developments, and sample advocacy materials. NHLP plans to release an additional advocate toolkit on survivors' rights under fair housing laws.

We hope that you find these materials helpful in aiding your clients. Please email Navneet Grewal or Meliah Schultzman at the contact information listed below if you would like a copy of the toolkit. ■

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### For technical assistance, requests for trainings or materials, or further questions, please contact:

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