

HOUSING JUSTICE

National Housing Law Project

Newsletter January 2011

Survivors' Rights in Subsidized Housing When the Family Breaks Up Due to Domestic Violence

In cases where a domestic violence survivor and the abuser live together in federally subsidized housing, the survivor may want to remain in the unit while seeking the housing provider's assistance to remove the abuser from the lease or voucher. Or, if the entire household is facing eviction or subsidy termination due to the abuser's criminal activity, the survivor may request that the housing provider pursue the eviction or subsidy termination against the abuser only. For survivors who live with their abusers in public or Section 8 housing, there are two separate processes at issue. First, survivors living in public or Section 8 housing may need to request that the housing provider remove the abuser from the lease. Second, survivors receiving Section 8 voucher assistance will need to take the additional step of asking the public housing agency (PHA) to remove the abuser from the voucher. This article discusses the laws that apply when a survivor needs to have the abuser removed from a subsidized housing lease or Section 8 voucher due to domestic violence.

Removing the Perpetrator from the Subsidized Housing Lease

Under the Violence Against Women Act (VAWA), a PHA or Section 8 landlord may bifurcate (split) a subsidized housing lease to evict, remove, or terminate assistance to any tenant who

engages in criminal acts of violence against household members. This action may be taken without evicting or otherwise penalizing the survivor of such violence. The authority to bifurcate a lease or otherwise remove the abuser applies to all leases for families in the public housing or Section 8 programs. Housing providers can bifurcate the lease regardless of whether the lease itself has specific language authorizing the bifurcation. Notably, even before VAWA's enactment, HUD encouraged PHAs "to carefully review circumstances where victims of domestic violence may be evicted due to circumstances beyond their control" and to exercise their authority to evict the perpetrator while allowing the victim to remain.

In removing the abuser from the lease, the housing provider must follow federal, state, and local eviction laws. It may take several weeks or even months to complete the eviction process, and the survivor may need to relocate to a safe, confidential location until the eviction proceedings are over. Because survivors who separate from their abusers often risk retaliation, advocates should work with survivors to consider additional security measures that should be implemented during this period. Additionally, advocates should recommend that housing providers consult with the survivor well before taking any action to evict the abuser, so that the survivor has adequate time to plan for her safety.

In any case where the abuser is no longer living in the unit, whether due to eviction, incarceration, or court order, the survivor should immediately request that the PHA recertify the household's income. Federal regulations provide for an adjust-

(Continued on page 2)

IN THIS ISSUE

Removing the Abuser from a Lease or Voucher

Service Animals as a Reasonable Accommodation

(Continued from page 1)

ment in rent upon a change in family circumstances. In many cases, the survivor's income will likely decrease once the abuser vacates the unit. Because rents in the public housing and Section 8 programs are income-based, a survivor may be entitled to a lower rent if the household's income decreases as a result of the abuser's absence.

At least one court has addressed PHAs' obligations to remove perpetrators of domestic violence from leases and to subsequently adjust the rent. In *St. Louis Housing Authority v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988), a public housing tenant requested that the PHA remove her husband from the lease after he fired a gun in the apartment. Shortly thereafter, the tenant informed the PHA that she had separated from her husband. She requested a hearing and asked for a rent adjustment based on the change in her family composition and income. At the hearing the tenant submitted a restraining order she had obtained against her husband, but the housing authority refused to act on the tenant's request to remove him from the lease. A court later ordered the PHA to reduce the tenant's rent to reflect the change in her family composition, to terminate the husband's tenancy, and to renew the tenant's lease for one year. The court found that the PHA had authority to terminate the husband's tenancy because he posed a threat to the safety of other tenants and that the tenant was entitled to a rent adjustment to reflect her change in family income once he left the unit.

Removing the Abuser from the Section 8 Voucher

In addition to removing the abuser from the lease, survivors in the Section 8 voucher program also will need to ask the PHA to remove the abuser from the voucher. In the Section 8 program, PHAs have authority to terminate voucher assistance for perpetrators of criminal activity while permitting innocent family members to continue receiving voucher assistance. The PHA does not have to wait for the Section 8 landlord to bifurcate the lease or to evict the batterer before exercising its discretion to remove the abuser from the

Laws Addressing Family Breakup

- 42 U.S.C. § 1437d(l)(6)(B) (public housing)
- 42 U.S.C. § 1437f(o)(20)(D)(i) (Section 8)
- 24 C.F.R. § 5.2009 (public housing & Section 8)
- 24 C.F.R. § 966.4(e)(9) (public housing)
- 24 C.F.R. § 982.315 (Section 8)
- 24 C.F.R. § 982.552(c)(2)(i)-(ii) (Section 8)

voucher. Further, HUD recently released regulations stating that if a family breaks up due to an occurrence of domestic violence, "the PHA must ensure that the victim retains assistance." 24 C.F.R. § 982.315.

PHAs are required to set forth in their Section 8 Administrative Plans the factors they will consider in assigning the Section 8 voucher in the event that a family breaks up. Factors that HUD urges PHAs to consider when developing a family breakup policy include the interest of family members who are minor children, ill, elderly, disabled, or victims of domestic violence. Advocates should consult the Administrative Plan and determine whether any of the factors cited in the family break-up policy support awarding the voucher to the domestic violence survivor.

If a court awards the voucher to the survivor as part of divorce or separation proceedings, the PHA is bound by the court's determination of which family members continue to receive assistance. Accordingly, family law practitioners should request that the voucher be awarded to the survivor in any divorce or separation proceedings.

Conclusion

In cases where a family in subsidized housing has broken up due to domestic violence, it is critical to ensure that the survivor retains the public housing unit or Section 8 voucher. VAWA and HUD regulations support the argument that in these cases, housing assistance should be assigned to the survivor and not the abuser, regardless of who is named as head of household on the lease or Section 8 voucher. ■

Survivor with Service Animal Seeks Exception to Housing Provider's Pet Policy

A domestic violence survivor with a disability may need a housing provider to make changes to its policies so that she can fully use and enjoy her dwelling. A common example is a survivor who needs a housing provider to make an exception to its pet policy so that she can have a service animal. An Iowa appeals court recently examined this issue in a case involving a tenant who suffered from post-traumatic stress disorder (PTSD) and requested an accommodation to a public housing agency's (PHA) pet policy. In *State of Iowa v. Des Moines Municipal Housing Agency*, 2010 WL 4484005 (Iowa Ct. App. Nov. 10, 2010), the tenant, Carol Henderson, sought an exception to the pet policy so that she could keep a service animal in her unit. Ms. Henderson suffered from PTSD as a result of several assaults by her ex-husband. Ms. Henderson's PTSD was triggered after there were two attempted break-ins at her unit.

To help alleviate her PTSD, Ms. Henderson obtained a Doberman pinscher. She requested a reasonable accommodation to the PHA's pet policy, as the dog exceeded the policy's weight limit. She asked that the PHA consider the dog as a service animal, because it helped her with tasks such as turning on lights and alerting her when people came to the property. The PHA rejected Ms. Henderson's request, stating that the dog did not meet the qualifications for a service animal. Ms. Henderson then submitted a doctor's letter stating that she was a victim of violent crime and had psychiatric diagnoses related to the violence. The letter further stated that Ms. Henderson's dog played an important part in her recovery and her psychological wellbeing. The PHA again rejected Ms. Henderson's reasonable accommodation request and filed an eviction action against her.

To settle the eviction action, Ms. Henderson agreed to remove her dog. The state attorney general then filed an action on her behalf alleging that the PHA violated the Iowa Civil Rights Act, which has a reasonable accommodation provision

similar to the federal Fair Housing Act. The trial court found that Ms. Henderson failed to notify the PHA how the dog would alleviate her disability. The trial court also found that she waived her reasonable accommodation request when she removed the dog from her home.

The appellate court reversed, holding that the trial court erred in finding the requested accommodation must alleviate the disability, rather than afford the person equal opportunity to use and enjoy a dwelling. The court found that Ms. Henderson was "not required to show the accommodation alleviates the disability itself; rather, the accommodation must be necessary to 'show [] that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.'" The appellate court also found that the trial court erred in finding that Ms. Henderson waived her request for an accommodation. The appellate court found that there was a factual dispute as to whether she was compelled to remove her dog to avoid eviction. Accordingly, the appellate court remanded for a new trial. The appellate court's analysis could be helpful for advocates assisting survivors who have psychiatric disabilities and who need an exception to a housing provider's pet policy so that they can have a service or companion animal. ■

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

Meliah Schultzman, mschultzman@nhlp.org
 Navneet Grewal, ngrewal@nhlp.org
 National Housing Law Project
 703 Market Street Ste. 2000
 San Francisco, CA 94103
 Phone: (415) 546-7000
www.nhlp.org

This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.