

HOUSING JUSTICE

National Housing Law Project

Newsletter January 2013

Addressing Conflicting Claims of Domestic Violence in Subsidized Housing Cases

Federal law provides that in cases of domestic violence in subsidized housing, public housing authorities have discretion to terminate the perpetrator's housing assistance while allowing the survivor and other household members to continue to live in the subsidized unit. This provision enables housing authorities to terminate assistance to household members who have committed criminal acts, while allowing innocent parties to remain in the subsidized dwelling. Questions may arise in cases where parties raise conflicting claims of domestic violence. For example, a household member who has been accused of domestic violence and is at risk of losing her housing may respond that she, in fact, is the victim of the domestic violence and that the perpetrator is trying to wrongfully remove her from the assisted unit.

Where there are conflicting claims of domestic violence, housing authorities should use a grievance hearing, informal hearing, or informal review to conduct fact-finding and to determine which party is the victim. In fact, in many cases housing authorities are required under existing law to offer a hearing before terminating a domestic violence perpetrator's assistance. This article discusses practices that may be helpful in cases where housing authorities are assessing conflicting claims of domestic violence. Advocates can work at the local level to urge their housing authorities to adopt these practices.

Pre-Hearing Notices

When a housing authority seeks to remove a domestic violence perpetrator from a public housing lease or a Section 8 voucher, it must afford the perpetrator due process protections, including notice and an opportunity to be heard. In cases where there are conflicting claims of domestic violence, the housing authority should issue notices to both parties explaining that a hearing is necessary to investigate allegations that the parties committed acts of domestic violence. For each party, the notice should describe the allegations of domestic violence that have been made against the party and should list any evidence or witnesses that will be considered during the hearing. The notice should also explain that each party will have an opportunity to present evidence demonstrating that he or she has been a victim of domestic violence and that this evidence is not limited to the most recent incident of violence committed against the party. The notice should make clear that the hearing officer will consider the entire history of acts of domestic violence, dating violence, and stalking committed against either party.

Referrals

Before the hearing, the housing authority should provide both parties with contact information for local domestic violence agencies so that the parties can seek services and plan for their safety. The housing authority also should provide both parties with contact information for local legal aid offices, which may be able to assist

(Continued on page 2)

IN THIS ISSUE

Alaska Enacts Housing Program for Domestic and Sexual Violence Survivors

Homeless Shelter Reverses Policy of Denying Housing to Pregnant Women

(Continued from page 1)

in providing appropriate referrals, obtaining restraining orders, and preparing for the hearing.

Confidentiality

Federal regulations require housing authorities to give parties an opportunity to examine any documents that the housing authority intends to rely on during a hearing. To protect victim safety and confidentiality, the housing authority should redact from these documents any information that would reveal the location of either party's residence, employer, school (including the schools attended by a party's children), or the location of any services that either party is receiving, such as counseling, medical treatment, or shelter.

Hearing Officer

Before the hearing, the parties or their representatives should be permitted to question the hearing officer regarding his or her knowledge of domestic violence. If the hearing officer has no training regarding domestic violence, the housing authority should consider adjourning the hearing until the hearing officer receives training from a local domestic violence agency, or until a hearing officer with knowledge of domestic violence can be appointed. Another option is to allow the parties to present general background information regarding the dynamics of domestic violence, including factors that should be considered in determining which party is the dominant aggressor.

Hearing officers should examine the totality of the evidence of domestic violence presented by both parties, rather than solely examining the incident(s) that led the housing authority to pursue eviction or termination of the voucher.

Safety

Housing authority security officers should be stationed near the hearing rooms. The two parties should not be in the same room together during the hearing, and the parties should not be permitted to directly question one another. If one

party wishes to question the other, the questions should be relayed by the hearing officer. However, each party must have an opportunity to review and respond to the other party's statements. Options that can protect the parties' safety while preserving their ability to respond to testimony may include using webcams, Skype, video conferencing, or closed circuit television. If housing authorities do not have this technology, they should consider contacting other local agencies that may share these resources, such as the courts, the police department, or the city attorney's office.

During the hearing, the housing authority should consider having a neutral third party present who has expertise regarding domestic violence and who can monitor the proceedings to ensure that the parties' safety and confidentiality are being protected. This neutral third party can advise the PHA when a line of questioning may endanger a party's safety or confidentiality.

Expert Witnesses

The parties should be permitted to present testimony from witnesses who have expertise regarding domestic violence, such as employees from agencies that provide services to domestic violence survivors, or law enforcement officers that have been trained to identify the dominant aggressor in domestic violence cases. Questioning of these expert witnesses by the hearing officer or the opposing party should be limited to questions that are designed to determine whether a party's actions meet the definition of domestic violence, dating violence, or stalking, as set forth in the Violence Against Women Act.

Conclusion

In cases involving conflicting claims of domestic violence, housing authorities must balance the due process rights of all parties with the need to protect victims' safety and confidentiality. Advocates should work with their local housing authorities to develop practices that will help housing authorities identify the dominant aggressor without endangering victims. ■

Alaska Adopts Statewide Rental Assistance Program for Survivors of Domestic and Sexual Violence

The state of Alaska recently launched an innovative program to provide rental assistance to domestic violence and sexual assault survivors. The program, called Empowering Choice, will provide up to 254 housing vouchers to survivors throughout the state. A second component of the program will provide preferential placement on public housing waiting lists for survivors.

How the Program Works

In October 2012, the Alaska Housing Finance Corporation (AHFC), the Alaska Network on Domestic Violence and Sexual Assault, and the State of Alaska Council on Domestic Violence and Sexual Assault entered into a memorandum of understanding to implement the Empowering Choice program. AHFC is the state's housing authority and will provide the Empowering Choice vouchers, which, for the most part, will be administered in the same way as typical Section 8 vouchers. The key differences are that the Empowering Choice vouchers will be time limited to 36 months, and recipients of these vouchers must be referred to the AHFC by a domestic violence or sexual assault agency. Vouchers will be allocated to 12 communities based in part on population.

The memorandum of understanding identifies 13 domestic and sexual violence programs that will identify clients who have been displaced due to domestic violence or sexual assault. The programs will provide a written referral that the client can take to her local AHFC office. The AHFC will timestamp the referral, process the client's voucher application, and place the client on the voucher waiting list. When a voucher becomes available, the AHFC will contact the first applicant on the waiting list and schedule an eligibility interview. If the client meets AHFC's eligibility requirements (which are the same as those for AHFC's standard Section 8 voucher program), AHFC will issue a voucher to the client. The client will have 60 days

Technical Assistance Question of the Month

Q. Are sexual assault survivors eligible for HUD's homelessness programs?

A. Any sexual assault survivor who meets HUD's definition of "homeless" can apply for HUD's homelessness programs. The homeless definition includes a survivor who is fleeing or attempting to flee sexual assault that either has taken place within her primary nighttime residence or has made her afraid to return to her primary nighttime residence. The full definition of "homeless" includes several categories of individuals in addition to domestic and sexual violence survivors. For the full definition, see 24 C.F.R. § 91.5.

to search for a unit to rent with her voucher, and two 30-day extensions may be granted if needed.

In addition to vouchers, Empowering Choice has a public housing component for three cities. Similar to the voucher program, applicants must obtain a referral from a domestic or sexual violence agency. The memorandum of understanding identifies three agencies that can provide referrals for the public housing program. Like the voucher program, a client can take a referral from one of these agencies to her local AHFC office, which will process her application and place her on the public housing waiting list with a preference for displacement due to domestic violence or sexual assault. Unlike the voucher program, residence in public housing is not limited to 36 months.

Confidentiality and VAWA Protections

The memorandum of understanding states that all information provided to AHFC regarding the fact that an individual is a survivor of domestic violence, dating violence, sexual assault, or stalking shall be retained in confidence. It will not be entered into any shared database, and it will not

(Continued on page 4)

be provided to any voucher landlord or other third party. Further, vouchers that are issued to participants in the Empowering Choice program will not have any information identifying the applicant as a participant in the program.

The memorandum of understanding provides that participants in the Empowering Choice program will be afforded Violence Against Women Act (VAWA) protections, which prohibit voucher and public housing tenants from being evicted or having their assistance terminated due to the violence committed against them. Leases issued under the program will contain a tenancy addendum outlining a participant's VAWA rights.

Funding

The program is funded through a \$1.3 million appropriation from the state legislature and a \$1 million matching contribution from AHFC's federal voucher allocation. AHFC is part of the U.S. Department of Housing and Urban Development's (HUD) Moving to Work demonstration. As a Moving to Work housing authority, AHFC has the ability to waive many HUD regulations and develop new programs, such as Empowering Choice. AHFC received HUD approval of the Empowering Choice program before its implementation.

Conclusion

The Empowering Choice program represents one strategy for assisting domestic and sexual violence survivors in obtaining housing. By setting aside a pool of vouchers for survivors who have been referred to the housing authority by a domestic violence or sexual assault agency, the program will assist survivors in receiving housing assistance more quickly. Creation of the program was facilitated by a contribution from the state legislature, as well as the AHFC's status as a Moving to Work housing authority. However, even in jurisdictions that do not have Moving to Work status, advocates can still work with their local housing authorities to encourage the adoption of a domestic violence preference. ■

New Orleans Homeless Shelter Reverses Policy that Denied Housing to Pregnant Women

A New Orleans homeless shelter has agreed to end its longstanding policy of refusing to house pregnant women. In December 2011, the New Orleans Mission asked a resident to leave the shelter because she was seven months pregnant. The shelter's assistant director cited liability concerns as a reason for its policy of denying housing to pregnant women.

The resident contacted Greater New Orleans Fair Housing Action Center. The fair housing agency began negotiations with the shelter to seek changes to the policy. After nearly a year of discussions, the shelter agreed to implement an anti-discrimination policy allowing pregnant women and women with children to stay at the shelter. The shelter also agreed to undergo fair housing training and to provide financial restitution to the resident who was denied housing. According to the Fair Housing Action Center, the new antidiscrimination policy will help ensure that all homeless individuals in New Orleans can access the shelter, regardless of their race, color, national origin, religion, sex, familial status, or disability. ■

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

Meliah Schultzman, mschultzman@nhlp.org
 Catherine Bishop, cbishop@nhlp.org
 National Housing Law Project
 703 Market Street Ste. 2000
 San Francisco, CA 94103
 Phone: (415) 546-7000, x. 3116
www.nhlp.org/OVWgrantees

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