

HOUSING JUSTICE

National Housing Law Project

Newsletter February 2009

State and Local Housing Protections for Domestic Violence Survivors Gaining Momentum

A growing number of states and local governments are adopting housing protections for domestic violence survivors. These laws are the result of the recent movement within the domestic violence and housing advocacy communities to address obstacles survivors face in maintaining housing, such as being evicted for calling the police or because the batterer caused a noisy disturbance at the dwelling. This article summarizes the housing protections for survivors that state and local governments have recently enacted.

Nondiscrimination Laws

Nondiscrimination laws prohibit a landlord from terminating a tenancy, failing to renew a tenancy, or refusing to enter into a rental agreement based on the tenant's or applicant's status as a victim of domestic violence. Rhode Island, the District of Columbia, and Westchester County (New York) have achieved this result by amending their existing fair housing laws to include victims of domestic violence as a protected class.¹ New York is currently considering such a law.² Arkansas, Indiana, North Carolina, and Washington have added provisions to their landlord-tenant codes barring denials of housing or evictions based on a person's status as a victim of domestic violence.³

Nondiscrimination laws have failed in recent years in California, Florida, Hawaii, and

1 D.C. CODE § 2-1401.01 (2007); R.I. GEN. LAWS § 34-37-1 (2007); WESTCHESTER COUNTY CODE § 700.05 (2005).

2 A. 1055, S. 936, 2009 Leg., Reg. Sess. (N.Y. 2009).

3 ARK. CODE ANN. § 18-16-112 (2007); IND. CODE ANN. § 32-31-9-8 (West 2007); N.C. GEN. STAT. ANN. § 42-42.2 (West 2007); WASH. REV. CODE ANN. § 59.18.580 (West 2007).

Massachusetts due in part to opposition from realtors' groups and apartment owners' associations. However, even in jurisdictions that do not have specific protections for domestic violence survivors, denials of housing and evictions that are based on an applicant's or tenant's status as a domestic violence victim may be challenged under federal and state fair housing laws. Additionally, federally subsidized tenants can challenge these actions under the Violence Against Women Act of 2005 (VAWA).

Eviction Defenses

Domestic violence victims are often threatened with eviction due to criminal acts committed at their rental units by their abusers. In response, several jurisdictions have enacted laws providing an eviction defense where the landlord tries to evict the victim because the abuser committed a crime, lease violation, or dangerous act at the rental unit.⁴ To invoke these laws, the victim must provide written documentation of the domestic violence, usually a police report or restraining order. Again, even without state or local housing protections for domestic violence survivors, advocates may still be able to raise a VAWA or fair housing defense for those facing evictions that are related to acts of violence committed against them.

Right to Call Police

Six jurisdictions have laws prohibiting landlords from limiting a tenant's right to call a peace officer

4 COLO. REV. STAT. ANN. §§ 13-40-104, 13-40-107.5 (West 2007); D.C. CODE § 42-3505.01 (2007); IOWA CODE ANN. §§ 562A.27A, 562B.25A (West 2007); LA. REV. STAT. ANN. § 40:506 (2007) (applies to housing authorities only); N.M. STAT. ANN. § 47-8-33 (West 2007); VA. CODE ANN. § 55-248.31 (West 2007); WASH. REV. CODE ANN. 59.18.580 (West 2007).

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or emergency assistance.⁵ Such laws ensure that domestic violence victims may summon police to their rental units in response to incidents of abuse without being penalized by their landlords.

Lock Changes

As part of basic safety planning, many domestic violence survivors need to change their locks to prevent abusers from regaining access to the home. Ten jurisdictions have laws requiring the landlord to change the locks or permitting the domestic violence survivor to do so.⁶ Most states require the survivor to provide documentation of domestic violence. In cases where the survivor and perpetrator are cotenants, the survivor is typically required to provide the landlord with a copy of a restraining order barring the perpetrator from the

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dwelling. Several states require landlords to act on the tenant's request within a short period of time, such as within one to five days. The survivor usually must pay for changing the locks, although in many states these costs may be covered by victims' compensation funds, and restraining orders may contain provisions ordering perpetrators to pay these costs.

5 ARIZ. REV. STAT. ANN. § 33-1315 (2007); COLO. REV. STAT. ANN. § 38-12-402 (West 2007); D.C. CODE § 2-1402.21 (2007); MINN. STAT. § 504B.205 (West 2007); TEX. PROP. CODE ANN. § 92.015 (Vernon 2007); WIS. STAT. ANN. 704.44 (West 2008).

6 ARIZ. REV. STAT. ANN. § 33-1318 (2007); ARK. CODE ANN. § 18-16-112 (2007); D.C. CODE § 42-3505.08 (2007); 765 ILL. COMP. STAT. ANN. 750/20 (West 2007); IND. CODE ANN. §§ 32-31-9-9, 32-31-9-10, 32-31-9-11 (West 2007); N.C. GEN. STAT. § 42-42.3 (West 2007); OR. REV. STAT. ANN. § 90.459 (2007); UTAH CODE ANN. § 57-22-5.1 (West 2007); VA. CODE ANN. §§ 55-225.5, 55-248.18:1 (2007); WASH. REV. CODE ANN. § 59.18.585 (West 2007).

Statistic of the Month

Women living in rental housing experience intimate partner violence at three times the rate of women who own their homes.

Source: Bureau of Justice Statistics, Intimate Partner Violence in the United States (Dec. 19, 2007).

Early Lease Termination

To escape an abusive relationship, domestic violence survivors may need to terminate their leases early and flee to a confidential location. However, some survivors may delay leaving for fear that they will face substantial penalties for breaking their leases. To assist survivors to move to safer homes, fifteen jurisdictions have statutes permitting a tenant who is a survivor of domestic violence to terminate a lease early.⁷ North Dakota⁸ is currently considering a similar provision.

The laws require the tenant to provide proof of domestic violence, usually in the form of a restraining order or a police report. Some jurisdictions also permit the tenant to verify the domestic violence by providing a signed statement from a qualified party, such as an attorney, licensed health professional, or social services provider. Several jurisdictions specify the time period in which the tenant can request lease termination, usually within thirty to ninety days after the restraining order, police report, or other documentation was issued. Most statutes also specify the notice period that the tenant must give to the landlord before the lease termination becomes effective, which may range from three to thirty days. The tenant can vacate the unit before the notice period expires, but is responsible for rent until the expiration date. Several jurisdictions provide that existing law governing return of the security deposit still applies, regardless of the survivor's early termination of the lease.

Conclusion

Many states and local governments have recently enacted or are currently considering laws to protect survivors' housing rights. Much work remains to be done to ensure that survivors and housing providers are aware of their rights and responsibilities under these laws. Please contact the National Housing Law Project for assistance in determining what protections your state has and how to effectively implement those protections. ■

7 ARIZ. REV. STAT. ANN. § 33-1318 (2007); COLO. REV. STAT. ANN. 38-12-402 (West 2007); DEL. CODE ANN. TIT. 25, § 5314 (2007); A.B. 2052, 2007 Leg., Reg. Sess. (Cal. 2008); D.C. CODE § 42-3505.07 (2007); 765 ILL. COMP. STAT. ANN. 750/15 (West 2007); IND. CODE ANN. §§ 32-31-9-12, 32-31-9-13 (West 2007); MINN. STAT. ANN. § 504B.206 (West 2007); N.J. STAT. ANN. § 46:3-9.6 (West 2009); N.Y. REAL PROP. LAW § 227-c (McKinney 2007); N.C. GEN. STAT. § 42-45.1 (West 2007); OR. REV. STAT. ANN. § 90.453 (West 2007); TEX. PROP. CODE ANN. § 92.016 (Vernon 2007); WASH. REV. CODE ANN. § 59.18.575 (West 2006); WIS. STAT. ANN. § 704.16 (West 2008).

8 S.B. 2171, 61st Leg. Assem. (N.D. 2009).

State and Local Housing Protections for Survivors

Jurisdictions that . . .

prohibit housing discrimination based on an individual's status as a survivor of domestic violence:

Arkansas, District of Columbia, Indiana, North Carolina, Rhode Island, Washington, Westchester County (New York)

provide an eviction defense for tenants who are being evicted because of acts of domestic violence committed against them:

Colorado, District of Columbia, Iowa, Louisiana, New Mexico, Virginia, Washington

bar landlords from limiting a tenant's right to call police:

Arizona, Colorado, District of Columbia, Minnesota, Texas, Wisconsin

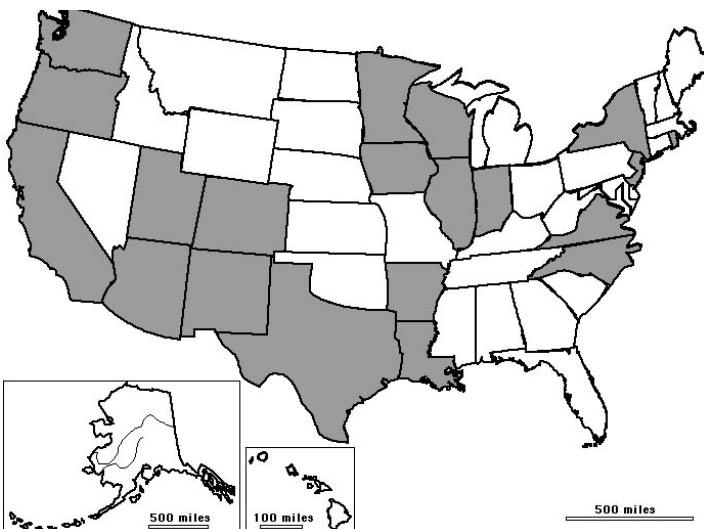
require landlords to change locks where tenants have provided documentation of domestic violence:

Arizona, Arkansas, District of Columbia, Illinois, Indiana, North Carolina, Oregon, Utah, Virginia, Washington

permit early lease termination for survivors of domestic violence:

Arizona, California, Colorado, Delaware, District of Columbia, Illinois, Indiana, Minnesota, New Jersey, New York, North Carolina, Oregon, Texas, Washington, Wisconsin

MAP OF STATES WITH HOUSING PROTECTIONS FOR SURVIVORS



Court: VAWA Bars Landlord from Evicting Domestic Violence Victim

In one of the first decisions of its kind, a New York City housing court ruled that the Violence Against Women Act of 2005 barred the eviction of a project-based Section 8 tenant. In *Metro North Owners, LLC v. Thorpe*, the court rejected the landlord's argument that the tenant created a nuisance by stabbing her former partner during a domestic dispute and found that the allegations were unsubstantiated. 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008). Instead, the court held that the tenant was the victim of domestic violence and entitled to VAWA's eviction protections.

Factual Background

In April 2008, police officers and emergency medical services responded to a violent incident at the tenant's apartment. After this incident, the landlord initiated eviction proceedings, claiming that the tenant was a nuisance. The tenant moved for summary judgment, arguing that VAWA required dismissal of the proceedings at the pretrial stage. The property manager alleged that the tenant stabbed her former partner during the incident. The property manager also alleged that the tenant regularly allowed her former partner into the building and complained when security guards denied him entry. Further, the property manager alleged the tenant had repeatedly engaged in loud fighting, yelling, and screaming with her former partner. The landlord submitted a security guard's incident report containing similar information.

The tenant conceded that her former partner told the security guard and police that she had stabbed him, but denied harming him. The district attorney's office had declined to prosecute her for the stabbing. Furthermore, the tenant stated that her former partner forcibly entered the apartment and assaulted her. According to the tenant, he threw her into a cabinet and injured himself on broken glass. The tenant asked the court to consider the entire history of her relationship with her former partner as proof that she was the victim of domestic violence. To establish this history, the tenant submitted several police reports and a criminal protection order.

Applicable Law

VAWA provides that an incident of domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim and shall not be good cause for

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terminating the victim's tenancy. Further, criminal activity directly relating to domestic violence, dating violence, or stalking shall not be cause for termination of the victim's tenancy. The tenant in Thorpe argued that because the landlord's allegations of nuisance were based solely on acts of domestic violence committed against her, VAWA prevented her tenancy from being terminated.

The Court's Findings

The court first found that the tenant's affidavit, police reports, and protection order depicted her as the victim of domestic violence and thus required the landlord to allege otherwise. The court next found that the property manager's statement that the tenant was the assailant was unsubstantiated, because the manager did not witness the stabbing or any of the alleged prior disputes, nor did she provide a reliable basis to explain how she obtained her information. Similarly, the court rejected the security guard's incident report because he did not witness the incident, and the report was unsworn.

One of the court's most significant findings was that even if the landlord's evidence was credible, the court still would have concluded that the alleged stabbing was a domestic dispute and that the tenant was a victim of domestic violence. The court said that the landlord's allegations that the tenant allowed her former partner to enter the building did not refute the evidence that she was a victim of domestic violence. According to the court, "The battered-woman syndrome, a well-established concept in law and science, explains the concept of anticipatory self-defense and seemingly inconsistent victim behavior." The court stated that the tenant's conduct in allowing her former partner into the building was characteristic of battered-woman syndrome. The court also noted that domestic violence is cyclical in nature, enticing the victim to remain with the abuser after the violence ends.

The court concluded that the tenant was a victim of domestic violence either under 42 U.S.C. § 1437f(c)(9)(B) or a victim of criminal activity relating to domestic violence under 42 U.S.C. § 1437f(c)(9)(C)(i). As such, VAWA prohibited the landlord from terminating the tenancy, and the court dismissed the holdover proceeding.

Conclusion

Thorpe is notable because it is one of the

first written decisions holding that VAWA prohibited the eviction of a Section 8 tenant based on acts of domestic violence committed against her. Even more remarkable is the court's statement that the tenant still would have been protected even if the landlord's evidence regarding the stabbing and prior incidents was credible. Some of the most difficult VAWA cases are those involving domestic violence survivors who act in self-defense or whose batterers repeatedly return to the subsidized unit. Thorpe provides these advocates with helpful language supporting the argument that this type of conduct is part of the cycle of violence and does not disqualify survivors from VAWA's protections. ■

UPCOMING TRAININGS

NHLP will present:

"Housing Rights and Needs of Sexual Assault Survivors"

National Sexual Assault Law Institute

March 4-5, 2009

San Diego

For more information about the Institute, contact the Victims Rights Law Center at 503-274-5477 or 617-399-6720.

NHLP will present: "Federal and State Housing Protections for Survivors of Domestic Violence and Stalking"

March 26, 2009

1PM-3PM EST

Center for Survivor Agency and Justice Webinar
For more information about the webinar, contact Center for Survivor Agency and Justice at 202.552.8304 or erika.csaj@gmail.com

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

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