

HOUSING JUSTICE

National Housing Law Project

Newsletter August 2010

DOJ Obtains \$680,000 Settlement in Housing Discrimination Case

The Department of Justice (DOJ) recently announced that a mobilehome park owner has agreed to pay \$680,000 in monetary damages and civil penalties to settle a lawsuit alleging that he sexually harassed female tenants and discriminated against African-American applicants. The settlement reinforces the viability of Fair Housing Act (FHA) claims brought on the basis of severe or pervasive sexual harassment.

Defendant Darwin K. Morgan owned numerous mobilehome parks in the Bloomington, Georgia, area. Female tenants of the parks alleged that from at least 1997, Morgan subjected them to severe sexual harassment. His conduct included verbal sexual advances; unwanted touching; taking adverse action against female tenants when they refused his sexual advances; and public masturbation. Additionally, testing by the Savannah-Chatham County Fair Housing Council revealed that Morgan refused to show rental units to an interracial couple while at the same time showing units to a white person, and he discouraged an interracial couple from applying for a rental unit while at the same time encouraging a white person to apply.

In 2008, DOJ filed an FHA lawsuit against Morgan alleging discrimination on the basis of sex and race. The lawsuit was subsequently consolidated with a related private suit that had been brought by the Fair Housing Council and three individuals. On June 23, 2010, a federal district court approved a consent decree between the United States and Morgan.

Under the consent decree, Morgan must pay \$350,000 to 11 individuals identified as victims of Morgan's discriminatory conduct. Morgan must also pay \$280,000 in monetary damages, costs and attorney's fees to four private plaintiffs, and \$50,000 to the United States as a civil penalty. The consent decree also requires Morgan to hire an independent manager who is familiar with the FHA to manage his properties. Morgan and the manager must also undergo FHA training, with specific emphasis on discrimination on the basis of sex and race. Finally, the consent decree provides that Morgan must refrain from entering the premises of any of the rental properties unless he is accompanied by a manager and needs to inspect the property.

To view the complaint and consent decree filed in the case, visit <http://www.justice.gov/crt/casebrief.php>. ■

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Breaking the Lease to Escape Violence

One of the most common questions the National Housing Law Project (NHLP) receives as a technical assistance provider is whether a survivor of domestic or sexual violence can break an existing lease without financial penalty. In many instances, a survivor may need to relocate to safe, confidential housing to escape her abuser. If the survivor has a lease, it is important to determine if she can be released from her responsibilities under the lease. This article discusses some of the strategies that may be used to relieve a survivor of her lease obligations.

State Law Protections

An advocate should first determine whether the jurisdiction has a law permitting tenants to terminate their leases due to domestic violence. As of the date of this publication, 18 jurisdictions have laws permitting survivors of domestic violence to break their leases. These jurisdictions are Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Illinois, Indiana, Maryland, Minnesota, New York, North Carolina, North Dakota, Oregon, Texas, Utah, Washington,

and Wisconsin. The laws typically require the tenant to provide proof of domestic violence, usually in the form of a restraining order or a police report. A few 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. Most statutes specify the notice period that the tenant must give to the landlord before the lease termination becomes effective, which ranges from three to 30 days. The tenant can vacate the unit before the notice period expires, but is responsible for rent until the expiration date.

Negotiating to End the Lease

Unfortunately, most states have not enacted laws enabling tenants to break their leases due to domestic violence. Further, even in states that have such laws, a survivor may be unable to use them if she lacks the necessary documentation of domestic violence. If the survivor simply abandons the unit and stops paying rent, the landlord may file an eviction action or a lawsuit against her for the unpaid rent due under the remaining lease term. Therefore, advocates should negotiate with the landlord for a date on which the parties can mutually agree to end the lease. If the parties reach an agreed-upon date for ending the survivor's lease obligations, the agreement should be put into writing and signed by both parties.

Advocates should inform the landlord that the survivor has previously experienced acts of violence on the premises, and that her safety will be jeopardized if she is forced to continue renting the unit. These negotiations may be more successful if advocates submit

Statistic of the Month

11% of lesbians reported violence by their female partner and 15% of gay men who had lived with a male partner reported being victimized by a male partner.

Patricia Tjaden, Symposium on Integrating Responses to Domestic Violence: Extent and Nature of Intimate Partner Violence as measured by the National Violence Against Women Survey, 47 Loy. L. Rev. 41, 54 (2003).

documentation demonstrating the risk of harm the survivor faces if she does not move, such as letters from service providers, statements from neighbors, or medical records. It may also be helpful to have a police officer or prosecutor call the landlord on the survivor's behalf. In many states, landlords can be held liable for assaults against tenants where the landlord knew that a tenant was at risk of harm but did not take reasonable steps to protect the tenant's safety. Advocates should research the legal authority in their state regarding landlords' liability for criminal acts committed by third parties. If appropriate, advocates should argue that the landlord could be held liable for future attacks on the survivor if he does not take the reasonable step of negotiating with the survivor to end her obligations under the lease.

The landlord may be more amenable to negotiations if the survivor has a friend or family member who is willing to assist in finding a new tenant, such as by advertising and showing the unit. Additionally, advocates should discuss with the survivor whether the apartment contains any habitability problems, such mold, broken windows, inadequate heating, or rodent or insect infestations. In many states, tenants may cite uninhabitable conditions as grounds for terminating the tenancy, and the landlord may be more willing to end the lease if the advocate reminds the landlord of this fact.

Advocates may also want to raise contract arguments, such as unconscionability and breach of the implied covenant of good faith and fair dealing. For example, in *Knudsen v. Lax*, 842 N.Y.S.2d 341 (N.Y. County Ct. 2007), a tenant with three young daughters sued her landlord to terminate her lease after a registered sex offender moved into a neighboring apartment. The court found that a lease clause that allowed the landlord to

charge the tenant the rent due under the remainder of her lease term, regardless of the fact that the tenant had good cause for terminating her lease, was unconscionable. The court also found that the landlord breached the implied covenant of good faith and fair dealing by refusing to terminate the lease.

Conclusion

Advocates will need to be creative and resourceful in cases where a tenant needs to break the lease to escape domestic or sexual violence, but does not have clear legal authority to do so. NHLP is happy to provide technical assistance to advocates working on these cases. ■

HUD Continues Its Effort to Prevent Housing Discrimination Based on Sexual Orientation or Gender Identity

In October 2009, Department of Housing and Urban Development (HUD) Secretary Shaun Donovan announced that HUD would enact measures to ensure that its programs are open to lesbian, gay, bisexual or transgender (LGBT) individuals. Secretary Donovan pledged to make these efforts a priority, stating "President Obama and I are determined that a qualified individual and family will not be denied housing choice based on sexual orientation or gender identity."

While there are no national assessments of LGBT housing discrimination, previous studies have indicated a bias against LGBT individuals and families seeking housing. For example, a 2007 Michigan study found that 30 percent of same-sex couples were treated differently from heterosexual couples when attempting to buy or rent a home. Bearing in

mind such discrimination, HUD has taken several steps toward the goal of preventing discrimination against LGBT individuals, especially in HUD housing, and plans to commence others in the near future. Such protections will be invaluable for ensuring access to housing for LGBT survivors of domestic violence, who often face discrimination based on membership in both protected groups.

HUD Issues Guidance on LGBT Housing Discrimination Complaints

On July 1, 2010, HUD issued guidance explaining that although the Fair Housing Act (FHA) does not explicitly prohibit housing discrimination based on sexual orientation or gender identity, the FHA's provisions may nonetheless protect individuals in these categories. Importantly, the guidance states that discrimination based on gender identity, which is often experienced by transgender individuals, constitutes impermissible sex discrimination under the FHA. Further, discrimination against LGBT individuals may violate other provisions of the FHA as well. For example, discrimination against a gay man due to fear he will infect other tenants with HIV or AIDS may constitute illegal discrimination on the basis of a perceived disability. While this guidance will not cover all instances of discrimination against LGBT individuals, it ensures that HUD will enforce the existing anti-discrimination law that protects these families.

Additionally, HUD staff will refer complaints to state and local governments that have enacted additional legal protections against discrimination based on sexual orientation or gender identity. The guidance lists approximately 20 states that prohibit discrimination against LGBT individuals, and notes that the District of Columbia and approxi-

mately 60 cities, towns, and counties do so as well. A map of these states is provided below.

HUD Requires Grant Applicants to Comply with State and Local Anti-Discrimination Laws

As another step toward increasing access to housing for all people, HUD published a Notice of Funding Availability (NOFA) for FY 2011 on June 11, 2010, which for the first time requires applicants for competitive programs to comply with state and local anti-discrimination laws protecting LGBT individuals. According to the NOFA, any subrecipients of competitive grants are also required to comply with these anti-discrimination laws. Furthermore, in order to have their submissions considered for competitive funding, applicants now must demonstrate that they have not been charged with a systematic violation of state or local law proscribing discrimination in housing based on sexual orientation or gender identity. As noted above, this will affect approximately 20 states and 60 localities.

Ongoing Efforts

In addition to the July guidance and the June NOFA, HUD plans to undertake further measures to combat housing discrimination on the basis of gender identification or sexual orientation. While the only way to prohibit LGBT discrimination in all types of housing is to amend the FHA, HUD can prohibit discrimination in all of its housing programs. To that end, HUD has stated an intent to propose a new regulation clarifying that the term "family," as it is used to describe eligible beneficiaries, includes LGBT individuals and couples. Such a redefinition would help ensure that LGBT families can access HUD-

assisted housing. As the proposed definition becomes public, it will be vital for advocates to engage in the process to guarantee that the full scope of LGBT families and individuals are encompassed.

Further, the Federal Housing Administration (FHA) will instruct its lending institutions that FHA-insured mortgages must be based on the credit-worthiness of borrowers, and not on unrelated factors such as sexual orientation or gender identity.

Finally, HUD has commissioned a national study of discrimination against LGBT people in the rental and sale of homes. In March of 2010, HUD launched a website soliciting public comments on its LGBT housing discrimination study, the first of its kind. HUD also held town hall meetings in the cities of Chicago, San Francisco and New York to gather feedback on how to design and implement the study. Such a study will help illuminate the extent of discrimination against the LGBT community.

Conclusion

Although less protective than comprehensive legislative or executive action covering all states, HUD's recent steps to address discrimination against LGBT individuals provide welcome methods to prevent it. The June NOFA is a positive step towards ensuring compliance with existing law, where there is local anti-discrimination protection for LGBT individuals. The July guidance will allow HUD to fight discrimination based on gender identity using the FHA as it is currently written. Moreover, a HUD-issued regulation clarifying the definition of family would be a significant step toward preventing LGBT discrimination in HUD-assisted housing. ■

States with Anti-Discrimination Protections for LGBT Individuals



To view HUD's new guidance and a list of states with LGBT Anti-Discrimination Protections, visit:
http://portal.hud.gov/portal/page/portal/ HUD/program_offices/ fair_housing_equal_opp/LGBT%20Housing% 20Discrimination

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

Navneet Grewal, ngrewal@nhlp.org,
 Meliah Schultzman, mschultzman@nhlp.org
 National Housing Law Project
 614 Grand Ave. Suite 320
 Oakland, CA 94610.
 Phone: (510)251-9400
www.nhlp.org

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