

HOUSING JUSTICE

National Housing Law Project

Newsletter June 2011

Procedural Protections for Domestic Violence Survivors in Federally Subsidized Housing

This month's newsletter focuses on the basic procedures that housing providers must follow before they can evict or terminate the rental assistance of tenants in federally subsidized housing. In federally assisted housing, the statutes, regulations, Department of Housing and Urban Development (HUD) guidance, public housing agency (PHA) policies, and leases pertaining to each program provide procedural protections for tenants facing eviction or termination of assistance. The procedures differ among the federally subsidized housing programs. As a result, the procedures that will apply in an individual case will depend on which housing program a domestic violence survivor is in. For example, survivors in public housing are usually entitled to a more elaborate set of procedural protections than those in other subsidized housing programs. This article describes the procedural protections available to survivors in several of the major federally subsidized housing programs, including public housing, Section 8 vouchers, HUD-subsidized and project-based Section 8 developments, and Section 515 Rural Housing.

Overview of Procedural Protections

Survivors in federally subsidized housing are entitled to notice and an opportunity to be heard before they can be evicted or terminated from the program. The survivor must be notified of the adverse action in writing, and the notice must inform

her of the grounds for termination or eviction. The time period in which the survivor must respond to the notice will depend on the housing program she is in and the nature of the alleged violation. For example, a survivor in public housing must receive 14 days' notice for an eviction due to non-payment of rent.

In many instances, federally subsidized tenants are entitled to an informal meeting or hearing before they may be evicted or their subsidies may be terminated. Depending on the program, the proceeding is called a grievance hearing, an informal hearing, or a meeting. The proceeding provides the survivor an opportunity to refute the evidence and legal arguments that the housing provider submits in support of the eviction or termination. The survivor can also use the proceeding to show that the housing provider relied on erroneous information, failed to consider all of the circumstances, violated the protections available to domestic violence victims under the Violence Against Women Act (VAWA), or violated fair housing laws. Whether a survivor is entitled to a pre-eviction administrative proceeding will depend upon which housing program she is in. The procedures for several housing programs are discussed below.

Public Housing

In the public housing program, tenants are usually entitled to a pre-eviction grievance hearing. This hearing is preceded by an informal meeting where the parties attempt to settle the matter. If the informal meeting does not yield a settlement, the tenant can request a grievance hearing.

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Before the hearing, the PHA must provide the tenant a reasonable opportunity to examine any documents that it has that are directly relevant to the eviction. During the hearing, the tenant has the right to be represented by counsel or a representative of her choice, to present evidence and arguments, to rebut contrary evidence, and to cross-examine witnesses. After the proceeding, the hearing officer must issue a written decision that includes the reasons for the decision.

If an eviction is based on criminal activity that threatens health or safety or involves drug-related activity, the PHA can decline to offer the grievance procedure and directly proceed with eviction. Thus, a PHA may decline to offer a survivor the grievance procedure in cases where the abuser committed criminal acts that threaten health or safety. If the survivor was the victim of these criminal acts, attorneys should ask the PHA to reconsider its decision not to offer the grievance procedure. Because the survivor likely has a defense against eviction under VAWA or fair housing laws, pursuing the eviction may be a waste of the PHA's time and resources, and may harm the survivor's credit history. It is therefore preferable to resolve these cases using the grievance procedure.

Section 8 Vouchers

As a preliminary matter, eviction of a Section 8 tenant must be distinguished from the termination of the tenant's voucher. Eviction is handled by the Section 8 landlord and is commenced by filing an action in court. By contrast, termination of the voucher is handled by the PHA and is commenced by issuing a notice of proposed termination. This notice informs the Section 8 tenant of her right to request an administrative proceeding, called an informal hearing, to challenge the decision. In some circumstances, eviction for breach of the lease can be grounds for termination of the Section 8 voucher, but the PHA still must follow the notice and informal hearing procedure in order to terminate the voucher.

In the voucher program, Section 8 landlords are not required to offer tenants an informal meeting or other proceeding before pursuing an eviction

Statistic of the Month

A household must earn the equivalent of \$38,400 in annual income to afford the national average two-bedroom fair market rent of \$960 per month.

National Low Income Housing Coalition,
Out of Reach 2011,
<http://nlihc.org/oor/oor2011/>

action in court. However, advocates should contact the Section 8 landlord anyway to determine whether the matter can be resolved informally, particularly where the survivor has a defense under VAWA or fair housing laws.

In contrast to the judicial eviction process, PHAs must provide the opportunity for an informal hearing to a tenant before it can terminate her Section 8 voucher assistance. During the informal hearing, the tenant may be represented by counsel or other representative, may present evidence, and may question witnesses. After the proceeding, the hearing officer must promptly furnish the tenant with a written decision that includes the reasons for the decision.

HUD-Subsidized and Project-Based Section 8 Developments

If a tenant is facing eviction from a HUD-subsidized or project-based Section 8 development, she must be given 10 days to request a meeting where she can discuss the proposed eviction with the landlord. Although this does not entitle the tenant to the procedural protections of the public housing grievance hearing or the Section 8 informal hearing, it does give the tenant a chance to explain the circumstances surrounding the alleged lease violation. Advocates should use this meeting as an opportunity to informally resolve the eviction.

Section 515 Rural Housing

Much like tenants in HUD-subsidized and project-based Section 8 developments, tenants facing

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eviction from Section 515 Rural Housing must be given an opportunity to meet with the owner to discuss the lease violation. This gives the tenant a chance to informally resolve the dispute before the owner files an eviction proceeding.

Conclusion

Residents of federally assisted housing must be given certain procedural protections before a housing provider can evict them or terminate their rental assistance. Advocates should urge domestic violence survivors to exercise their rights to all available procedural protections. Depending on the program at issue, advocates should assist the survivor in requesting an informal meeting or grievance hearing. If the survivor missed the deadline for requesting the hearing or meeting, advocates should examine whether the survivor's failure to meet the deadline was related to domestic violence or disability and seek an extension. Advocates can assist survivors in preparing for the meeting or hearing by helping the survivor request a copy of her tenant file, identifying relevant witnesses, and reviewing documents that could be used in the survivor's defense, such as police, court, or medical records. ■

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

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Credit History and Extenuating Circumstances for Individuals Applying for Subsidized Housing

Earlier this year, Department of Housing and Urban Development (HUD) Assistant Secretary Sandra Henriquez issued a memo to all public housing agencies (PHAs) regarding credit histories. The memorandum explains that when applying to public housing or the Section 8 Housing Choice Voucher program, people with disabilities may be at a disadvantage because of negative credit history related to a particular disability. For example, an applicant may have significant medical costs from hospitalization that led to poor medical history. Or, an applicant's severe post-traumatic stress disorder may have prevented her from paying bills for a period of time. Fortunately, HUD's existing framework allows PHAs to consider extenuating circumstances when screening tenants.

The memorandum urges PHAs to use their discretion when determining admissions and occupancy policies. Further, the memorandum states that PHAs should consider local needs when setting their local admissions and occupancy policies. The credit history checks that PHAs perform should focus narrowly on verifying rental payment history. Thus, if an applicant has a good history of paying rent on time, advocates should emphasize that this factor should outweigh any negative credit history.

This memorandum should be helpful for advocates who are assisting domestic violence survivors who have poor credit histories. In many cases, an abuser may have engaged in financial abuse that resulted in outstanding debts, overdue payments, and even bankruptcy for the survivor. The memorandum can be used to support arguments that credit history that is a direct result of domestic violence committed against an applicant should not be a basis for denial of admission to public housing or the voucher program.

For a copy of the memorandum, please contact Navneet Grewal at the National Housing Law Project, ngrewal@nhlp.org. ■