



Tip of the Month October 2014

Helping Survivors of Domestic and Sexual Violence Obtain and Retain Safe and Affordable Rental Housing

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It is a difficult decision for a survivor of domestic abuse to leave an abuser, and when living in rental housing, obligations under the lease can make the decision even more difficult. In addition to victims of domestic violence, victims of sexual assault and stalking may also need to move from their apartments and break their leases for safety. The impact of domestic abuse, dating violence, stalking and sexual assault extends well beyond physical and emotional harm to the victim. Changes to the Federal Violence Against Women Act (VAWA) in 2013 and changes to state statutes effective August 1, 2014 facilitate the victim's escape from a violent home, and protect them from adverse actions by the landlord because of violence in their home.

PROBLEMS FACED BY VICTIMS OF ABUSE

Moving takes the victim out of the dangerous environment, but may result in a struggle to maintain basic human needs. The time period when moving/leaving the home is the most dangerous time for a victim. Moving out of rented housing often involves the victim breaking a lease. Traditionally, even if the victim vacates the property, there remains a contractual obligation to pay rent. Failure to pay rent may result in the landlord filing an eviction or other action to recover the unpaid rent. Joint liability under the lease may mean that the victim will have to face the abuser in court.

In addition to rent obligations, domestic abuse, dating violence, stalking and sexual assault can affect the victim's compliance with other terms in the lease. Victims who feel they must stay with an abuser may face additional harm from landlords trying to evict the criminal activity of domestic abuse perpetrated against them or repeated police calls associated with domestic abuse which are protected by statute. Violent struggles in the home can also result in damage to the premises for which the landlord may try to hold the victim responsible. The victim's problems can even extend beyond the current tenancy. If the landlord files an eviction or other action against the victim, the resulting court record may make it difficult for the victim to find safe, affordable housing.

ISSUE SPOTTING

As discussed below, victims of domestic abuse are afforded protections under state and federal laws. However, victims do not always identify themselves as victims or identify their legal problems as resulting from domestic or sexual violence. It is important for the housing attorney to spot signs of domestic abuse and sexual violence in order to invoke these protections in housing cases.

Practice Tip: Ask questions and fully investigate the grounds of a landlord’s case or the tenant’s motion for expungement to determine whether domestic or sexual violence is an underlying factor, manifesting as a complaint against the tenant of:

- noise
- criminal activity
- police visits
- property damage
- unauthorized occupants, or
- nonpayment of rent.

SOLUTIONS

At both the federal and state level, there is relief available to help victims of domestic abuse, dating violence, stalking and sexual assault escape danger. At the federal level, VAWA, as amended in 2013, applies only to housing involving federal funding. This includes Public Housing, the Section 8 Housing Choice Voucher program, and Project-based Section 8, Low-Income Housing Tax Credit housing among others. People living in private housing have state laws that may assist them to either move if that is needed, or stay if the reason for the evictions/termination is based upon domestic abuse, stalking or sexual assault

VAWA

VAWA’s scope aims to ensure that victims of domestic violence and their families can obtain and maintain housing. VAWA protects victims of domestic violence, dating violence, or stalking, who live in federally funded housing or who are applying for federally-funded housing. Federally funded housing programs that are covered by VAWA now include: Public Housing; Project-based Section 8; Section 8 Housing Choice Voucher programs; private landlords renting to Section 8 Housing Choice Voucher Holders; Section 202; Section 811; Low Income Housing Tax Credit Housing; USDA Rural Housing; and any housing funded through the McKinney-Vento Act—which includes homeless shelters, Supportive Housing programs, Shelter Plus Care housing. The act’s protections extend to affiliated household members of the victims as well.

APPLYING FOR FEDERALLY-FUNDED HOUSING

VAWA protects victims who are applying for federally-funded housing from application denials based on their status as survivors or on incidents of domestic or sexual violence. A federally-funded landlord in a VAWA-covered housing program cannot reject an applicant because he or she is a victim of domestic violence, dating violence, stalking or sexual assault. To assert this protection, the victim must know the housing provider’s grounds for denial and be able to connect them to the status as a victim. VAWA-covered programs all have application procedures that require some form of appeal review if an application is denied. The victim can provide written notice to the prospective landlord that the denial is because of the incidents of domestic or sexual violence. The housing provider may ask for supporting documentation. All information about an applicant’s status as a survivor or documentation submitted is confidential, and the housing provider cannot release it without the victim’s consent.

Practice Tip: The connection between the domestic violence and the reason for denial of the application may not be apparent. Prior evictions, criminal activity, or landlord claims of unpaid rent could be grounds for denial, but they may be the result of prior instances of domestic violence. Interview your client carefully to identify the connection and assert the applicant's right VAWA protection and the information to the housing provider.

RETAINING FEDERALLY FUNDED HOUSING

Landlords covered by VAWA cannot evict a resident for incidents of actual or threatened domestic violence, dating violence, stalking or sexual assault against the resident or affiliated household member. Also, the landlord cannot evict the victim for criminal activity directly related to such violence. The victim can raise VAWA's protections as a defense to an eviction action and ask that the eviction/termination be withdrawn. However, to prevent the court case altogether, it may be prudent to invoke VAWA protections and tie the landlord's bases for proposing eviction to the domestic or sexual violence as soon as the victim has notice of the landlord's intent to file an eviction action. The housing provider can ask for information supporting the victim's claim for VAWA protection.

The landlord can still evict the victim for unrelated criminal activity or lease violations, but cannot hold the victim of domestic or sexual violence to a higher standard than others residents who are victims of crime. If a landlord can show that only eviction of the victim will prevent an actual and imminent threat to the safety of others from the perpetrator of the domestic or sexual violence then such an action might succeed. However the law sets out a very strict and objective standard of proof for such an action against the victim.

Practice Tip: When your client is a victim or an immediate family member of a victim facing an eviction or termination of tenancy, search for connections between the domestic or sexual violence and the grounds for eviction. For example, the client may have been arrested and charged with an assault, but upon further investigation, she had been acting in self-defense against the abuser. Establishing this connection could save the client from eviction and from loss of the family's rent subsidy.

VAWA gives the victim and housing provider some options to keep the victim safe with continued housing subsidy:

- 1) **Bifurcating the Lease:** The landlord/housing provider can bifurcate the lease and evict the abuser while keeping the victim and her family in the subsidized premises. The victim will have to claim VAWA protections and provide documentation supporting this. Documentation requirements are set out in the VAWA statute and regulations and can range from self-certification by the victim to police or court records, restraining orders, or other third-party verification regarding the incident(s). The landlord is required to keep such information confidential.
- 2) **Terminating the Lease:** In a tenancy under the Section 8 Housing Choice Voucher program, the Voucher holder rents from a private market landlord who receives the subsidy from the Section 8 Program. A victim of domestic or

sexual violence may terminate the lease, and keep her Voucher to rent at a new location. Section 8 rules limiting the ability for participants to move do not apply to a participant moving for safety under VAWA. State laws regarding ending a lease for reasons related to domestic or sexual violence do not apply to lease termination moves made pursuant to VAWA.

Practice Tip: While VAWA offers protections for victims of domestic and sexual violence, it also offers legal methods for landlords to evict abusers. Keep this in mind when advising landlords.

MINNESOTA LANDLORD-TENANT LAW

Minnesota landlord-tenant law, Minn. Stat. § 504B, was amended effective August 1, 2014 so it now provides some protections for victims of domestic abuse, stalking and sexual assault in rental housing.

Practice Tip: Look at the statutory definitions carefully.

Victims of domestic abuse covered by the new protections are defined by Minn. Stat. § 518B.01 Subdiv. 2, when a household member does the following against a family member or household member:

- causes physical harm, bodily injury or assault;
- inflicts fear of imminent physical harm, bodily injury, or assault; or
- commits terroristic threats, criminal sexual conduct, or interferes with an emergency call (offenses defined by specific statutes)

Victims of stalking covered by the new protection are defined by Minn. Stat. § 609.749, subdivision 1. Victims of sexual assault covered by the new protection are defined by Minn. Stat. § 609.342 to 609.3451.

MINN. STAT. § 504B.171

The amendment creates a covenant against illegal activity that includes domestic abuse, stalking or sexual assault.

Practice Tip: If a victim wants to stay in her home, the covenant may provide a way for the landlord to evict the perpetrator for violations of the covenant while continuing to maintain the tenancy of the victim. Ask the victim whether she wants to leave or wants to maintain her tenancy.

MINN. STAT. § 504B.285

The statute now provides that a victim cannot be evicted on the basis that the tenant or authorized occupant has been the victim of domestic abuse, stalking or sexual assault.

Practice Tip:

When your client is a victim of domestic or sexual violence facing eviction, search for the connections between the domestic abuse, stalking or sexual assault and the grounds for the

eviction. For example, the victim is being evicted for noise violations and damage to property but the noise violations and the damage to property occurred when her abuser assaulted her after breaking to door to enter the unit. Establishing the connection could save the client from eviction.

Minn. Stat. § 504B.206

This statutory section permitting a victim to terminate the lease has been substantially revised. It now applies to victims of domestic abuse, stalking and sexual assault. If a victim takes the steps outline in the statute the lease is terminated and no further obligations under the terms of the lease apply to the tenant. It applies to those tenancies that are not VAWA-covered tenancies.

Under Minn. Stat. § 504B.206, a tenant who is a victim of domestic abuse, stalking or sexual assault who fears imminent violence to the tenant or to an authorized occupant may terminate a lease by providing written notice.

The written notice must state:

- the tenant fears imminent violence from a person as indicated in a qualifying document;
- the tenant needs to terminate the tenancy;
- the specific date the tenancy will terminate; and
- the instructions for what the landlord should do with any persona property that remains in the premises after the tenant vacates.

The victim must deliver the notice by mail, fax, or in person prior to the termination date, along with a copy of the qualifying document. A qualifying document can be a court order, a police report, some other document signed by a judge or prosecutor, probation officer, domestic abuse advocate, sexual assault counselor or medical professional.

The landlord may ask for the name of the perpetrator but the tenant is not required to provide it unless it is known and the tenant determines that it is safe to provide the name. All information disclosed is confidential, but the landlord may be able to use it in an eviction action or a claim for unpaid rent or damages.

The rent for the month in which the tenant vacates must be paid. The victim must forfeit all claims to the damage deposit. The victim is NOT required to pay any additional amounts to the landlord to end the lease. When fully compliant with the statute, the victim is relieved of obligations under the lease. If there are remaining tenants their tenancy ends at the end of the month in with the victim vacates. The remaining tenants and the landlord may enter into a new lease.

Practice Tip: This is essentially a new statute. Landlords are not all aware that the requirement for payment of an additional amount to end the lease has been removed from the law. You may need to walk through the steps of the statute as carefully with the landlord as you have with the

tenant when helping her prepare her notice. The law expands the types of documents that support the ending the lease notice, so even if the tenant does not have an Order for Protection or No Contact order it is now possible to end the lease and move to a safer location with the other documentation as outlined in the statute. Help the tenant review any documentation offered with the notice to redact any confidential or intimate information that might be in the document but not necessary to satisfy the statute.

RESOURCES

- www.lawhelpmn.org Factsheets H-22 “Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault”, H-23 “Victims of Domestic Violence, Stalking, or Criminal Sexual Conduct: Your Rights in Breaking Your Lease”, and H-32 “Tenants’ Right to Seek Police and Emergency Assistance”
- www.projusticemn.org CLE materials for “Domestic and Sexual Violence & Housing: Minnesota 2014 State Law Changes and Review of VAWA 2013 Federal Housing Protections” presented by Christy Snow-Kaster from Central Minnesota Legal Services and Dorinda Wider from Mid Minnesota Legal Aid.
- Violence Against Women Reauthorization Act of 2013 Housing Protections for Survivors - NHLP’s library: <http://www.screencast.com/t/pGpkkVAPVic>.
- National Network to End Domestic Violence | The Violence Against Women Act Reauthorization Of 2013: Housing Protections (Section 601): <http://nnedv.org/policy/issues/housing.html%20http://nnedv.org/pages/3853-the-violence-against-women-act-reauthorization-of-2013-housing-protections-section-601.html>.