

Housing Rights **ADVOCATE**

Austin Tenants' Council • Issue 69, Spring 2013

Landlord Charged With Discrimination

The City of Austin Equal Employment/Fair Housing Office charged an Austin landlord with violating the Fair Housing Act on the bases of race: black and sex: female.

The COA EE/FHO alleges Michael Jennings, former owner of a duplex located at 2614 Sol Wilson Avenue, Austin, TX, pursued an eviction against his tenant, Patricia Tealer, for nonpayment of rent while the lease contract contained terms of \$0 rent (in 2010, Jennings signed an agreement with Tealer to act as his property manager in lieu of rent). In addition, the COA EE/FHO alleges Jennings subjected Tealer to racial slurs and sexually harassing comments. Jennings submitted no defense to Tealer's allegations.

The federal Fair Housing Act prohibits landlords from discriminating based on race, color, religion, national origin, sex, disability and familial status. Under the Act, it is illegal to make housing unavailable or set different terms, conditions, or privileges for the sale or rental of housing because of one of the protected classes.

The Act also makes it illegal to threaten, coerce, or intimidate anyone exercising a fair housing right.

"Discrimination has no home in Central Texas. Tenants do not have to accept derogatory or intimidating statements based on their race or sex," said Katherine Stark, executive director of the Austin Tenants' Council. "The Austin Tenants' Council is committed to combating all violations of the Fair Housing Act."

The charge will be heard by an administrative law judge unless any party to the charge elects to have the case heard in federal district court. If an administrative law judge finds after a hearing that illegal discrimination has occurred, the judge may award damages and order injunctive relief and other equitable relief to deter further discrimination. In addition, the judge may impose civil penalties in order to vindicate the public interest and award attorney's fees. If the matter is decided in federal court, the judge may also award punitive damages to aggrieved persons.

Fair Housing Act: Celebrating 45 Years

To recognize the 45th anniversary of the Fair Housing Act, ATC presented two fair housing conferences in April. More than 100 people, including attorneys, housing authority staff, civil rights investigators, affordable housing landlords, and social service providers, attended the first training. Scott Chang, an associate

with Relman, Dane & Colfax in Washington, D.C., provided a legal update including a discussion of HUD's recent disparate impact rule. At the second training, sponsored by the City of Round Rock, ATC and Texas RioGrande Legal Aid offered guidance on fair housing and tenant-landlord laws to 25 housing providers in Williamson County.

Intervention Prevents Homelessness

The Austin Tenants' Council offers crisis intervention to Travis County residents who do not exceed income guidelines (\$47,100 annually for a family of four). Counselors mediate on behalf of tenants to resolve emergencies such as illegal eviction, lockout, utility shut-off, or improper seizure of personal property that threaten their housing.

Locked Out!

Mirna Aguilar, a mother of two small children, fell behind in her rent after becoming ill. She owed Legacy Apartments her water utility payment and \$137 in late fees when the manager changed the locks to Aguilar's apartment. The manager opened the door to allow Aguilar to gather a few belongings, but would not allow her to remain in the apartment.

A Lockout Is Not An Eviction

There are many misconceptions about a lockout. Some think it is a way to evict a tenant, and others think that the tenant has to pay the delinquent rent to be able to reenter the dwelling. The Texas Property Code, §92.0081 – §92.009, describes under what conditions a landlord may change the locks on a rental unit and the tenant's

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remedies if the law is not followed.

A landlord may not change the locks because of a tenant's failure to pay the rent unless the lease includes written notice of the landlord's right to exercise a lockout.

The intention of the lockout law is to force a tenant who is delinquent in rent to have contact with the landlord to discuss the problem or to arrange payment. Landlords must follow a strict procedure when changing the door locks of a tenant, and the tenant must be given a new key whether or not any delinquent rent is paid. A landlord cannot legally, permanently lock a tenant out without going through the eviction process.

In short, the lockout law says:

1. The lease must include written notice of the landlord's right to exercise a lockout.
2. The tenant must be behind on rent.

3. The landlord must give advance, written notice to the tenant.
4. The tenant does not have to pay any money to regain entry into the rental unit.
5. The landlord must give the tenant a key upon request.
6. A lockout is not an eviction.

The landlord of an apartment complex that receives housing tax credits is prohibited from locking out or threatening to lock out a tenant.

Housing Secured

Linda Aleman, ATC housing specialist, contacted the manager and explained the lawful lockout and eviction procedures. At first, the manager refused to allow Aguilar to reenter the apartment.

If a landlord refuses to give the tenant a new key, the tenant can get assistance from the justice of the peace court by re-

questing an order called a writ of reentry. The tenant will need to specify both in writing and orally as to how the landlord violated the law. The court will typically charge the tenant a fee for the constable to deliver this order to the landlord. The tenant can ask the court to waive this fee by asking for a pauper's affidavit. The tenant will have to disclose some financial information so the judge can make a decision. If the judge approves the pauper's affidavit, the order will be delivered free of charge. This order will require the landlord to allow the tenant access to the rental unit.

After talking with Aleman, the manager finally agreed to provide Aguilar with a key. And rather than pursuing an eviction against Aguilar, the manager also agreed to a payment arrangement so Aguilar could remain in her home and get caught up on the money she owed the landlord.

Tenant Files Successful Motion to Stay

Erica Webb contacted ATC after a constable notified her that he would be returning to her home in 24 hours to enforce an eviction.

Writ of Possession

After an eviction hearing, the judge will make a decision based on the facts presented during the hearing. If the judgment is in favor of the landlord, the tenant will have five days to move out or appeal the decision. If the tenant does not move out or appeal, the landlord must request that the judge issue a writ of possession, which is a court order directing the constable or sheriff to place the landlord in possession of the rental unit. The tenant, all occupants,

and personal items will be removed by the landlord under the supervision of the constable or sheriff. Before removing all people and belongings, the officer executing the writ must give the tenant 24 hours to move from the time the officer posts a written warning notice on the front door.

Appeal Filed

When Webb received notice from the constable, she had already filed an appeal, paying a bond into the court so she could remain in her apartment until the appellate county court case was heard.

A clerk at the justice court informed Webb that the constable could only stay the writ

with a written order from the court. The clerk advised Webb to file a motion to stay the writ of possession, but could not provide Webb with the form necessary to request this motion from the judge.

After consulting with Texas RioGrande Legal Aid, ATC housing specialist Andrew Jones counseled Webb on her rights. Webb created her own document for a motion to stay the writ of possession. This motion included a copy of the court registry receipt from the bond that was paid to file the appellate case.

After Webb presented her case, the judge granted the stay. Webb was able to remain in her home during the appeal after she and the constable received a written order, staying the writ of possession.

Intervención Evita Desamparo

El Consejo de Inquilinos de Austin ofrece servicios de intervención ante crisis a residentes del Condado Travis que no exceden los requisitos de ingresos (\$47,100 anuales para familia de cuatro miembros). Sus consejeros interceden a favor de inquilinos en la resolución de emergencias por acciones ilegales como desalojo, impedimento de entrada, desconexión de servicios, o inapropiado embargo de propiedad personal que amenaza el alojamiento.

Impedimento de Entrada

Mirna Aguilar, madre de dos niños pequeños, se atrasó en el pago de la renta al enfermarse. Le debía a Legacy Apartments el pago del agua y \$137 en recargos por mora cuando el administrador cambió la cerradura del apartamento de Aguilar. El administrador le abrió la puerta para permitirle sacar algunas cosas pero no le permitió quedarse en el apartamento.

El Impedimento de Entrada No Es Desalojo

Hay muchas ideas erradas sobre el impedimento de entrada. Algunos piensan que es una manera de desalojar al inquilino, y otros piensan que el inquilino debe pagar la renta debida para volver a ocupar la vivienda. El Código de la Propiedad de Texas (§92.0081 – §92.009) describe las condiciones por las que un propietario puede cambiar la cerradura de una unidad de renta y los recursos del inquilino si no se cumple la ley.

Un propietario no puede cambiar la cerradura porque el inquilino no paga la renta, a menos que el contrato escrito especifique que el propietario tiene derecho a impedir la entrada.

La intención de la ley de impedimento de entrada es forzar al inquilino que adeuda

renta a comunicarse con el propietario para discutir el problema o planear el pago. Los propietarios arrendadores deben seguir un procedimiento estricto al cambiar las cerraduras de un inquilino, y el inquilino debe recibir una nueva llave pague o no la renta atrasada. El arrendador no puede legalmente impedir permanentemente la entrada a un inquilino sin pasar por el proceso de desalojo.

Vivienda Asegurada

Linda Aleman, especialista en viviendas de ATC, se comunicó con el administrador y le explicó el procedimiento legal de impedimento de entrada y desalojo. Al principio, el administrador se negó a permitirle la entrada a Aguilar.

Si un arrendador se niega a dar al inquilino una nueva llave, el inquilino puede obtener asistencia de un tribunal de juez de paz, solicitando una orden judicial de

reingreso. El inquilino deberá especificar tanto por escrito como oralmente de qué manera violó la ley el arrendador. El tribunal normalmente cobra al inquilino un cargo para que un agente presente la orden al arrendador. El inquilino puede pedir al tribunal que lo exima de este cargo mediante una declaración jurada de pobreza. El inquilino tendrá que presentar cierta información financiera para que el juez pueda tomar tal decisión. Si el juez aprueba la declaración jurada, la orden al arrendador será entregada libre de cargos. La orden requerirá al arrendador que permita al inquilino el acceso a la unidad de renta.

Después de hablar con Alemán, el administrador finalmente aceptó entregar una llave a Aguilar. Y en vez de proseguir a un embargo contra Aguilar, el administrador aceptó también un plan de pago para que Aguilar pueda permanecer en la vivienda y ponerse al día con la renta adeudada.

Propietario Acusado de Discriminación

La Ciudad de Austin - Oficina de Igualdad en el Empleo/Vivienda Justa (COAEE/FHO) acusó a un arrendador de Austin de violar el Acta de Vivienda Justa en base a raza: negra, y género: femenino.

COA EE/FHO alega que Michael Jennings, ex propietario de un duplex ubicado en 2614 Sol Wilson Avenue, Austin, TX, trató de desalojar a su inquilina Patricia Tealer por no pagar la renta, cuando el contrato especificaba una renta de \$0 (en el 2010, Jennings firmó un acuerdo con Tealer para actuar como administradora de la propiedad a cambio de la renta). Además, COA EE/FHO alega que Jennings sometió a Tealer a insultos racistas y comentarios sexistas. Jennings no presentó defensa ante las

denuncias de Tealer.

La federal Acta de Vivienda Justa prohíbe a arrendadores discriminar en base a raza, color, religión, nacionalidad de origen, discapacidad o estado familiar. Bajo el Acta, es ilegal negar o disponer distintos términos, condiciones o privilegios en la venta o renta de una vivienda por alguna de las razones protegidas. El Acta también hace ilegal amenazar, forzar o intimidar a alguien que hace ejercicio del derecho a vivienda justa.

La denuncia será vista por un juez de derecho administrativo a menos que una de las partes opte por llevar el caso a un juzgado de primera instancia.

Austin Tenants' Council
1640-B East 2nd Street, Suite 150
Austin, TX 78702

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Fair Housing Program / Programa de Vivienda Justa This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing, or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under state and federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento, o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

Telephone Counseling / Consejos por Telefono Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

In-House Counseling / Consejos en la Oficina Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7007.

Crisis Intervention / Intervencion Crisis Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenaza su vivienda. Call / llame al 474-1961.

Rental Repair Assistance / Ayuda con Reparaciones en su Vivenda The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7007.

Lease Forms / Contratos ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.

Austin Tenants' Council Staff
Linda AlemanHousing Specialist
Jose Calderon.....Housing Specialist
Melinda Carmona Fair Housing Program Specialist
Christine Castilleja Intake Specialist
Cruz GarciaHousing Specialist
Ian Groetsch Law Clerk
Andrew JonesHousing Specialist
Morgan MorrisonFair Housing Testing Coordinator
Lucia Perez-Salinas..... Fair Housing Program Specialist
Nekesha PhoenixFair Housing Program Director
Bruce Rodenborn Technical Support
Katherine StarkExecutive Director
Christopher SuarezHousing Specialist