|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Private | Public Housing | HUD Multifamily | LIHTC | Housing Choice Voucher | Section 515 Rural Rental Housing | HCD Programs | HOME | Continuum of Care |
| Ownership | Private owner | Public Housing Authority | Private non- or for-profit | Private non-or for profit | Private | Private non- or for profit | Private non- or for profit | Private non- or for-profit | Gov’t, nonprofit, or PHA |
| Rent | Market, unless rent controlled or stabilized | 30% of adjusted income or flat rent | Depends on program; primarily 30% of adjusted income or budget-based | Flat rents based on income category, *i.e*., 30% of 50% of AMI or 30% of 60% of AMI | 30% of adjusted income plus any additional amount to cover *reasonable* rent | Variable – market, flat, or 30% of adjusted income depending on type. | Variable depending on program | Variable | Variable, usually 30% of adjusted income |
| Good Cause | Depends on local jurisdiction | Required during and at end of lease term | Required during and at end of lease term | Required during and at end of lease term | Required during lease term | Required during and at end of lease term | Variable depending on program | Required during and at end of lease term | Required during and at end of lease term |
| Regulated by | State law and local jurisdictions | PHA and HUD | HUD | IRS and CTCAC | PHA and HUD | USDA Rural Development | Department of Housing and Community Development | HUD/local jurisdiction | HUD/local jurisdiction |

**Pathways to Justice: Common Issues in Subsidized Housing Evictions**

**Types of Housing: Basic Characteristics**

**Statutes and Regulations**

Public Housing

42 U.S.C. §1437d

24 C.F.R. Part 966

HUD Subsidized Housing

12 U.S.C. §1715z-1b(b)(3)

24 C.F.R. §§ 247.3, 880.607, 880.601, 882.511, 883.701

24 C.F.R. §5.100, 5.850-5.861

Rural Housing

Title V of the Housing Act of 1949

7 C.F.R. §3560.159

Section 8 Vouchers

42 U.S.C. §§1437f(d)(1)(B)(ii)-(iii), (v), (o)(7)(C),(D), (t)(1)(b)

24 C.F.R. § 983.257(b)(3); 982.310

Low Income Housing Tax Credit

26 U.S.C. §42(h)(6)(E)(ii)

HCD Programs

Links to guidance here: http://www.hcd.ca.gov/fa/amc/

Hypothetical 1

Anne lives in public housing. Her cousin Bart was just released from prison, where he had served time for engaging in mail fraud. Upon release, Bart listed Anne’s address as his place of residence because she is the only family he has in the state.

Scenario 1: Bart stays with Anne for 14 days while he searches for a permanent place to live. Though he leaves on the 14th day, Anne receives a notice from the housing authority that she is being evicted because neighbors saw a single man living with her. Also, when a housing authority inspector went into her unit, she saw men’s clothing in a closet, as well as shaving cream. What do you do to help Anne?

Scenario 2: Bart never actually lives with Anne, but the housing authority has a memorandum of understanding with the police department and they found that he had listed Anne’s address as his place of residence. Anne is served with an eviction notice based on that fact. What do you do to help Anne?

Hypothetical 2

Clara lives in subsidized housing that has project-based Section 8 funding. She has worked at K-Mart for five years and her pay has not changed. Clara also has 2 young children, aged 7 and 8. She has paid $380 for rent for the past six years. However, this year, her rent went up to $425. She cannot afford to pay the rent, so she falls behind. Her landlord serves her with a 3-day notice to pay or quit. Clara comes to you and says that she doesn’t know why her rent went up. What can you do to help Clara?

**Select Successful Cases Related to Defending Evictions and Terminations from Federally Subsidized Housing Programs**

* Nonpayment of rent
  + Unlawful rent increase in violation of rent control ordinance
    - *Landmark Realty, LLC v. Lewis*, No. CUD-13-646586 (Cal. Super. Ct. San Francisco Cnty. June 24, 2014).
      * Court sided with Section 8 voucher tenant in eviction action where the tenant withheld rent after learning that she had been overpaying rent. Court found that the landlord should have deducted her overpayments from the rent due; thus, the court found the 3-day notice did not correctly state the amount of rent owed.
  + Housing providers cannot combine additional charges to “rent” (late fees, damages, other charges)
    - *Seldin Co. v. Calbaro*, 702 N.W.2d 504, 507 (Iowa Ct. App. 2005)
      * Court concluded that tenant’s eviction on the basis of late fees is a violation of HUD policy, citing Handbook 4350.3, and noting that “HUD allows landlords to collect late fees in other ways, such as withholding funds from a tenant’s security deposit.”
    - *Sager v. Hous. Comm’n of Anne Arundel County*, 957 F. Supp. 2d 627 (D. Md. 2013)
      * Court concluded that a PHA lease clause that applied rent payments first to charges such as late fees violates the Brooke Amendment, the U.S. Housing Act, and Maryland consumer protection law. In *Sager*, the PHA would only apply payments to rent first if the tenant designated checks as “rent.” Absent this notation, the PHA would apply other charges to rent first. The court said, at 632, “This lease provision is, however, unworthy of an agency dedicated to the provision of decent, affordable housing to those of low income, and inconsistent with the purpose and provisions of housing law.”
* Breach of lease
  + Late Payments
    - Repeated late payments do not necessarily comprise material noncompliance with lease
      * *Gersten Companies v. Deloney*, 212 Cal. App. 3d 1119 (Ct. App. 1989).

Court concluded that federally subsidized tenant’s repeated late payments within grace period under state law did not, in themselves, constitute material noncompliance with lease. (The housing provider had failed to comply with three-day notice requirement.)

However, court said that housing provider could show material noncompliance if it could show harm to the housing project.

* + Unauthorized occupants
    - Burden of persuasion is housing authority’s; unreliable hearsay insufficient to establish violation of rule.
      * *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008)
        + In voucher termination hearing, statements made by alleged unauthorized occupant to police was unreliable hearsay and insufficient to establish violation of unauthorized occupant rule.
    - Use of mailing address alone by non-household member is insufficient to show unauthorized occupancy
      * *Matthews v. Hous. Auth. Baltimore City*, 216 Md. App. 572 (2014)

Appellate court reversed lower court’s affirmance of Section 8 voucher termination where tenant’s husband listed the tenant’s address as his mailing address, finding no evidence to support the unauthorized occupancy, and finding nothing in the PHA’s administrative plan to support termination when a non-household member uses a voucher holder’s address as a mailing address.

* + Disruptive behavior
    - Multiple confrontations with staff not sufficient to warrant terminating tenancy
      * *Smith v. Tuckahoe Hous. Auth.,* 973 N.Y.S. 2d 804 (N.Y. App. Div. Nov. 6, 2013)

Court reviewed PHA’s decision to terminate a couple’s tenancy because of the husband’s multiple confrontations with PHA staff. Court concluded that terminating the couple was disproportionate punishment that it shocked the judicial conscience as a matter of law. The court considered multiple factors, including that the confrontations did not include violence and that the husband was receiving anger management therapy.

* + Damaging the property
    - * *Moore v. Hous. Auth. of City of New Haven*, 1993 WL 525051 (Nov. 22, 1993)
        + Not an eviction case, but one in which the tenant had been constructively evicted due to poor housing conditions. Court concluded that federal regulations, specifically 24 C.F.R. § 966.4(h)(2), “requires the housing authority to make all repairs, even in the case of damage caused by the tenant,” and that the “only thing the regulation allows is the housing authority to bill the tenant for the damage; it does not relieve the housing authority of its obligation to repair.”
* Unreported income
  + Termination is not appropriate penalty for failure to report income
    - *Dep’t of Cmty Affairs v. Smith*, 2014 WL 784673 (N.J. Admin. Jan. 30, 2014)
      * + On appeal of tenant’s Section 8 voucher termination, ALJ concluded that termination was not the appropriate remedy when mother’s adult son did not report income; ALJ found the mother’s testimony credible that she simply was not aware of the son’s employment, and recommended repayment plan instead of termination.
    - Failure to report must be fraudulent
      * Chancellor Manor v. Thibodeaux, 628 N.W.2d 193, 196 (Minn. Ct. App. 2001)
        + “[T]enant error, which occurs when tenant misunderstands or forgets the rules, is distinguishable from fraud.”
* Failure to pay utilities
  + Failure to pay utilities does not necessarily constitute a serious or repeated lease violation.
    - *Sayles v. Greater Gadsden Hous. Auth*., 658 So. 2d 489 (Ala. Civ. App. 1994)
      * + Court found no cause for eviction for “the short-term disconnection of a utility service that occurred after an approximate two-year period of service,” in situation where utilities had previously been shut off.
    - *Hous. Auth. of Cnty of San Bernadino v. Kelly*, 2010 WL 8971996 at \*4 (Cal. App. Dep’t Super. Ct. Nov. 19, 2010) (Unpub.)
      * + Court concluded that federally subsidized tenants’ failure to pay a utility bill timely “on a single occasion” did not constitute “either a ‘serious’ or ‘repeated’ violation of their lease terms,” in situation where the utilities had not been shut off. Court cited *Sayles*.
* Criminal activity/drug use
  + Drug charge one-mile away from public housing complex insufficient to warrant immediate termination
    - *Carvel Gardens Annex b. McKnight*, No. JP19-08-001821 (Del. J.P. Ct. Dec. 19, 2008), available at: <http://www.nhlp.org/files/2014supplement/Chapter11/FN%20544%20Carvel%20Gardens%20v%20McKnight%20(Dec%2019%202008).pdf>
      * Court concluded that a drug charge for an incident occurring a mile from public housing complex was not “in, on or near the premises.” The court, at pg. 2, states: “‘In, on or near’” would only be meaningful where the drug activity was discovered by management in a rental unit on the common area of the complex or on the public street that is adjacent to the public housing project. The court finds that the immediate termination of the defendant is an inappropriate act by [the management company].”
* Fraud/Misrepresentation
  + - *Kingsbridge Ct. Assocs. V. Hamlette*, 906 N.Y.S.2d 773 (N.Y. Civ. Ct. 2009)
      * Section 8 Rehab housing provider attempted to terminate the tenancy of a tenant who had allegedly failed to disclose her Social Security Income. However, the court found that the housing provider failed to comply with required procedures by HUD. Thus, the court dismissed the proceedings. The court, at \*3, stated “By not complying with several HUD mandated requirement, [the housing provider] eviscerated the procedural safeguards intended to prevent improper termination of respondent’s federally subsidized tenancy.”
    - *Woods v. Willis*, 515 F. App'x 471 (6th Cir. 2013)
      * Housing authority may not solely use unreliable hearsay evidence to terminate voucher participant’s subsidy on basis of fraud. In this case, participant stated she had custody of her son, but housing authority used a letter from child’s father as proof she did not.