

Housing Rights **ADVOCATE**

Austin Tenants' Council • Issue 51, Fall 2008

All Hot Over Broken Air Conditioners

Keeping cool last summer was challenging for many Austinites. Even a dip in the chilly waters of Barton Springs Pool was no match for the record-breaking 100-degree days we experienced from May through September.

Many tenants suffered through the heat for weeks on end because their landlord refused to fix their air conditioning unit. By quickly mediating on behalf of these tenants, staff of the ATC Renters' Rights Assistance Program (RRAP) brought relief to dozens of clients.

David Kelley is one of the people assisted by ATC housing specialist Cruz Garcia. A cab driver for 10 years, Kelley has diabetes and takes insulin which must be kept cool

but cannot be refrigerated. His air conditioner stopped working at the end of May. Daily for several weeks, Kelley called his apartment manager to inform her of the problem. He even sent a certified letter requesting repairs. Maintenance would tinker with the unit, but it never worked for more than a few hours at a time.

In June, Kelley discussed his situation with Garcia during an in-house counseling appointment. Garcia called the apartment manager to find out what was happening with the repairs. Just three days later, Kelley had a newly installed AC unit cooling his apartment. "I don't know what Cruz said to them, but she got the job done," a thankful Kelley says. "I am really happy."

Renters' Rights After Hurricane Ike

In its wake, Hurricane Ike left a storm of confusion regarding renters' rights. Are tenants who had to evacuate responsible for paying rent? Does a lack of electricity make a rental unit "uninhabitable"? Can landlords charge a fee to tenants who want to terminate their leases?

Terminating the Lease

Like other natural disasters, hurricane damage is a "casualty loss." In these cases, landlords are not obligated to make repairs until they receive the insurance proceeds. Tenants' options to terminate their lease vary depending on the condition of the rental property after the hurricane.

Under Section 92.054 of the Texas Property Code, if the unit is completely unusable, either the tenant or the landlord may terminate the lease by giving written notice to the other before repairs are completed. The landlord may not charge the tenant a fee to terminate the lease nor hold the tenant responsible for any remaining rent due under the contract. The tenant is entitled to a refund of the security deposit and to a prorated refund of rent from the date the tenant moves out.

If the unit is partially unusable, the tenant does not have a right to terminate the

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FH Case Updates

In all settled cases reported here, the respondent, unless otherwise noted, denies the allegations of discrimination made by the complainant and the parties have agreed to resolve the case prior to a trial on the merits.

Padron v. Arbor Pointe

After a massive stroke left him unable to walk, Ricardo Padron had to begin using a wheelchair for mobility. While recovering, Padron wondered how he would be able to enter his apartment when he was released from the rehabilitation center. With several steps leading to its entrance, the apartment was not accessible for a wheelchair user.

ATC fair housing program specialist Lucia Salinas helped Padron make a request for reasonable accommodation. He asked the apartment manager to release him from his lease without penalty so he could find an accessible unit. The manager quickly agreed. "It's safe for me," Padron says of his new, accessible home. "I want to thank Lucy for her help — she did a great job."

Sanchez v. Village at Gracy Farms

Debbie Sanchez knew something wasn't right when she racked up two noise violations at her apartment complex — both for

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ATC Receives Housing Counseling Grant

In October, the U.S. Department of Housing and Urban Development awarded the Austin Tenants' Counsel \$50,326 for a one-year, comprehensive counseling grant.

As one of the few tenant-landlord organizations in Texas, ATC receives requests for assistance from across the state. This funding allows ATC to continue offering services such as telephone counseling and emergency mediation and repair assistance to clients living outside of Austin and Travis County.

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lease but is entitled to a proportionate reduction in the rent. The amount of the rent reduction is determined by a court judgment or a stipulation in the written lease. Before paying anything less than full rent, the tenant should review the lease and consult an attorney.

Tenants whose rental units are "partially unusable" should promptly send a certified letter to their landlord requesting repairs. If the landlord has received the insurance proceeds, the landlord must make repairs that are a threat to health and safety within a reasonable amount of time. Otherwise, the tenant, after sending a certified repair request, would have the right to terminate the lease without penalty.

What Is "Uninhabitable"?

The Texas Property Code does not provide a clear definition of "uninhabitable." Some

landlords may argue that a lack of utilities does not make a unit unusable. Ultimately, a judge will make the determination if the landlord disputes the tenant's claim and challenges the assertion in court. To be prepared, tenants should take photos or video of their rental unit, documenting the extent of the damage.

Rental Housing Assistance

The U.S. Department of Housing and Urban Development and the Federal Emergency Management Agency implemented a rental assistance program to provide temporary rental payments and case management services to tenants who were displaced by Hurricane Ike. Registration is available online at www.fema.gov or by calling 800-621-FEMA (3362).

For questions about your rights after a casualty loss, call ATC's telephone counseling line at 512-474-1961.

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incidents that occurred while she and her two daughters were not at home. Sanchez believed the manager, who is white, was discriminating against her because of her national origin and familial status.

Tired of the harassment, Sanchez moved out early and faced a bill of nearly \$5,350 including accelerated rent, reletting fees, and a concession payback.

ATC fair housing specialist Robert Hood helped Sanchez file a fair housing complaint. The City of Austin Equal Employment/Fair Housing Office negotiated a conciliation agreement where Sanchez paid \$371 for damages to her unit and the apartment complex released Sanchez from all contractual liability, waiving \$4,975 due under the lease. To learn more about fair housing laws, contact the ATC Fair Housing Program at 512-474-1961.

Utility Bill Assistance

The City of Austin offers several programs to help customers keep their utility account in good standing. For details, contact Austin Energy at 494-9400 or www.austinenergy.com.

Payment Assistance

The Customer Assistance Program helps eligible customers who are having difficulty paying their utility bill. To apply for financial assistance, contact one of these organizations:

- AIDS Services of Austin, 458-2437
- Any Baby Can, 454-3743
- Capital IDEA, 457-8610
- Greater Mount Zion Baptist Church, 469-9020
- Sacred Heart Catholic Church, 926-1171
- St. Mary's Cathedral, 476-3750
- Services to the Elderly, 477-3796
- Travis County, 854-4120

Fee Waivers and Discounts

Eligible customers qualify for the following fee waiver and discounts:

- \$6/month waiver of the electric service charge. This represents a total annual savings of \$72;
- Reduced rate for green power. This represents an average annual savings of \$131.52;
- 50-percent discount on the residential drainage fee. This represents a total annual savings of \$40.44.

Deferred Payment Agreements

A deferred payment agreement allows customers the opportunity to keep their utility account in good standing. The past due amount is spread out over a period of time, allowing customers extra time to become current on their account.

Gran Calor por Aire Acondicionados

Para muchos residentes de Austin, mantenerse fresco este verano fue un gran problema. Aún una zambullida en las frías aguas de Barton Springs Pool no fue paliativo para el número récord de días de más de 100 grados que tuvimos de Mayo a Septiembre.

Muchos inquilinos sufrieron el gran calor semana tras semana porque los propietarios se negaron a arreglarles las unidades de aire acondicionado. Mediando rápidamente a favor de los inquilinos, el personal del Programa de Asistencia en Derechos de Inquilinos (RRAP) de ATC logró aliviar a docenas de clientes.

David Kelley es una de las personas que recibió ayuda de la asistente de viviendas de ATC Cruz García. Taxista por 10 años, Kelley tiene diabetes y depende de insulina, la que debe permanecer fría pero no refrigerada. Su aire acondicionado dejó de funcionar a fines de mayo. Diariamente y por varias semanas, Kelley llamó a la administradora de su apartamento para informarle del problema. Hasta envió una carta certificada solicitando la reparación. El personal de mantenimiento hacía ajustes en la unidad pero ésta nunca funcionó por más de unas horas por vez.

En junio, Kelley planteó su situación a García durante una cita de asesoría en el lugar. García llamó a la administradora del apartamento para averiguar qué estaba pasando con las reparaciones. Solo tres días después, Kelley obtuvo la instalación de una nueva unidad de aire acondicionado en su apartamento. "No sé lo que les dijo Cruz, pero logró que lo hicieran", dijo Kelley agradecido. "Estoy muy contento."

Derechos de Inquilinos Después del Huracán

En su estela, el huracán Ike dejó una tormenta de confusión en cuanto a los derechos de inquilinos. ¿Son los inquilinos que tuvieron que evacuar responsables de pagar la renta? ¿La falta de electricidad hace a una unidad rentada "inhabitable"? ¿Pueden los propietarios cobrar un cargo a los inquilinos que desean cancelar sus contratos?

Cancelar Contrato

Como en otros desastres naturales, los daños por huracán son considerados "pérdida por accidente". En estos casos, los propietarios no están obligados a hacer reparaciones hasta que reciban el pago del seguro. La opción del inquilino a cancelar su contrato varía dependiendo de la condición de la propiedad rentada a consecuencia del huracán.

Bajo la Sección 92.054 del Código de la Propiedad de Texas, si la unidad es totalmente inhabitable, tanto el inquilino como el propietario pueden cancelar el contrato por medio de aviso escrito a la otra parte, antes de que se completen las reparaciones. El propietario no puede cobrar al inquilino el cargo de cancelación del contrato ni hacerlo responsable del resto de la renta debida bajo contrato. El inquilino tiene derecho al reembolso del depósito de seguridad y el reembolso prorrateado de la renta desde la fecha en que deja la unidad.

Si la unidad es parcialmente inhabitable, el inquilino no tiene derecho a cancelar el contrato pero tiene derecho a una reducción proporcional de la renta. La cantidad de la reducción estará determinada por opinión judicial o estipulación en el contrato escrito. Antes de pagar cualquier porción de la renta, el inquilino debería examinar el contrato y consultar a un abogado.

Los inquilinos cuyas unidades rentadas son "parcialmente inhabitables" deberían enviar prontamente una carta certificada al propietario, solicitándole reparaciones. Si el propietario ha recibido el pago del seguro, el propietario debe hacer las reparaciones de condiciones amenazantes a la salud y seguridad dentro de un período razonable de tiempo. De lo contrario, el inquilino, después de enviar la solicitud de reparación por certificado, tendría derecho a cancelar el contrato sin penalidades.

¿Qué Significa "Inhabitable"?

El Código de la Propiedad de Texas no ofrece una definición clara de "inhabitable". Algunos propietarios podrían argüir que la falta de electricidad o gas no hace a una unidad "inhabitable". En última instancia, un juez tomará la determinación si el propietario disputa el reclamo del inquilino y desafía la querrela en la corte. Para estar preparado, el inquilino debería tener fotos o video de la unidad rentada, documentando la extensión de los daños.

Asistencia a Viviendas Rentadas

El Departamento de Viviendas y Desarrollo Urbano de EE.UU. y la Agencia Federal de Administración de Emergencias implementaron un programa de asistencia en rentas para asistir con pagos temporales de renta y tratamiento de casos a inquilinos desplazados por el huracán Ike. La inscripción está disponible en Internet: www.fema.gov, o llamando al 800-621-FEMA (3362).

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This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code.

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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 amenass 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.

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