

Housing Rights **ADVOCATE**

Austin Tenants' Council • Issue 62, Summer 2011

Tenants Win Failure to Repair Lawsuits

When a landlord fails to respond or remedy a problem affecting the health or safety of an ordinary tenant, the tenant may file suit in justice, county, or district court and seek an order for the repair, reduction in the rent, civil penalty of \$500 plus one month's rent, actual damages, and attorney's fees if an attorney is hired. (A tenant may file suit in justice court without an attorney.) Two tenants recently won lawsuits against their landlords for failure to make repairs.

Disa Castillo v. Richard Jones

After her landlord ignored her requests for repairs, Disa Castillo contacted ATC for assistance. Castillo was especially concerned about her newborn's health due to a roach infestation.

Under ATC's Renters' Rights Assistance Program, housing specialist Rebecca Mojica



Pro bono attorneys S. Alex King and Thomas Tucker of Fritz, Byrne, Head & Harrison, PLLC represented Disa Castillo (center) in a lawsuit against her landlord.

visited Castillo's home to document the substandard conditions including a broken air conditioner, garbage disposal, and dishwasher; mold and rotted wood under the sink; sliding doors locked shut; dryer not properly ventilated; and an unbearable smell (possibly animal urine) in the 10-year-old carpet.

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2011 State Legislative Update *By Texas Tenants' Union*

The 82nd Texas Legislature made relatively few changes to tenant-landlord laws compared to prior sessions; however, one particular update will have a significant impact on eviction appeals.

HB 1111

Allows a justice of the peace (JP) to issue a writ of possession if a tenant appealing a non-payment of rent eviction case using a pauper's affidavit does not deposit rent into the registry of the justice court within

five days of appealing and as it becomes due. The clerk must give an appealing tenant a notice stating what must be done and by when.

Currently, JPs do not have the right to issue a writ of possession after an appeal is filed. Instead, landlords have to file a motion in county court (often with the assistance of an attorney). Making the motion in county court takes more time and money than it does in JP court. Effective: Jan. 1, 2012.

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FH Case Updates

In the settled case 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.

Peggy Adams v. Red Hills Villas

Peggy Adams wanted to move to Red Hills Villas. To show the need for her service animals, she provided management with a letter from her doctor and proof of the animals' training. Despite this documentation, management refused to waive the \$300 pet deposit.

ATC fair housing program director Nekeasha Phoenix and law clerk Pranjali Mehta helped Adams make a formal request for reasonable accommodation to management. After receiving the request, management reversed its position and waived the pet deposit for Adams's support animals.

Erick Brown v. The Vistas

Erick Brown lived at The Vistas in Marble Falls, TX, for five years after evacuating New Orleans during Hurricane Katrina. When he moved out, Brown was charged \$427 for damages. According to Brown, he left his apartment in good condition minus normal wear and tear. Brown tried to dispute the charges with management. However, management turned over the account to

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collections despite Brown’s attempts to resolve the dispute.

Brown filed a fair housing complaint alleging discrimination based on race. Brown believed that management would not have falsely charged him for damages, would have been more willing to discuss

resolution with him, and would not have turned over his account to collections so quickly if he were not black.

HUD negotiated a conciliation agreement in which management agreed to take fair housing training, clear the balance due, and remove the negative credit reporting of Brown’s account.

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Even after receiving two certified letters from ATC, landlord Richard Jones only completed some of the work. Because the landlord did not make a diligent effort to repair the health and safety threats before the final deadline, Castillo exercised her right to terminate the lease and move without penalty.

Castillo also decided to take legal action. Thomas Tucker and S. Alex King of Fritz, Byrne, Head & Harrison, PLLC, volunteered to represent Castillo pro bono. On June 21, Judge Susan Steeg of the Justice Court #3 awarded Castillo \$1,200.

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HB 1127

Requires eviction citations to include the following language:

A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE.

Effective: Jan. 1, 2012.

HB 1168

Changes “smoke detector” to smoke alarm.” Where battery-operated smoke detectors are already installed, it lifts the trigger to install smoke alarms powered by alternating current to renovations costing more than \$5,000 instead of more than \$2,500. Adds requirement for smoke alarms to be installed in each bedroom rather than outside in the vicinity of the bedroom. Repeals Section 92.256 relating to requirements for dwellings occupied on or before Sept. 1, 1981. Adds requirement for the landlord to inspect and repair or replace a fire extinguisher if the landlord has provided one for the dwelling. Effective: Sept. 1, 2011.

HB 1371

Allows a public housing authority located

in a city that has a population of more than 500,000 and is not more than 50 miles from an international border to require that vehicles parked in a community of the authority to be registered with the housing authority. Effective: Sept. 1, 2011.

HB 1862

Requires the landlord to pay the security deposit, pro-rated rent, actual damages (including any moving costs, utility connection fees, storage fees, and lost wages), and court costs and attorney’s fees to tenants who are not in default of their lease when a city revokes a certificate of occupancy over the landlord’s failure to maintain the premises. Effective: Sept. 1, 2011.

SB 889

Allows a lienholder to give a notice to a tenant to pay rent to the lienholder when the landlord defaults. Tenants who occupy the premises as their primary residence would be protected if they continued to pay their landlord. Effective: June 17, 2011.

HB 1429

Would have established a tenant’s right to a copy of the lease and would have expanded protection from retaliation to tenants who establish, attempt to establish, or participate in a tenant organization.

Vetoed by Gov. Rick Perry — this bill will not become law.

Maria Quiroz v. The Arbors of Austin

Stressed out after living with rats for months, Maria Quiroz contacted ATC and the City of Austin Code Compliance Department for help. ATC housing specialist Linda Aleman visited Quiroz’s apartment at the Arbors of Austin to document the infestation.

After receiving the tenant’s repair request letters, management insisted that the problem was resolved; however, Quiroz continued to find droppings and hear rats in her walls. Worried that management would report negative information on her credit and rental history if she moved, Quiroz felt stuck in a lease that did not expire for several months.

Christopher Smith, an associate with Thompson & Knight LLP, agreed to represent Quiroz pro bono after meeting her at one of the free legal advice clinics run by Texas RioGrande Legal Aid and Volunteer Legal Services of Central Texas.

On July 12, Judge David Phillips of the County Court at Law #1 heard Quiroz’s case. Quiroz, who had fulfilled her lease but was now living at another apartment complex, accepted management’s settlement offer of \$3,000.

Novedades en Casos de Vivienda Justa

En los casos resueltos reportados aquí, el demandado, a menos que se indique de otro modo, niega las denuncias de discriminación hechas por el demandante, y las partes acuerdan resolver el caso antes de llevarlo a juicio.

Peggy Adams v. Red Hills Villas

Peggy Adams quería vivir en Red Hills Villas. Para demostrar la necesidad de sus perros guía, ella presentó a la administración una carta de su médico y prueba del entrenamiento de los animales. A pesar de esta documentación, la administración se negó a eximir la del depósito por animal de \$300.

La directora del programa de Vivienda Justa de ATC, Nekesha Phoenix, y el asistente jurídico Pranjal Mehta, ayudaron a Adams a hacer un pedido formal de adaptación razonable a la administración del edificio. Después de recibir el pedido, la administración revirtió su posición y eximió a Adams del depósito por animal para sus perros guía.

Erick Brown v. The Vistas

Erick Brown vivió en The Vistas, en Marble Falls, Texas, durante cinco años, después de ser evacuado de New Orleans durante el huracán Katrina. Cuando Brown se mudó del apartamento, le cobraban \$427 por daños. Brown trató de disputar este gasto ante la administración.

Brown introdujo una queja por Vivienda Justa, alegando discriminación en base a su raza. HUD negoció un acuerdo por el que la administración se comprometió a cumplir un entrenamiento de Vivienda Justa, cancelar el balance debido y quitar el informe negativo de crédito en la cuenta de Brown.

Inquilinos Ganan Juicios

Cuando un propietario no responde ni soluciona un problema que afecta la salud o seguridad del inquilino, el inquilino puede iniciar juicio en cortes de justicia, condado o distrito, solicitando una orden judicial para la reparación, reducción de renta, multa de \$500 más un mes de renta, daños directos y honorarios de abogado de haberse contratado uno. (El inquilino puede iniciar juicio en cortes de justicia sin necesidad de abogado). Dos inquilinos acaban de ganar juicios contra los propietarios por no haber hecho reparaciones.

Disa Castillo v. Richard Jones

Después que el propietario ignorara su pedido de reparaciones, Disa Castillo buscó asistencia en ATC. A Castillo le preocupaba sobre todo la salud de su recién nacido, debido a una plaga de cucarachas en la vivienda.

Bajo el Programa de Asistencia en Derechos de Inquilinos de ATC, la especialista en viviendas Rebecca Mojica visitó la vivienda de Castillo para documentar las condiciones deficientes, incluyendo aire acondicionado, triturador de basura y lavaplatos rotos; moho y madera podrida bajo el fregadero; puertas corredizas que no abrían; secadora sin ventilación apropiada; y un olor inaguantable (posiblemente orina animal) en la alfombra de 10 años.

Aún después de recibir dos cartas certificadas de ATC, el propietario Richard Jones solo realizó parte del trabajo. Como el propietario no hizo un esfuerzo esmerado por eliminar la amenaza a la salud y seguridad antes del plazo final, Castillo ejerció su derecho de dar por cancelado el contrato y mudarse sin penalidades.

Castillo decidió además tomar acción legal. Thomas Tucker y S. Alex King, de la

firma Fritz, Byrne, Head & Harrison PLLC, representaron a Castillo de forma voluntaria y gratuita. El 21 de junio, la Jueza Susan Steeg de la Corte de Justicia #3 indemnizó a Castillo con \$1,200.

María Quiroz v. The Arbors of Austin

Estresada por vivir con ratas durante meses, María Quiroz se comunicó con ATC y el Departamento de Cumplimiento de Código de la Ciudad de Austin, solicitando ayuda. La especialista en viviendas de ATC Linda Aleman visitó el apartamento de Quiroz en el complejo The Arbors of Austin, para documentar la presencia de ratas.

Después de recibir cartas de la inquilina pidiendo reparaciones, la administración insistió en que el problema estaba resuelto; sin embargo, Quiroz continuó hallando excrementos y oía a las ratas en las paredes. Preocupada de que la administración reportara información negativa en su informe de crédito e historial de renta si se mudaba, Quiroz se sintió prisionera de un contrato que no vencía por varios meses.

Christopher Smith, asociado a Thompson & Knight LLP, aceptó representar a Quiroz gratuitamente, después de reunirse con ella en una de las clínicas de asesoramiento legal gratuito de la organización Asistencia Legal y Servicios Legales Voluntarios Río Grande en Texas Centro.

El 12 de julio, el Juez David Phillips de la Corte Condal #1 vio el caso de Quiroz. Quiroz, que había cumplido su contrato y vivía ahora en otro complejo de apartamentos, aceptó la oferta de la administración por \$3,000.



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

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Housing Rights Advocate is published quarterly by the Austin Tenants' Council, 1640-B East 2nd Street, Suite 150, Austin, TX 78702. The publication is supported by grants from the City of Austin (CDBG) and the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The publisher is solely responsible for the accuracy of the statements and interpretations contained herein. Such interpretations do not necessarily reflect the views of the government.

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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
- Melinda Carmona Intake Specialist
- Christine Castilleja Intake Specialist
- Cruz GarciaHousing Specialist
- Rebecca MojicaHousing Specialist
- Morgan MorrisonFair Housing Testing Coordinator
- Lucia Perez-Salinas..... Fair Housing Program Specialist
- Nekesha PhoenixFair Housing Program Director
- Antonio Ramirez.....Housing Specialist
- Bruce Rodenborn Technical Support
- Victoria SalinasHousing Specialist
- Christopher SuarezHousing Specialist
- Katherine Stark Executive Director