Evictions from Federally-Subsidized Housing

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What We Will Cover

- Good Cause Requirement in Subsidized Housing
- Notice Requirements
- Unlawful Detainer Litigation
Does My Client Live in Subsidized Housing?
Types of Subsidized Housing

- Public Housing
- HUD-Subsidized Multifamily
- Project-Based Section 8
- Low Income Housing Tax Credit
- Housing Choice Voucher (Section 8 Voucher)
- Other types
  - HOPWA
  - Shelter Plus Care
  - Supportive Housing
  - HOME
  - State and local subsidies
What Housing is My Client In?

- **Extremely low rent?**
  - Most subsidized housing programs index rent to 30 percent of the tenant’s income

- **Who is the Landlord?**
  - Housing Authority (public housing)
  - Affordable housing developer (LIHTC? Project-based Section 8?)
  - Others (Voucher?)

- **Lease**
  - Form leases used in some subsidized housing programs
    - Project-based Section 8
    - HUD-subsidized multifamily
    - Voucher program (Tenancy Addendum)

- **If everything else fails, ask the landlord!**
What Constitutes Good Cause
Lease must provide that the PHA may terminate the lease for:

- Serious or repeated violation of material terms of the lease;
- Failure to fulfill household obligations as described in the regulations; or
- Other good cause.
“Other good cause” is defined as including, but is not limited to:

- Criminal activity or alcohol abuse;
- Discovery (after admission) of facts that made the tenant ineligible;
- Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;
- Failure of a family member to comply with the community service requirements; and
- Failure of the tenant to accept the PHA’s offer of a lease revision to an existing lease on a form adopted by the PHA.
Landlord may not terminate the lease except for:
- Material noncompliance with lease;
- Material failure to carry out obligations under any landlord and tenant act;
- Criminal activity; and
- Other good cause.

Other good cause not defined in regulations, but prior warning required.

Also Project-based Section 8 (Part 880, 881, 883, 886)
Landlord may not terminate the lease except for:
- Serious or repeated violations of the terms and conditions of the lease;
- Violation of applicable Federal, State, or Local law;
- Other good cause.

Other good cause not defined in regulations.
During the lease term, landlord may not terminate the lease except for:

- Serious or repeated violations of the terms and conditions of the lease;
- Violation of Federal, State, or Local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or
- Other good cause.

Same for Project-based Vouchers (983.257)

Just-Cause Jurisdictions: LL must show good cause at any time
HCV Other Good Cause

- **Other good cause may include:**
  - Failure by the family to accept the offer of a new lease or revision;
  - A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;
  - After initial term, the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; (N/A to PBV) or
  - After initial term, business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental) (N/A to PBV).
Other programs

- Low Income Housing Tax Credit
- HOPWA
- Shelter Plus Care

- Also consider state law
  - Material noncompliance standard – McNeece v. Wood (1928) 204 Cal. 280, 285
Common Eviction Scenarios
Breach of Lease

- In all programs, a serious violation of the lease or repeated minor violations of the lease will constitute material noncompliance and a ground for lease termination.
Nonpayment of rent is often a serious lease violation; can also result from termination of subsidy.

Cal. limitation: cannot demand rent more than one year past due. CCP 1161(2).

Defenses
- Improper calculation of rent; failure to recertify correctly.
- Inclusion of other charges with rent; EIV (for retro charges)
- Tender
- Warranty of habitability
- De minimis breach/Absence of tenant fault
- Fair Debt Collection Practices Act; Bankruptcy
Minor Violations

- Minor violations (24 CFR 247.3; HUD Handbook 4350.3 8-13).
  - Late payments
  - Keeping unauthorized occupants
  - Failure to pay utilities
  - Disruptive behavior
  - Damaging the property
  - Failure to pay for repairs for damage caused by tenant

- Must be repeated to be material noncompliance. Also inquire about impact.
Ms. Deloney has a habit of paying her rent late and has received a number of nonpayment notices from her landlord. However, she has always tendered the rent within the 10-day notice period accompanied by the late charge.

After the fourth late payment, her landlord sent a termination notice, on the ground that “[o]n several occasions you were sent letters reminding you that your rent is due on the 1st of the month and continued late rent payments would not be tolerated” and filed an unlawful detainer action against Ms. Deloney. What result?

Answer:

Violation of Landlord Tenant Law

- Must be ground for eviction under state law
- Examples:
  - Overcrowding in unit in violation of local housing code (from HUD Handbook)
  - Damaging, destroying, or defacing a unit to such extent that the unit no longer is in compliance with housing code (HUD Handbook)
  - Nuisance (CCP 1161(4))
Criminal Activity or Threatening Behavior

• PHAs and landlords must use leases that allow for termination of tenancy for criminal activity that is:
  ○ Drug-related;
  ○ Other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

• The PHA may also terminate if a family member engages in alcohol abuse.
Persons Covered

- Criminal activity must be conducted by tenant, household member, or guest
- Distinguish grounds for eviction from grounds for termination (for voucher): actions of guests not basis for termination
Location of Criminal Activity

- **Drug-related criminal activity:**
  - Public housing: on or off the premises
  - HUD Multifamily: on or near
  - Voucher: on or near

- **Violent criminal activity:**
  - Voucher: on or near

- **Other criminal activity:**
  - Nexus requirement for all programs: must affect the safety or quiet enjoyment of residents on the premises.

- **Distinguish from voucher termination**
Common Eviction Defenses

- Violation cured
- Harmless violation
- Waiver and laches
- Excluding offender from household
- Reasonable accommodation
- Violence Against Women Act (VAWA)/CCP 1161.3
- Relief from Forfeiture (CCP 1179)
Mitigating Factors

- Seriousness of offense
- Extent of participation or culpability of individual family members
- Mitigating circumstances related to disability
- Effects of termination of assistance on other family members who were not involved

Some courts require the PHA/landlord to consider mitigating factors before commencing eviction.

If PHA/owner says no, will court consider?
Questions?
Procedural Requirements
Eviction Process in California

• Written termination notice
  - Federal law
  - State law
    - Strict compliance with notice conditions is a prerequisite to invoking the summary process of unlawful detainer. *Kwok v. Bergren* (1982) 130 CA3d 596, 599

• Grievance procedure/informal hearing (in some programs)

• Unlawful detainer

• Self-help is not allowed (Cal. Civ. Code 789.3)
Notice Requirements
Notice Requirements

- Notice period
- Notice language
- Service requirements
Notice Period

- Different notice periods for:
  - Nonpayment of rent
  - Other lease violations
  - No fault evictions
- Federal notice period may run concurrently with state law notice period
- Lease may provide for longer notice periods
Notice Period: Nonpayment of Rent

- Cal. law: 3 days (CCP 1161(2))
  - When does 3-day period start?
- Public housing: 14 days (24 CFR 966.4)
- HUD Multifamily: state law but with 10 days to request meeting with owner (24 CFR 247.4)
Notice Period: Nonpayment of Rent

- HOME: 30 days (24 CFR 92.253)
- Voucher and LIHTC: state law and lease agreement
- Application of FDCPA: 30 days if notice signed by landlord’s attorney?
Notice Period: Lease Violations

- Cal. law: 3 days (CCP 1161(3))
- Public housing: 30 days or state law if state law provides for less time (24 CFR 966.4)
- HUD Multifamily: state law but with 10 days to request meeting with owner (24 CFR 247.4; Handbook 4350.3)
- HOME: 30 days (24 CFR 92.253)
- Voucher and LIHTC: state law and lease agreement
Notice Period: Other Good Cause

- HUD Multifamily and Section 8 Mod Rehab: 30 days and termination must occur at the end of the lease term.
  - Prior warning notice
Notice Period: Voucher No Fault Eviction

- Cal. law: 90 days (CC 1954.535)
- Termination for business/economic/personal reason, no fault—not during initial lease term
- 90-day notice for evictions based on tenant fault?
- Protecting Tenants at Foreclosure Act
  - 90-day notice and right to stay until the end of the lease
  - Voucher tenants automatically deemed “bona fide tenants”
Content of Notice: Nonpayment of Rent

• Cal. state law (CCP 1161(2)):
  ○ Notice must be in alternative, i.e. pay or quit
  ○ Must specify no more than rent actually due
  ○ Include the name, phone number, and address of the person to pay overdue rent and usual days and hours the person is available to accept rent

• Public housing (24 CFR 966.4(l)(3)(ii)):
  ○ State specific ground for termination
  ○ Inform the tenant of her right to respond
  ○ Inform the tenant of her right to examine PHA documents
  ○ Inform the tenant of her right to request a grievance procedure
Content of Notice: Nonpayment of Rent

- HUD Multifamily (24 CFR 247.4; Handbook 4350.3)
  - Amount of the balance due and the date of computation;
  - Date tenancy is terminated;
  - Advise tenant of opportunity to present a defense in any judicial proceeding
  - Advise tenant of the right to request a meeting with landlord within 10 days
  - Advise that persons with disabilities have right to reasonable accommodation
Content of Notice: Nonpayment of Rent

- Housing Choice Voucher (24 CFR 982.310(e))
  - Ground for termination
- LIHTC and HOME
  - State law and lease agreement
Content of Notice: Other Violations

- **Cal. state law (CCP 1161(3))**:
  - If violation can be cured, notice must be in alternative, i.e. perform or quit
  - Notice must state the breach

- **Public housing (24 CFR 966.4(l)(3)(ii))**:
  - State specific ground for termination
  - Inform the tenant of her right to respond
  - Inform the tenant of her right to examine PHA documents
  - Inform the tenant of her right to request a grievance procedure, if one is required. If not grievable, indicate why & court procedure.
Content of Notice: Other Violations

- HUD Multifamily (24 CFR 247.4; Handbook 4350.3)
  - Date tenancy is terminated;
  - Grounds for termination with sufficient specificity to enable preparation of defense
  - Advise tenant of opportunity to present a defense in any judicial proceeding
  - Advise tenant of the right to request a meeting with landlord within 10 days
  - Advise that persons with disabilities have right to reasonable accommodation
Content of Notice: Other Violations

- Housing Choice Voucher (24 CFR 982.310(e))
  - Ground for termination
- LIHTC and HOME
  - State law and lease agreement
Mr. Smith, a tenant in a HUD-subsidized property, comes into your office with a notice to quit based on nuisance (the NTQ is reproduced in the handout).

Further, the UD complaint states that the notice “was served in compliance with state and federal law, including, but not limited to the requirements of 24 C.F.R. § 274.4(b) and CCP § 1162.

(1) Is the notice valid? (2) Assuming notice is valid, does the complaint state a cause of action?

Answer:
Swords to Plowshares v. Smith, 294 F. Supp. 2d 1067 (N.D. Cal. 2002)
Service of Notice

- Cal. law (CCP 1162):
  - Personal service;
  - Substitute service; or
  - Posting and mail
  - Does actual receipt cure service defects?
Service of Notice

- **Public housing (24 CFR 966.4(k))**:  
  - Personal service on adult member of tenant’s household or service via first-class mail.

- **HUD-assisted multifamily (24 CFR 247.4(b))**:  
  - Serving a copy on an adult answering the door, or if no one responds, by placing a copy through or under or by attaching to door; and  
  - Mailed to the tenant via first-class mail.

- **Section 8 project-based (Handbook 4350.3)**  
  - Look to state law and lease agreement
Service of Notice

- **Housing Choice Voucher (24 CFR 982.310(e)(2))**:  
  - Look to state law and lease agreement; and  
  - Owner must also give copy of notice to PHA at same time notice is given to tenant.

- **LIHTC and HOME**:  
  - Look to state law and lease agreement
UD Litigation
Unlawful Detainer Process

- Service of Complaint
  - Personal
  - Substitute
  - Nail and mail if allowed by the court
- Five days to answer
- Pre-answer motions:
  - Delta motion to quash
  - Demurrer
- Answer
- Summary Judgment
- Trial
Discovery

- Discovery available on five-day notice
  - Interrogatories
  - Requests for Production
  - Depositions
**60-Day “Curtain”**

- Limited civil UDAs are masked for the first 60 days
  - Unmasked after 60 days unless tenant prevails within the 60 days
  - EXCEPTION: post-foreclosure cases
Good cause

- Landlord has burden to prove good cause at trial
- Can landlord rely on new grounds not stated in notice?
  - Multifamily: prohibited by lease
  - Public housing: implicitly prohibited because notice must state the grounds with enough specificity for tenant to state a defense
  - Cal. law: implicitly prohibited by requirement that the notice state the breach
- Watch for hearsay!
Notice of appeal – 30 days after judgment
No automatic stay of the writ of possession
Ask for stay
  - Trial court
  - Writ proceeding in appellate division
  - Appeal bond
    - Subsidized tenants: bond set at tenant’s rent share
Resources

- HUD Tenants Rights: HUD Programs (3d ed. & 2010 supp.) (the Green Book)
  - 4th ed. out soon!
  - Order at www.nhlp.org
- CEB Eviction Defense/Landlord Tenant Manual
  - Free access for new lawyers
- Rutter Group Landlord Tenant Manual
- Questions?