

FAIR HOUSING OF THE DAKOTAS

(The Fair Housing of the Dakotas serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all.)

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**Testimony before the
Senate Judiciary Committee
on Senate Bill 2171
by the Fair Housing of the Dakotas
January 20, 2009**

Mr. Chairman, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination with the North Dakota Department of Labor (NDDOL) and/or in state or federal court.

People contact our office with a variety of housing questions. Unfortunately, in recent years we have seen an increase in the number of contacts to our office regarding domestic violence and related issues. The most common scenario is from a female who is residing with a partner who is abusing her. Most often, there are also young children in the home. The female is trying to determine if she will be held to her lease should she vacate. Other contacts to our office have involved females who have left an abusive situation and been held to the lease requirements by her landlord. I'll discuss one of these scenarios which occurred in 2008 to a person who contacted our office.

Our client was living with her boyfriend and their child in 2006 in Fargo. Both were on the lease. Following escalating incidents, one evening she feared for her safety and locked herself in the bathroom at their apartment and called the police. There was some minor damage to the bathroom door as a result. The police came and calmed her boyfriend down and she left with the child to stay with friends. Because the police were called, she alerted her landlord to the situation and asked to be released from her lease so she could move out. Her landlord told her that she would not be liable for the damage or lease if she got her boyfriend to sign a statement that he was releasing her from the lease. The next day, with a friend and fearing what she might confront, she met with her boyfriend and he signed the statement. Given the stress of the situation and wanting to vacate as soon as possible with a friend present, she dropped the statement into her landlord's rent box and proceeded to vacate. She also attached a note which included her new mailing address and asked the landlord to send her a copy of the statement. She never received. She and her child then moved to Williston and in with her parents to get back on their feet. Her ex lived at the apartment a few more months and then moved out a state. Her police complaint remains open due to unpaid child support. In 2008, she felt she was in a position to get out on her own and applied for an apartment. She had worked very hard to turn things around for her and her child. However, she was denied the first apartment that she wanted to rent. She could not understand why given she had a good job and income. She visited with the prospective landlord and was told that she had received a bad landlord reference indicating that she owed over \$2,000 because she gave improper notice and for rent which was not paid following her vacating. She obtained a copy of the reference being given by



her former landlord and not only did it note this but it also indicated police involvement due to "Domestic". Not only was she upset to find that she owed this money, but also that her privacy was violated like that. I contacted the landlord regarding my concerns at sending a tenant back into a dangerous situation to obtain a release as well the discrepancy about the release from the lease and that a domestic police call was being noted on landlord referrals. The landlord's attorney stated that they saw nothing wrong with the reference because they felt a need to tell the truth. Our client chose to continue residing with her parents rather than get rejected by other landlords and is reviewing her options.

This is just one example given by a tenant who contacted our office last year. In these situations, not only is the victim having to leave an emotionally charged situation, go out on their own often with young children, with limited to no funds, and typically into a shelter, but she also has to deal with still paying the rent at a property she cannot reside in safely and/or be held to what occurred at that property. I understand that there needs to be a balance with the rights of a housing provider. Consequently, it is our view that with proper notice any damage should be the responsibility of the abuser and any unpaid rent should be the responsibility of the tenant who continues to reside at the unit. Anything unpaid should be pursued by the housing provider through Small Claims Court like any other situation involving outstanding debt by a renter.

Our office went from 1 or 2 contacts on this issue in 2006 to 12 in 2008. These numbers may seem low but they are increasing. Seeing this trend, in 2007 we worked with a local domestic violence prevention organization in putting together a fact sheet on fair housing and domestic violence. In 2008, we received requests from the public for 75 copies of this fact sheet. Most often these copies went to housing providers and organizations assisting vulnerable populations because victims were fearful of receiving the publications at their home. As the fact sheet documents, under the Violence Against Women Act (VAWA), subsidized housing providers are required to have certain policies in place to assist victims of domestic violence, dating violence, sexual assault and stalking. Fair Housing Laws can apply since women are overwhelmingly the victims of this type of violence so it becomes a gender discrimination issue. The fact sheet also notes several cases which were filed as fair housing violations. However, the VAWA currently only requires such policies when the property is subsidized or when tenants are on housing assistance. This leaves a large gap of the rental housing industry in North Dakota uncovered.

The Fair Housing of the Dakotas supports passage of Senate Bill 2171. I thank you for the opportunity to provide testimony today and please let me know if you have any questions. Thank you.

FAIR HOUSING & DOMESTIC VIOLENCE & ASSAULT

FACT SHEET NO. 7 (Published by the Fair Housing of the Dakotas)

The Violence Against Women Act (VAWA) was signed into law in 1994 and was groundbreaking legislation which addressed the issue of violence against women. In 2000 and 2005, the law was reauthorized and given additional power to protect a woman's rights when a victim of domestic violence, dating violence, sexual assault and stalking. The reauthorization was the result of increasing numbers of such reported violence. Specifically, US Department of Justice (DOJ) studies indicated at the time:

- ◆ Among cities surveyed, 44% of homeless individuals identified domestic violence as a primary cause of homelessness. 92% of homeless women had experienced physical or sexual abuse at some point in their lives and 62% had been victims of intimate partner violence as adults.
- ◆ Increasing numbers of women and families across the United States were being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence. There are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing and some people are on waiting lists for years.
- ◆ Women who leave their abusers frequently lack adequate emergency shelter options. In cities surveyed in 2004 prior to VAWA reauthorization, requests for emergency shelter by homeless women with children had increased by 78%. Victims of domestic violence often return to abusive partners because they cannot find long-term housing. A choice gets made between a life with the abuser and a life on the streets.
- ◆ Because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term housing. A victim may have had to flee her abuser for safety reasons with little or no money, thus failing to pay her rent and/or breaking her lease which can destroy her rental history.
- ◆ Victims of domestic violence in rural areas face additional barriers and unique circumstances such as geographic isolation, lack of public transportation, difficulty ensuring confidentiality in small communities, and decreased access to many resources.

These statistics and others were recognized by Congress and the US Department of Housing & Urban Development (HUD) as needing to be addressed by those administering Federal housing programs. VAWA states that it is illegal for rental properties receiving federal funding to evict a tenant or refuse to rent to an applicant because that person was a victim of actual or threatened domestic violence, stalking or dating violence. VAWA covers public housing authorities as well as properties receiving funds through Section 8, Section 811, Rural Development and other federal housing

assistance programs and specifies:

- ◆ Landlords and housing authorities are prohibited from denying housing or refusing to accept a Section 8 voucher because an applicant has been a victim of domestic violence, stalking or dating violence, or has been previously evicted because of domestic violence.
- ◆ Domestic violence, stalking or dating violence cannot be used as a means of terminating a Section 8 voucher holder.
- ◆ Leases can be split to protect the victim in order to evict, remove or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against household members without evicting, terminating or penalizing the victim of such violence who is also a tenant or lawful occupant.
- ◆ A housing provider or public housing agency responding to an incident of domestic violence, stalking or dating violence may request that an individual certify via a HUD approved certification form that the individual is a victim of such violence and that the incident(s) in question are the result of actual or threatened abuse.
- ◆ A victim may transfer to another jurisdiction under the tenant based assistance program if the victim has complied with all other requirements.
- ◆ All information provided to a housing provider or public housing agency regarding any incident of domestic violence, stalking or dating violence shall remain confidential by that housing provider or public housing agency unless as otherwise required by law.

This is also an issue for housing providers who do not receive federal funding. According to various studies, women are victims of violent crimes by spouses and violent crimes from significant others 85-90% of the time. Under Federal Fair Housing Law and North and South Dakota state laws, gender (sex) is protected from housing discrimination. As a result, a policy which eliminates or denies participation in a program solely because the individual was a victim of domestic violence, stalking or dating violence, would potentially have a disparate impact upon women because they make up the majority of such victims. Thereby making such a policy a violation of fair housing laws due to gender discrimination. A disparate impact means that even if a landlord does not intend to discriminate against women, the landlord's actions are still harmful to women as a group while they do not have the same harmful effect on men as a group.

Housing providers who assume that renting to a victim of domestic violence will be a threat to the health and safety of other tenants risk a fair housing violation. For example, a landlord refuses to rent to a female domestic violence victim yet rents to other victims of crime.

Housing providers should also not evict tenants for police calls for health and safety reasons or when police ac-

tivity or arrests occur because of being a victim of domestic violence. For instance, a victim of domestic violence may have been arrested when she contacted the police for help because she was forced to fight back against her abuser in self-defense. Evicting due to police calls could be gender discrimination in housing because women in domestic violence situations would be a primary source of police contact in those situations. If a victim fears she will be evicted for reporting domestic violence, she is more likely to keep the abuse a secret and not seek assistance. In regard to charging victims for damage caused by the abuser, housing providers should proceed with caution because it could be a fair housing violation if shown to have a disparate impact due to gender or if only charged in a domestic violence situation versus damage caused by other acts of crime which are not charged to those victims.

Significant Fair Housing Case Law in this Area:

—Alvera et al v. C.B.M. et al: First fair housing case to argue evictions due to domestic violence was a form of gender discrimination. Female tenant was physically assaulted by her husband in their apartment. The police were called and her husband was arrested, jailed and charged. The tenant obtained a restraining order which she gave to her landlord. She was then informed that she was being evicted due to a zero tolerance policy against violence. Settlement reached for an undisclosed sum and change in management policy as it related to victims of domestic violence. (OR)

—Bouley v. Young-Sanbourin: Female tenant was beaten by husband and called police. Husband was arrested and never returned to the home. The landlord served a notice of eviction after meeting with the tenant. The tenant claimed the eviction was because her reaction to being assaulted did not concur with the landlord's gender stereotypes about how a female victim should act and because she refused to listen to the landlord's attempt to discuss religion with her after the assault. Settlement reached following judge's ruling that victim had a claim. (VT)

—Warren v. Ypsilanti Housing Commission: Involved a zero tolerance situation similar to the Alvera case where a female tenant was served an eviction following a police call to her apartment when a former boyfriend arrived unannounced and assaulted her. Settlement reached for victim and change in management policy. (MI)

—ACLU v. St. Louis Housing Authority: Female was a victim of ongoing domestic violence. Couple broke up but ex continued to stalk, harass and threaten tenant including damages to her apartment windows and property. Tenant gained a restraining order and showed her landlord who issued a notice of lease violation. Housing authority refused to allow tenant to transfer to another unit to conceal identity claiming tenant was responsible for her domestic violence situation. Tenant paid for apartment damage done by abuser and abuser continued to violate restraining order and cause damage. At no time, did the housing

authority ban the alleged abuser from the property or file criminal or civil complaints against him. Settlement reached to allow tenant to transfer to undisclosed apartment, refund her costs of repairs to windows and other damage done by abuser, send employees to domestic violence training and ban abuser from property. (MO)

—Blackwell v. Urban Property Management: Tenant was beaten, stabbed and raped by an ex-boyfriend in her subsidized apartment unit. Fearing for her safety, she asked her landlord to allow her to transfer to other housing but her landlord refused. Fearing for her safety and that of her children, she gave up her voucher, left the housing with her children and went into hiding with friends and family. She was unable to afford housing without her voucher and remained in hiding until her ex was caught and arrested three months later. Case reached \$60,000 settlement and change in policies. (CO)

—ACLU v. Northend Village: An ex-boyfriend harassed and stalked a female tenant causing her to gain a protection order. Despite order, ex kicked in tenant's door when she was not home and broke windows. Police charged the ex but tenant's landlord still served her an eviction notice for not supervising guests even though she was not home at time and had protection order. Settlement reached where Respondents will not evict or discriminate against individuals because they have been the victims of domestic violence, dating violence, sexual assault or stalking, regardless if the abuser is residing in the tenant's household. The Respondent will also offer early lease termination and relocation to tenants who have been the victims of such abuse and need to leave their homes to ensure their safety. The Respondents also agreed to pay monetary damages and attorneys' fees. (MI)

Examples of how Housing Providers can assist victims of domestic violence:

- ◆ Change locks for tenant when requested due to a safety concern. Make sure property is well-lit, safe and secure. Complete repairs that may pose a safety issue, such as broken windows and locks, in a timely manner.
- ◆ Acknowledge domestic violence protection orders and help to enforce them. Exclude the violent person from the premises. Assist in the pressing of criminal charges.
- ◆ Do not publish victim's addresses in newsletters or give out information to anyone without a release from the tenant. Recognize that domestic violence is not a lease violation.

If you want more information on fair housing or pursuing your fair housing rights when a victim of violence, contact the Fair Housing of the Dakotas. If you have questions about domestic violence or suspect someone may be a victim, please contact the National Domestic Violence Hotline at 1-800-799-SAFE for assistance.

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