

## Landlord Sexual Harassment

While acts of sexual harassment in the workplace have resulted in lawsuits against employers for a number of years, there has not been a great deal of legal protection for actions of sexual harassment of tenants by a landlord. However, recent case law from the federal courts has begun to provide protection for tenants in landlord sexual harassment cases.

In discussing landlord sexual harassment, it first must be determined as to the definition of sexual harassment, which is very difficult being that it often turns on a question of an individual's perspective of a situation. In the landlord-tenant context, one federal court has taken the position that the subjective feelings of the tenant are to be determinative of the question of whether the landlord sexually harassed the tenant. However, most courts when faced with this issue have looked to the reasonable victim standard in evaluating claims of sexual harassment from the perspective of a "reasonable victim." The Equal Employment Opportunity Commission (EEOC) Regulations have also been found useful in defining sexual harassment. Some courts have turned to these regulations in evaluating claims of landlord sexual harassment, i.e. "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment." The EEOC's Regulations do not go on to define "unwelcome sexual advances" and "conduct of a sexual nature," but presumably intend for those factors to be determined on a case-by-case basis.

The courts have found that there are two types of sexual harassment situations that are actionable; *quid pro quo* and hostile environment. *Quid pro quo* sexual harassment takes place when the terms or privileges of the tenancy are conditioned upon sexual favors, i.e. a female tenant asks the landlord for a favor or service, including repairs to the property or permission to pay rent late and is told that such a request will be granted only if the tenant consents to sexual acts. Hostile environment sexual harassment usually occurs when there is constant unwelcome sexual innuendos or verbal or physical advances by the landlord. It is not based upon an express denial of tenancy privileges, but that such harassment makes the tenancy more burdensome and constructively denies tenant certain privileges of tenancy.

The Fair Housing Act prohibits discrimination against tenants on the basis of their sex, but does not explicitly prohibit landlord sexual harassment of tenants. While there is little case law on this particular subject, recent cases have begun to establish a cause of action for sexual harassment of a tenant by her landlord under the Fair Housing Act. The Fair Housing Act prohibits discrimination "in terms, conditions, or privileges of rental of dwelling, or in the provision of services of facilities in connection therewith because of sex." The Fair Housing Act has been construed broadly and the courts have reasoned that it was intended to provide a remedy for victims of discrimination. The HUD regulations provide additional support for the argument that the Fair Housing Act provides a remedy for any sexual harassment of tenants by landlords. Some of these regulations prohibit, "failing or delaying maintenance or repairs or of sale of rental dwellings because of sex and "denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors."

In order for a tenant to prove a sexual harassment claim against a landlord, the tenant must first prove by a preponderance of the evidence that the defendant intended to discriminate against her. The defendant can rebut the plaintiff's claim by articulating "some legitimate, nondiscriminatory reason for [his] action." The tenant will prevail if the defendant is unable to rebut the claim or if the nondiscriminatory reason given by the defendant is merely pretextual. Some courts have held that the intent to discriminate may be inferred rather than requiring explicit proof of intent. The tenant next must establish that the landlord's actions were unwelcome or unsolicited. Finally, if the tenant seeks to recover damages from the owner of the building for the actions of the harasser, the tenant must prove liability under the doctrine of *respondent superior* (unless the owner is the alleged harasser). Under this doctrine, an employer is responsible for the injurious acts of an employee, provided the employee was acting within the legitimate scope of employment during the time of the injury sued for. Thus, the owner of an apartment building would be liable for tenant harassment committed by his apartment manager if the acts were committed while the manager was acting within the scope of his employment. In such instances, the tenant would not have to prove that the acts harasser were "with the approval or a direction of the owner" in order to hold the owner liable for the acts of the harasser this regard, it should be noted that an owner who has set up an unbiased procedure by which a tenant could complain about the actions of a property manager may insulate himself from liability.

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If a tenant desires to pursue a federal claim against the landlord for sexual harassment, the tenant has two remedies. First the tenant can proceed with a claim of sexual discrimination by filing a claim with the regional office of HUD. The discriminatory act must have occurred within one year before the claim was filed and the administrative process is geared to attempt to reach a conciliation agreement between the claimant and the respondent. The conciliation agreement may provide for monetary relief and is subject to approval by HUD. If an agreement can't be reached, HUD can dismiss the claim or file a charge. If the administrative process does not result in a conciliation agreement, a hearing may be held before an administrative law judge who can assess civil penalties against the landlord for up to \$10,000 for a first-time offender. The other remedy for the tenant who claims landlord sexual harassment would be filing a lawsuit against the landlord within two years of the alleged act of discrimination. The availability of punitive damages as well as the recoverability of attorney's fees against the landlord may make this remedy attractive to the tenant. Recently a class action lawsuit was brought for sexual harassment by a landlord at an apartment complex in California which resulted in an award of \$642,000 to the plaintiff/tenants (*Felder v. Dana Properties*, Calif. 1992).

In conclusion, it is quite likely that our courts will recognize claims for sexual harassment of tenants by landlords under the federal Fair Housing Act which will provide a significant legal remedy for tenants, so all landlords must continue to take all available actions to prohibit all acts of discrimination.

***By Scott M. Clark, Esq.***

3008 N. 44<sup>th</sup> Street, Phoenix, AZ 85018

602.957.7877

[selark@scottclarklaw.com](mailto:selark@scottclarklaw.com)

<http://www.scottclarklaw.com>

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