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Domestic Violence, Elder Abuse, Dependent Adult Abuse and Human Trafficking in Rental Housing

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Revised June 2020

If you own or manage residential rental property, you may have had to deal with domestic violence incidents between residents. And if you haven't yet, chances are you will at some point. When domestic violence occurs in a rental unit, owners and managers frequently have questions. For instance, if the victim obtains a restraining order and wants her locks changed, should you change them? Or if there is no restraining order and you receive complaints from other residents about loud fighting, should you evict both the victim and the perpetrator? What if the victim wants to terminate his or her lease? If you let the victim out of the lease, how do you handle the security deposit when the unit is finally vacant?

Definition of abuse

Before we look at these and other questions, let's look at what constitutes domestic violence. California Family Code § 6211 defines domestic violence as abuse perpetrated against someone with whom the victim has (or had) a romantic relationship such as marriage, living together, dating, engagement or having had a child with the person. It is also defined as abuse against a child of one of the parties to the relationship or against a person who is related to one of the parties (such as a parent, sibling, in-law or grandparent of one of the parties). Finally, it also covers abuse against a cohabitant or former cohabitant, as defined in California Family Code § 6209. That code section defines a cohabitant as a person who regularly resides in the household and a former cohabitant as a person who formerly regularly resided in the household.

Abuse includes any kind of physical violence or harm, such as hitting, kicking, pushing, pulling hair, throwing objects at, sexually assaulting or otherwise hurting the victim. It also includes following, stalking or harassing the victim or attempting or threatening to harm the victim. Abuse can be verbal, written or physical.

Elder abuse and dependent adult abuse

Effective January 1, 2013, the protections afforded to domestic violence victims were extended to elder abuse and dependent adult abuse victims. California Welfare & Institutions Code §15610.07 defines "abuse of an elder or a dependent adult" as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm or pain or mental suffering or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

Human Trafficking

Effective January 1, 2014, the above protections are also extended to victims of human trafficking. California Penal Code § 236.1 defines "human trafficking" as depriving or violating the personal liberty of another with the intent to obtain forced labor or services or causing, inducing or persuading or attempting to cause, induce or persuade a person who is a minor to engage in a commercial sex act.

Right to Summon Law Enforcement/Emergency Assistance

Effective January 1, 2019, AB 2413 (which added Civil Code §1946.8, and amended Code of Civil Procedure §1161.3 and Government Code §53165) declares void, as contrary to public policy, a provision in a rental or lease agreement that limits or prohibits, or threatens to limit or

prohibit, a tenant's, resident's, or other person's right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency. It also prohibits a landlord from imposing, or threatening to impose, penalties in this context as well. A waiver of these provisions is contrary to public policy and is void and unenforceable. It establishes evidentiary presumptions in this connection to be applicable to unlawful detainer actions. It authorizes a tenant, resident, or other aggrieved person to seek an injunction for a violation of these provisions. For purposes relating to unlawful detainer, it authorizes a tenant to document an act of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, by attaching a statement, in a specified form, from a qualified 3rd party. It prohibits the landlord from disclosing information that a tenant has submitted in this context, except as specified.

Possible discrimination issues

There have been a number of cases in recent years in which policies that result in automatic eviction of both the perpetrator and the victim of domestic violence have been found to be discriminatory. The argument goes something like this: statistics show that the majority of domestic violence victims are women. Policies that result in eviction of both parties when there has been domestic violence have a "disparate impact" or discriminatory effect on women. Such policies therefore constitute discrimination on the basis of sex (which is a protected class under both federal and state fair housing laws).

Termination of tenancy by the victim

What if the victim wants to terminate his or her tenancy? In October of 2008, Governor Schwarzenegger signed an emergency bill addressing this issue. That bill added Civil Code § 1946.7. This law provides that a victim of domestic violence, sexual assault or stalking can terminate the tenancy even if it is in the middle of a lease.

Effective January 1, 2013, victims of elder abuse or abuse of a dependent adult are also covered by this law and effective January 1, 2014, the law also covers victims of human trafficking.

The resident must notify the landlord that the resident (or a family member living in the same household) was a victim of domestic violence, sexual assault, stalking, abuse of an elder or a dependent adult, or human trafficking and that the resident intends to terminate the tenancy. The resident must provide a written notice of termination to the landlord.

The resident must also provide one of the following:

- (1) a copy of a temporary restraining order, emergency protective order or protective order issued by a court that protects the resident or household member from further domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult; or
- (2) a copy of a written police report stating that the resident or household member has filed a report alleging that the resident or household member is a victim of domestic violence, stalking, sexual assault, human trafficking or abuse of an elder or a dependent adult or a restraining order issued by a court that protects the resident or household member from further domestic violence, sexual assault or stalking; or
- (3) documentation from a qualified third party based on information received by that third party while acting in his or her professional capacity to indicate that the resident or household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse or dependent adult

abuse. Civil Code § 1946.7 (as amended effective January 1, 2014) sets forth what must be contained in the statement. The law also provides that a “qualified third party” must be a physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist or licensed professional clinical counselor. Alternatively, a domestic violence counselor or human trafficking case worker can sign the documentation but only if the documentation displays the letterhead of the office, hospital, institution, center or organization that engages or employs the counselor or caseworker.

The law was amended in 2011 to provide that the notice to terminate must be given to the landlord within 180 days of the date when the police report was made or the order was issued by the court (the previous time frame was 60 days). There is no requirement in the law that any charges be filed against the perpetrator or that the perpetrator be convicted of any crime in order for the victim to have the right to terminate the lease. The law was further amended effective January 1, 2016, to provide that once the notice is given, the victim remains liable for rent for the next 14 days, after which time all of the victim’s obligations under the lease or rental agreement are terminated. The remaining residents continue to be fully responsible under the lease.

Finally, as of January 1, 2014, the law prohibits a landlord from disclosing any information provided by a resident pursuant to Civil Code § 1946.7 to any third party unless (a) the resident consents in writing to the disclosure; or (b) the disclosure is required by law or court order. It is not considered to be a disclosure of information if the landlord communicates with a qualified third party who provided a statement that the resident was seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse or dependent adult abuse for the purposes of verifying the contents of that statement.

Security deposit disposition

Next, let’s examine issues regarding the application of the security deposit at the end of the tenancy. If the victim has moved out pursuant to Civil Code § 1946.7, the security deposit still stays with the unit until it has been vacated by all remaining residents. The law doesn’t address what to do if a refund of the deposit is owed.

Normally, if multiple residents vacate a unit and a refund of the deposit is due, you would put the names of all the residents on one check and let them work out how to divide it up unless you have been given written instructions (signed by all residents) on how to divide it up. In a domestic violence situation, however, there could be issues with doing so. By putting the victim and the perpetrator’s names on one check, you are, in effect, forcing the victim to have contact with the perpetrator in order to receive the security deposit refund. An alternative is to divide the refund and send a check for each person’s “share” directly to him or her. Because the law doesn’t specifically address this issue, how to handle the refund is a risk-management decision for the owner or the company to make.

The law doesn’t specify how to apply the security deposit when one resident terminates early. However, in the case of early termination under Civil Code §1946.7, the purpose of the law is to terminate the victim’s liability after the early termination of the lease. The method most favorable to a victim (the beneficiary of Civil Code §1946.7) would be to first apply the security deposit against rent and other amounts accruing before the victim terminates the lease, secondly against physical damages and thirdly against amounts accruing after the victim terminates the lease.

Terminating Tenancy

As of January 1, 2011, the law also prohibits a landlord from terminating a tenancy or refusing to renew a lease based on an act of domestic violence, stalking or sexual assault against a protected tenant or a protected tenant’s household member. Effective January 1, 2013, abuse of

an elder or a dependent adult is also covered by this law and effective January 1, 2014, the law also covers victims of human trafficking. The act must be documented via a police report or the victim must have obtained a restraining order, emergency protective order or protective order and the perpetrator must not be a tenant in the same unit. However, the landlord may terminate the tenancy of a protected tenant if the protected tenant has allowed the perpetrator back into the unit or the landlord reasonably believes that the perpetrator's presence poses a physical threat to others or poses a threat to a tenant's right to quiet enjoyment. In either of these instances, the landlord must have given the resident a 3-day notice to cure the violation before taking steps to terminate the tenancy.

Changing the Locks

The law requires a landlord to change the locks within 24 hours of a protected tenant's request if the perpetrator is not a tenant in the same unit and if the tenant has provided the landlord with a copy of a restraining order against the perpetrator. The landlord must provide the protected tenant with a key to the new locks. The landlord must also change the locks within 24 hours of a protected tenant's request when the perpetrator is a tenant in the same unit, but the protected tenant has obtained a restraining order that excludes the perpetrator from the residence.

Keys to the new locks must be provided to the protected tenant. In such instance, the landlord cannot be held liable to the perpetrator for changing the locks and the perpetrator remains financially liable under any existing lease. If a landlord fails or refuses to change the locks under either of the above circumstances, the protected tenant has the right to change the locks and must provide the landlord with a key to the new lock. A protected tenant or protected household member is defined as someone who has obtained a restraining order or has a police report against the perpetrator that alleges the protected person is a victim of domestic violence, stalking or sexual assault.

Violence Against Women Act

In addition to the protections afforded by the State, the federal Violence Against Women Act ("VAWA"), which was enacted in 1994 and reauthorized in 2005 and 2013, prohibits denial of admission to or assistance under, termination from participation in or eviction (under most circumstances) of victims of domestic violence, sexual assault or stalking from public housing as well as both project and voucher-based Section 8 housing. The 2013 amendments to the VAWA extend these protections to the Section 202, 811, 236, and USRDA programs, certain mortgage insured loans under the 221(d)(3) mortgage insurance program, housing provided pursuant to Subtitle A of title IV of the McKinney-Vento Homeless Assistance Act, housing provided under Subtitle A of Title II of the Cranston-Gonzalez National Affordable Housing Act and the Low Income Housing Tax Credit Program.

The VAWA provides that an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking cannot be construed as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy or occupancy rights to housing. In addition, the prohibition against eviction exists even if the perpetrator continues to come onto the property and cause disturbances for other residents and even if there is criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking that is engaged in by a member of the household or any guest or other person under the control of the tenant if the tenant or other person associated with the tenant is a victim or threatened victim of domestic violence, dating violence, sexual assault or stalking.

Tenancy can only be terminated if the housing provider can demonstrate that an actual or imminent threat to other tenants or individuals employed at or providing services to the property would be present if the resident is not evicted.

Summary

Domestic violence, elder abuse, dependent adult abuse and human trafficking issues can be legally complex and challenging. Be sure to seek legal advice when confronted with a specific

domestic violence, elder abuse, dependent adult abuse or human trafficking issue on your property.

These topics, and many others, are covered in our Fair Housing Fundamentals course, available online. If you are interested in this in-depth training, please contact the Education Department at 800.338.6039 or education@kts-law.com.

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