



# North Penn Legal Services

## Landlord-Tenant and Fair Housing Law

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## Tips for Tenants

- Read your lease before you sign it. A lease is a contract and a tenant is bound by the lease terms.
- Get receipts for rent and security deposit, or pay with a money order or check so you have proof.
- Keep the receipts, money order stubs, or canceled checks in a safe place.
- Don't move into a unit if repairs still need to be made.
- If you have to move into a unit before the repairs are made, make the landlord promise in writing to make the repairs by a certain date. Keep a copy.
- Don't agree to do anything in exchange for a reduction in the rent unless you get the landlord's promise in writing.

## Warranty of Habitability

- The warranty of habitability is a guarantee that landlord will provide safe and sanitary conditions for tenants, for example:
  - Working heat
  - Working smoke detectors
  - Free of insect or rodent infestation
- This guarantee is implied by law in every residential lease in PA
- A landlord cannot get around the warranty of habitability by claiming the tenant is renting the apartment "as is"
- Cities & municipalities often impose higher standards that are more specific (example, inside temperature at least 68° in winter)
- For more information, read the 1979 Pennsylvania Supreme Court case *Pugh v. Holmes*, 405 A.2d 897

## Getting Repairs Made

Tenant should notify landlord in writing of bad conditions

(Date the letter and keep a copy to prove you sent it)

Call Code Enforcement or Health Bureau

Keep proof of the problems

- Pictures of leak in ceiling, mold, holes in walls, etc.
- Notes of number of mice, cockroaches you see per day
- Notes of day furnace stopped working & record of temperatures in the apartment
- Notes of when bed bug bites started



## Getting Repairs Made

Tenant has a few options if tenant notifies landlord twice in writing of bad conditions & landlord does not make repairs.

- 1) Repair & Deduct
- 2) Sue Landlord for Back Rent & Other Expenses
- 3) Break Lease & Move Out
- 4) Withholding the Rent

See more details about each option at  
<http://northpennlegal.org/resources/landlord-tenant-handbook-understanding-fair-housing-your-security-deposit>

## Uninhabitable Conditions

Bad conditions must be serious to either break lease and move out, or withhold the rent

Very serious conditions that make a home uninhabitable include:

- No heat in cold weather
- No drinkable water
- Sewer system does not work
- Dangerous structural problems
- Extreme rodent or insect infestation



If one part of the home is uninhabitable the home may be considered "partially uninhabitable"

## Rent Withholding

Tenant must do the following to withhold the rent:

- Be living in bad conditions (home is uninhabitable)
- Notify landlord in writing of the bad conditions
- Give landlord a chance to make repairs
- Notify landlord again of the bad conditions & state that tenant will withhold the rent next month if landlord doesn't make repairs
- Have the rent money available when it is due  
(Judge will not believe tenant withheld the rent because of bad conditions when tenant didn't have the money to pay the rent that month)

## Rent Withholding

If landlord files eviction case, tenant should be prepared to prove in court:

- Very bad conditions (pictures, Code Enforcement report, witnesses, etc.)
- Tenant notified landlord in writing twice of the serious conditions & intention to withhold the rent
- Tenant had the rent money available when it was due (bank account statement, debit card account print out, money order purchased on rent due date, etc.)
- Tenant still has the rent money owed to the landlord or receipts for necessary expenses



## Eviction Process

The most important things to remember about the eviction process:

- A landlord cannot lock a tenant out or make the unit unlivable to force the tenant to move out (by turning off the heat, water, electricity).
- A landlord must take a tenant to court to evict the tenant.
- If the landlord wins, the sheriff or constable can lock the tenant's doors no less than 21 days after the eviction hearing.

## Return of Security Deposit

Within 30 days of tenant moving out, Landlord must return the security deposit in full or give the tenant an itemized list of damages and return the balance

If Landlord fails to return or send list of damages:

- Landlord loses right to keep deposit or sue for damages,
- Tenant can sue landlord for double the amount of the security deposit if gave landlord new address.

Tenant cannot waive these rights in the lease.

## Holding & Returning Tenant's Personal Property After Move Out

- Landlord can't hold tenant's property until tenant pays back rent, damages, etc.
- When tenant gives notice the property isn't abandoned, landlord must safeguard tenant's property – can't throw it out or sell it for at least 30 days
- Landlord must follow procedures outlined in 2014 amendments to Landlord and Tenant Act about "Disposition of abandoned personal property" (68 P.S. § 250.505a)



## FAIR HOUSING

The most important things to remember about fair housing laws:

- 1) Discrimination must be because of a protected class
- 2) Federal law sets the minimum protections - states, cities and municipalities can pass laws to provide more protections (but not fewer protections)
- 3) Housing providers must comply with fair housing laws regardless of their personal beliefs

## **Fair Housing Act & Pennsylvania Human Relations Act**

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### **Protected Classes:**

- |                   |                  |
|-------------------|------------------|
| • Race            | • Age (people 40 |
| • Color           | years old and    |
| • National Origin | older)           |
| • Religion        | (under           |
| • Sex             | Pennsylvania     |
| • Familial Status | Human Relations  |
| • Disability      | Act)             |

## **Local Ordinances**

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- Allentown, Bethlehem and Easton added the protected classes of:
  - Sexual orientation
  - Gender identity and gender expression
  - Marital status

## **What types of housing do fair housing laws cover?**

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- Private housing
- Public housing and subsidized housing
- Manufactured home communities
- Homeless shelters
- Group homes
- Rooming or boarding houses
- Nursing homes and assisted living centers
- University housing (dorms)
- Vacant land offered for sale or lease

## **How the Fair Housing Act is Enforced**

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- Tenant Raising a Defense in Eviction Action
- Complaint Filed with:
  - Dept. of Housing & Urban Development (HUD): 1 year
  - PA Human Relations Commission (PHRC): 180 days
  - City Human Relations Commission:
    - Allentown & Bethlehem: 180 days
    - Easton: 300 days
- Lawsuit Filed in State or Federal Court: 2 years



## **Violation of Fair Housing Laws - Consequences**

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Types of Relief Ordered by Courts:

- Money Damages to Victims
- Fines
- Injunctive Relief
- Mandatory Fair Housing Training for Housing Provider, Landlord, Management Company or Realty Company
- Attorney's Fees

## **Other Related Laws**

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- Americans with Disabilities Act (ADA) of 1990 (protected class: disability) – public accommodations including management offices
- Laws applying to recipients of federal funding:
  - Title VI of the Civil Rights Act of 1964 (protected classes: race, color, national origin)
  - Section 504 of the Rehabilitation Act of 1974 (protected class: disability)

## Disability



- Individual with a physical or mental impairment that substantially limits one or more major life activities, or
- Individual who is regarded as having such an impairment, or
- Individual with a record of such an impairment

## Disability



Major life activities include activities of central importance to daily life:

- Seeing
- Hearing
- Speaking
- Walking
- Breathing
- Caring for one's self
- Performing manual tasks, and
- Learning.

## Additional Rights for Equal Enjoyment

### Reasonable Modifications

Structural change to

- Interior
- Exterior
- Common areas



### Reasonable Accommodations

Change, exception, or adjustment to a rule, practice, or service



## Reasonable Modification Examples

- Individual with mobility issues may install a ramp or stair glide
- Resident with hearing disability may install a peep hole in door
- Resident who is sensitive to loud or persistent noise may install acoustic tiles to reduce noise
- Individual who cannot remember to turn off water may install automatic faucet



## Reasonable Modification - Costs

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Private housing: Tenant is responsible for paying for modification, unless structural changes should have been included in the unit or public or common area because multi-family dwelling constructed after 1991.

When reasonable, the private landlord may require the tenant to restore the interior of the unit to the pre-modification condition before moving out.

## Reasonable Modification - Costs

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- Federally-funded housing provider: Housing provider responsible for the costs associated with a reasonable modification, unless:
    - Undue financial or administrative burden,
    - Fundamental alteration of the program, or
    - Housing provider can accommodate the individual's needs through other means.
- (Section 504 of the Rehabilitation Act of 1973)

## Reasonable Accommodation Examples

- Housing provider allows tenant with mobility impairment to move from third floor to ground floor
- Housing provider notifies tenant with chemical sensitivities in advance of painting and exterminations
- Housing provider allows tenant's family member or aide to move into the unit as a live-in caregiver



## Reasonable Accommodation Examples

- Housing provider reserves a parking space near the ramp for a tenant who uses a wheelchair
- Management delays eviction proceedings so tenant (whose mental health disability causes her to have poor housekeeping or hoard belongings) can obtain necessary services to be able to pass a re-inspection of the apartment

## **Is this a problem?**

One of your consumers who is an individual with a disability resides in a transitional housing residence which has a work requirement. The consumer tells you that they received a notice of eviction because they can't comply with the work requirement.

## **Is this a problem?**

A consumer resides in a nursing home where she has dinner every night in the dining room. She suffers a stroke which limits her ability to use her hands and open her mouth. As a result, she often drops food and sometimes drools while eating. One day, she mentions that she hates eating dinner alone. When you ask why she's eating alone, she tells you that they won't let her in the dining room since she had her stroke.

## Necessary & Nexus

- RA/RM must be necessary to allow the tenant full enjoyment of the unit.
- RA/RM is necessary if identifiable relationship, or nexus, between the requested modification or accommodation and tenant's disability.
  - E.g. Tenant with a mobility impairment can show a nexus between disability and RA request of additional time to clean the apartment.
  - E.g. Tenant with a mental health disability cannot show a nexus between disability and RM request of a ramp.

## When can a tenant request a RA?

Tenant can request a reasonable accommodation at any time prior to actually being evicted, including:

- During application process,
- While living in unit,
- When housing provider changes a rule or policy,
- In response to housing provider's complaint or adverse action,
- At informal hearing,
- At eviction hearing,
- Appeal to a higher court.

## **What counts as a RA/RM request?**

- Any request asking for modification or accommodation because of a disability
  - E.g. Lease says tenant must pay rent in person. Tenant tells housing provider: "Sometimes I get really anxious about leaving my apartment. Can I pay my rent another way? Can I mail a money order?"
- Does not have to use the magic words "reasonable accommodation"
- May be oral or in writing
- Does not have to use housing provider's request form

## **What information can the housing provider request?**

- Can ask tenant, medical provider or social service provider to confirm tenant has a disability
- Cannot ask for tenant's diagnosis
- Cannot ask tenant for more information or medical verification if:
  - Disability is obvious, or
  - Housing provider already knows tenant has a disability and need for reasonable accommodation is clear



### **What information can the housing provider request? - Examples**

- E.g. Tenant uses a wheelchair & requests an assigned parking spot close to the entrance – no information necessary
- E.g. Tenant has a respiratory problem & requests a transfer because his neighbor's smoking makes it difficult for him to breathe – documentation of respiratory problem or effect of smoke may be necessary
- E.g. Tenant has mental disability & requests an emotional support animal (ESA) – documentation of mental disability & need for ESA may be necessary

### **What makes an RA/RM request unreasonable?**

RA/RM request is reasonable unless:

- Undue financial and administrative burden on housing provider, or
- Fundamental alteration of housing provider's operations.

E.g. Asking housing provider to notify tenant of all cleaning supplies used in entire building is unreasonable

E.g. Asking housing provider to provide tenant ride to doctor or grocery store due to tenant's mobility impairment is unreasonable

## Other reasons for denying RA/RM request

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Accommodation not required if:

- Tenant poses a direct threat to the health or safety of other residents or housing provider's staff
- Tenant would cause substantial physical damage to another person's property

Housing provider has the burden to show tenant is a direct threat or will cause substantial physical damage – high burden

## Open a Dialogue

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- Tenant's RA/RM request should open a dialogue between the housing provider and the tenant about the tenant's needs
- If housing provider refuses tenant's request, housing provider should suggest an alternative RA/RM
- If housing provider does not respond to the tenant for an extended time or does not respond to tenant's request at all, housing provider may be in violation of fair housing laws

## Assistance Animals as RA

- Assistance animals include
  - Service animals
  - Emotional support animals (ESAs)
- Different rules for service animals under fair housing laws & Americans with Disabilities Act (ADA)
  - ADA covers public accommodations, such as public buildings, restaurants, real estate and rental offices, etc.
  - Fair housing laws cover the person's dwelling, common areas, entrances/exits, etc.

## Assistance Animals under FHA

- Person with disability may request accommodation for assistance animal, if person can show relationship between needing animal & disability
- Requester must show relationship to disability
  - Ex. Wheelchair bound tenant who does not need service animal must show emotional support animal assists him with mental disability, not physical disability
  - Ex. Tenant with PTSD must have supporting documentation that ESA calms him



## Assistance Animals under FHA

- Assistance animals do not need to have special training
- Assistance animals can be any type of animal, not just a dog
- Assistance animals are not “pets” – they are a reasonable accommodation request to a municipality’s ordinance
- HUD guidelines allow all dogs to be assistance animals, even if breed is considered dangerous by ordinance for pet dogs

## Is this a problem?

Your client is an individual with a disability who has an assistance animal. He’s in the process of transferring from a transitional living situation to his own apartment. The apartment will be available in two weeks. You advise your client to stay at the shelter until his apartment is ready and call them to make sure a bed is available. The next morning, your client comes into your office looking very disheveled. When you ask him what happened, he tells you that he had to sleep on the street last night because the homeless shelter wouldn’t let his dog in.

## Design & Construction Requirements

- FHAA has seven design & construction requirements
- Covered multifamily dwellings built for occupancy after March 13, 1991 must comply with the seven requirements
- A multifamily dwelling is covered if it has four or more units
  - All units are covered if the building has an elevator
  - Only the ground floor units are covered if the building does not have an elevator



## Definition of Familial Status



- Children under 18 living with parents or legal custodians
- Pregnant women
- People securing custody of children under 18

## **Examples of Illegal Housing Discrimination on the Basis of Familial Status**

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- Examples of Obvious Discrimination
  - Advertisement that says "no kids"
  - Refusing to sell to buyer with kids because homeowner thinks kids will bother elderly couple living next door
  - Requiring families with children live on a particular floor or part of the development

## **Examples of Illegal Housing Discrimination on the Basis of Familial Status**

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- Example of Subtle Discrimination
  - Refusing to rent apartment because concerned about kids' safety (apartment on high floor & has balcony, lead paint, busy highway)
  - Telling pregnant woman that 3<sup>rd</sup> floor apartment wouldn't be good for her because she would have to climb stairs

## Is this a problem?

Your consumer, who is pregnant and has a two-year old child, found a great 2<sup>nd</sup> floor apartment which overlooks a creek. The landlord told her he can't rent it to her, but has another apartment available on the first floor on the other side of the complex, away from the creek.

## Familial Status Discrimination Occupancy Codes

- HUD's default rule is 2 people per bedroom but it recognizes a lot of exceptions to this rule, such as:
  - Size of unit
  - Configuration of unit
  - Age of children

HUD "Keating Memo" (1991)



## Discrimination on the Basis of Familial Status

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- Housing provider should not charge per person for rent or other fees
- Housing provider can only set the number of people who can live in a unit
- Housing provider cannot decide who sleeps where
- Housing provider cannot restrict a girl and a boy from sharing a bedroom, or a parent and a child from sharing a bedroom

## Sex Discrimination

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- Discrimination on the basis of sex is prohibited
- Sex discrimination includes claims of sexual harassment
  - Ex. tenant's refusal to have sex with landlord results in adverse action or landlord creates a hostile housing environment
- May include discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals if discrimination is based on gender nonconformity or sex stereotyping



## Violation of Fair Housing Laws - Consequences

- Sex discrimination (landlord & property manager sexually harassed tenants & retaliated against tenants who complained)

Outcome: over \$2 million in damages to tenants; \$55,000 fine; property owner cannot have contact with tenants, must hire independent manager

## Is this a problem?

Your consumer mentions how she's going to dinner with the manager of her building. She states that she doesn't really like him, but he said that he'll take extra care to make sure all her repairs are done.

## Sexual Orientation, Gender Identity, and Gender Expression

- Federal rules prohibit discrimination on the basis of sexual orientation or gender identity in:
  - HUD-assisted housing (e.g. public housing, Section 8 Housing Choice Vouchers, project-based Section 8)
  - Housing whose financing is insured by HUD
  - FHA-insured mortgage financing
- Allentown, Bethlehem & Easton - Cannot discriminate on the basis of sexual orientation, gender identity and gender expression



## Examples of Illegal Housing Discrimination – Race & Color

- Telling a white parent with biracial children that an apartment is no longer available even though it is
- Not returning voicemails from a person interested in renting a house because the landlord assumed from the person's voice that he or she is African-American
- Denying an African-American applicant's application based on his criminal record, but admitting white applicants with a similar criminal record

## Violation of Fair Housing Laws - Consequences

- Race Discrimination: housing provider assigning applicants to buildings based on race and not following waiting list  
Settlement: \$175,000 in damages to applicants; transfers for tenants; policy changes; mandatory training
- Race discrimination by landlord against tenants' potential subletter  
Outcome: \$32,000 in damages to tenants; \$44,000 in damages to potential subletter; plus attorney's fees

## Examples of Illegal Housing Discrimination – National Origin

- Refusing to rent to potential tenants who do not speak English
- National origin discrimination (segregating tenants of South Asian or Middle Eastern descent into only two buildings in the apartment complex because manager didn't like the smell of the ethnic cuisine the tenants cooked)  
Outcome: \$210,000 in damages to tenants; \$107,000 in civil fines; manager fired; mandated fair housing training

## Is this a problem?

Your consumer meets with a landlord about an apartment. They are both Spanish-speaking and talk for a while, discussing their joint homeland of Puerto Rico. The landlord agrees to rent to her and her family. The following day, your consumer returns with her spouse. The landlord starts talking to the spouse and asks where in Puerto Rico he lived. The spouse replies that he's from Mexico. The landlord says that he forgot the lease and will call them to arrange another time to sign it. Your consumer never hears from the landlord again.

## Examples of Illegal Housing Discrimination – Religion

- Discouraging tenants who are Muslim from applying saying they may not fit in with other residents
- Religious Discrimination (Senior residence asking applicants if they were actively practicing their religion, staff describing the building as "the Jewish hotel experience," other claims of disability and race discrimination)

Settlement: \$297,500 in damages, attorney's fees, costs; mandatory fair housing training; marketing changes

## **North Penn Legal Services** **[www.northpennlegal.org](http://www.northpennlegal.org)**

Information on self-help legal topics, latest news & events updated regularly  
559 Main Street, Suite 200, Bethlehem, PA 18018

Phone: (610) 317-8757

TTY Relay Service: 800-654-5984

Office hours: Monday - Friday 9:00 – 12:00 / 1:00 - 5:00

Intake Line: 1-877-953-4250

Monday, Tuesday, Wednesday, Thursday

9:00 – 11:30 A.M. / 1:30 – 4 :00

Friday 9:00 – 11:30 A.M.



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