



# Housing Rights ADVOCATE

Issue 35, Spring 2005

The Austin Tenants' Council

www.housing-rights.org

## Security Deposits the Hard Way

In September 2003, the Austin Tenants' Council opened a repair mediation case on behalf of Melissa Martinez, a tenant at Douglas Landing Apartments in Southeast Austin. Ms. Martinez had several repair problems including a commode that backed up repeatedly, a broken window by her front door and pest problems (roaches, ants, etc.).

Bruce Rodenborn, Program Development Specialist, assisted Ms. Martinez in drafting a request for repair and sent it by certified mail. Rather than responding and taking care of the problems within a reasonable amount of time (presumed to be seven days by law), the manager blamed Ms. Martinez for the problems and repaired nothing.

The window that was broken is actually located below the level of the parking lot because the complex is built on a steep hill. Ms. Martinez believes that a rock thrown by children playing in the parking lot or possibly debris thrown by a passing car broke the window. She reported the broken window to the manager immediately and there is nothing in her lease holding her liable for such damages so she did not want to pay for this damage to the landlord's property. Also, Ms. Martinez had reported the commode problem ever since she had moved in, but she was still blamed for it.

Tenants often have a difficult time proving the condition of a property when they move in unless they complete a thorough inventory of the condition of the property and keep a copy. It's surprising how many move-in inventories are

Continued on Page 2

## Compromise Reached on Occupancy Policy Cases

In 2001, the Texas Commission on Human Rights (TCHR), now the Civil Rights Division of the Texas Workforce Commission, rescinded its 1995 policy entitled, "Occupancy Policies for Families under Fair Housing Laws in Texas." TCHR stated that the agency would instead use the standard adopted by U.S. Department of Housing and Development (HUD)

**"An occupancy policy of two persons per bedroom which also takes into account the size of the bedroom, and does not count children until they are 24 months, will not be considered discriminatory."**

to determine whether a landlord has violated the Fair Housing Act by discriminating against families with children by having an overly restrictive occupancy policy.

HUD readopted the "Keating Memo" in December 1998 as this standard. The Keating Memo states that two persons per bedroom is generally a reasonable occupancy policy, but the size of the bedroom and other factors might affect how restrictive a landlord can be. For example, a 200 square foot bedroom can easily accommodate more than two people. On the other hand, if a landlord's property has a septic tank that will be overloaded by too many people in the unit, being more restrictive may be justified. However, being more restrictive than two persons per bedroom will be closely scrutinized.

The Austin Tenants' Council (ATC) immediately objected to the TCHR's 1995 policy because it did not address the issue of bedroom size, and shockingly, it stated that once a child reached the age of six months the child could be considered as an occupant. Thus, a landlord could require a couple with a nine-month-old baby to rent a

Continued on Page 3

## Recent Staff Changes Jennifer Scott Leaves ATC Staff

The Austin Tenants' Council is sad to announce the departure of longtime employee, Jennifer Scott. Ms. Scott first worked at ATC as a Vista Volunteer in 1991-1992 and was later hired as a full-time staff person in 1996. She and another Vista Volunteer ran the Bilingual Community Outreach Project which provided ESL classes for low-income tenants. After the BCOP program and her VISTA service ended, she worked at Travis County MHMR before being hired to work under ATC's Renters Rights Assistance Program. Over the years, Jennifer became one of ATC's best tenant-landlord counselors and did

Continued on Page 3

## Is HB 1167 a Good Bill?

The Texas Housing of Representatives is currently considering a bill (HB1167) that will radically change the administration of Low-Income Housing Tax Credits, which are part of a federal program to create affordable housing.

The bill is 116 pages long and will abolish many of the Legislature's reforms of the Texas Department of Housing and Community Affairs (TDHCA), which were made during the recent Sunset review process. Readers may remember several scandals involving TDHCA Board members prior to the changes made after the Sunset review. Subsequent to that, TDHCA has been much more effective in implementing fair policies and monitoring Tax Credit properties to make certain that they comply with state and federal regulations. The bill contains measures that would most benefit

Continued on Page 3

### Inside:

- 1 - New Fair Housing Director
- 2 - More about occupancy standards
- 3 - Details about HB 1167

# Landlord–Tenant News

## Security Deposit

Continued from page 1

reported, “missing” by management when it comes time for the tenant to move out of a property. Thus, tenants are billed for pre-existing damages and struggle to prove the unit’s original condition. Tenants should immediately complete a move-in inventory, sign it, keep a copy and submit the original with a witness or get a delivery receipt.

Landlords that want to be fair should make certain the inventory is completed and agreed upon, as well, because it may be hard to remember the condition of a rental property a year or more later. According to the Texas Property Code, a landlord has the burden of proving that deductions from a security deposit are reasonable, so proper documentation is equally necessary for landlords. ATC recommends that both tenant and landlord also take photographs at move in and move out. The truth is that tenants are biased to believe they didn’t cause damage and landlords are biased to believe the tenant did. Photographs are less fallible than our memory and help avoid costly security deposit disputes.

Fortunately, in Ms. Martinez’s case, there was a Section 8 Inspection done by the Housing Authority of the City of Austin (HACA) that documented the pre-existing problem with the commode. It was supposedly repaired at the time, but most likely, the obstruction was simply moved to the side with a drain auger, and after Ms. Martinez moved in, the obstruction began stopping up the commode again. In any case, the manager did not have this repair problem or others remedied within seven days after receiving the repair request.

Because there was no response, Ms. Martinez wanted to exercise her right under the Property Code to terminate the lease and move. However, when a tenant has a Section 8 Voucher, the Housing Authority must agree with the lease termination or the tenant may lose the Voucher because federal Section 8 regulations are different than Texas laws. Thus, Ms. Martinez had to have a second Section 8 Inspection done and the unit failed again. HACA eventually

sent notice that they were ceasing payment of the rent at the end of November 2003 and Ms. Martinez was cleared to move.

After all she had been through, the only thing she wanted was to leave Douglas Landing and receive the refund of her security deposit. She wasn’t interested in suing for the judicial remedies of \$500 plus one month’s rent, or other damages such as her moving expenses. She just wanted \$400 security deposit refunded within 30 days as required by law.

Instead, she was sent a bill for the repair of the toilet, for the broken window and \$182 of allegedly unpaid rent. With the assistance of Mr. Rodenborn, she sent a letter disputing the charges and demanding

**“Some people may like difficulty and drama in their lives, but Ms. Martinez sure doesn’t. She just wants to pay some long delayed bills with the money owed her.”**

her \$400 back. The letter warned the manager that if she had to sue to recover the deposit, she would also seek the other damages she believed she was owed. The letter was also sent to the owner of the property, and shortly thereafter the manager was replaced.

Ms. Martinez and Mr. Rodenborn hoped that the new manager would be more reasonable, but she wasn’t. Even after being given a copy of the Section 8 Inspection showing the same problem with the commode, she wouldn’t refund the deposit either. ATC then referred Ms. Martinez to Mark R. Lee, one of ATC’s cooperating attorneys.

With the assistance of Mr. Lee, Ms. Martinez filed a lawsuit against the owner in County Court, and surprisingly or perhaps not, there was no response to the lawsuit either. Ms. Martinez obtained a default judgment and was waiting at press time to have a Writ of Execution served on the manager. The owner will either have to provide a check for the \$4500 judgment or Ms. Martinez can seize assets such as rent checks and/or the landlord’s non-exempt property such as furniture, equipment, etc., to satisfy the debt.

Some people may like difficulty and drama in their life, but Ms. Martinez sure doesn’t. She just wants to pay some long delayed bills with the money owed, and put this problem behind her.

## House Bill 1167

Continued from page 1

a limited number of low-income housing developers. However unintentionally, ATC believes HB1167 will:

- Establish a very prescriptive process for the allocation of tax credits that will reduce the ability of the TDHCA board to shape the Low-Income Housing Tax Credit program to meet changing needs within the state and restricts the state from determining the type and quality of housing to be created with public funds.
- Limit competition between developers for tax credit funds and remove incentives to create fiscally responsible, quality developments.
- Eliminate underwriting and other safeguards that ensure quality developments.
- Eliminate incentives to keep rents affordable.
- Shift funding away from addressing the housing needs of very low-income families and move it towards the middle of the market that needs no subsidies.
- Eliminate housing programs such as the acclaimed Bootstrap Self Help Housing Program that has helped Habitat for Humanity and border nonprofits make home ownership a reality for many Texas families.
- Substantially reduce funding for single family housing in order to provide more funding for apartments.
- Make it more difficult for tenants and neighborhoods to ensure apartment projects subsidized by the state are kept in good condition.
- Weaken efforts to produce housing accessible to people with disabilities.
- Restrict public input.

None of these changes seems to improve the state of affordable housing development in Texas. This is especially true in a time when many neighborhoods object to such developments because they are seen as low-quality housing that brings down the value of the neighborhood. The Austin Tenants’ Council is unclear what has prompted the need for this legislation since, as stated above, TDHCA seems to be doing well over the past few years.

The full text of the bill is available at: [www.capitol.state.tx.us](http://www.capitol.state.tx.us).



# Fair Housing News

## Occupancy Policy Compromise

Continued from page 1

two-bedroom unit. Many property owners and managers mistakenly believed the policy was a law that carried more weight than just the opinion of one state agency. Clients still report that property managers say the old TCHR policy is the law.

In fairness, many property owners simply want a clear standard they can follow, but the Keating Memo purposely left occupancy standards open for interpretation to accommodate the wide variety of rental properties that are covered under the Fair Housing Act. Furthermore and unfortunately, the Keating Memo does not directly address the issue of the age to begin counting children as occupants. There have been continuing disputes between fair housing advocates, including ATC, and property owners over what constitutes a reasonable standard.

In 2004, ATC filed several HUD 903 complaints against different property owners, which were investigated by the City of Austin's Equal Employment/Fair Housing Office (COA-EEFHO). After some fairly contentious negotiations during the conciliation process, the property owners agreed to settle. Under the revised policy, the owners agreed not to count children under 24 months of age as occupants. The owners also agreed that other factors such as the size of the units might require allowing more than two occupants per bedroom.

The Austin Tenants' Council wasn't entirely satisfied with the outcome. ATC believes that a two-year old might continue to sleep in the same bedroom as the parents, but believes this was a reasonable compromise given the size of the units and the bedrooms in these cases. The property owners wanted a lower age limit and agreed to include the size of their bedrooms when determining how many people can live in a unit.

The COA-EEFHO has adopted this agreement as their de-facto standard for determining cause in familial status complaints that they investigate. There has been widespread adoption of this occupancy policy in the Austin area as evidenced by a recent testing project funded by the COA-EEFHO and conducted by ATC.

The Familial Status Testing project was designed to determine whether apartment complexes are complying with this new occupancy standard. COA-EEFHO and ATC conducted a total of 28 tests based on familial status and are pleased to announce that 75% of the apartment complexes tested were using the new occupancy standard and were in compliance.

The COA-EEFHO and ATC applaud these apartment complexes for their diligence in addressing this issue. ATC would also like to thank Director Charles Gorham and Investigator John Benavides for their hard work in the original conciliation that created the occupancy policy.

However, the project also found positive evidence of discrimination on 7 tests conducted or 25% of the apartment complexes tested. For example, one apartment complex denied housing to a couple with a child 7 months of age because their existing occupancy standard only allowed a couple with a child 6 months old or younger. This is not in compliance with the changes in the occupancy standards and is a violation under Fair Housing laws.

ATC will continue its education and outreach efforts to inform the community about familial status discrimination to minimize further violations. ATC will also continue its testing activities to find owners that use more restrictive occupancy policies.

Property owners in Texas should be aware that application of the old TCHR policy has, in ATC's opinion, never been in compliance with the Fair Housing Act. If ATC finds a property that still uses that policy, ATC will file a fair housing complaint with HUD and seek "frustration of mission and diversion of resources" damages against these owners, as this issue has unnecessarily taken up a significant portion of ATC's fair housing efforts.

Furthermore, just as TCHR's policy was not a law, neither is the current City of Austin policy. It does not provide blanket protection, especially when applied in specific situations. Any person has the right to file a fair housing complaint and/or seek civil damages in a lawsuit. Hopefully, though, fair housing advocates and property owners are closer to a middle ground that both can accept.

## Staff Changes

Continued from page 1

so in two languages. She speaks Spanish fluently and translated past issues of the Housing Advocate. She also has translated all of ATC's brochures into Spanish and has updated both the English and Spanish versions as the laws have changed over the years.

Ms. Scott's enthusiasm for housing work and willingness to accept new challenges will be sorely missed. The many people she has helped over the past eight years can testify to the kindness and intelligence with which she applied herself on their behalf. From organizing tenants at Austin Hills Mobile Home Park to advocating on behalf of many Spanish-speaking victims of unscrupulous landlords, her impact in people's lives has been significant.

The entire staff will miss her but also wishes her the best in her new pursuits.



## New Fair Housing Program Director

As disappointed as we are about the loss of Jennifer Scott, the Austin Tenants' Council is equally happy to welcome back to its staff Ms. Nekeshia Phoenix, who has been hired as the new Fair Housing Program Coordinator. Ms. Phoenix previously worked for four years at ATC as a Fair Housing Specialist and then as a Testing Coordinator. She left ATC to become an investigator for the Texas Commission on Human Rights (now the Civil Rights Division of the Texas Workforce Commission) where she also worked for four years.

ATC is excited to have her as the director of the Fair Housing Program because of her extensive fair housing experience. She has helped victims of housing discrimination both as a fair housing advocate at a nonprofit organization while working at ATC, and as an investigator at a governmental fair housing organization while at the Texas Workforce Commission. This varied experience strengthens ATC's ability to assist clients in filing HUD Administrative (903) Fair Housing complaints and during the often lengthy HUD Administrative Process that follows.





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The Austin Tenants' Council, as a sub-recipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modification and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

**Programs and Services/Programas y Servicios**

**FAIR HOUSING  
 VIVIENDA JUSTA**

**THE FAIR HOUSING PROGRAM / EL PROGRAMA DE VIVIENDA JUSTA** - This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under State and Federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

**TENANT-LANDLORD  
 INQUILINO-PROPIETARIO**

**TELEPHONE COUNSELING / CONSEJOS POR TELEFONO** - Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

**IN-HOUSE COUNSELING / CONSEJOS EN LA OFICINA** - Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7007.

**CRISIS INTERVENTION / INTERVENCION CRISIS** - Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenass su vivienda. Call / llame al 474-1961.

**RENTAL REPAIR ASSISTANCE / AYUDA CON REPARACIONES EN SU VIVIENDA** - The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7007.

**LEASE FORMS / CONTRATOS** - ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.

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