Housing Rights ADVOCATE

Austin Tenants' Council • Issue 60, Winter 2011

ATC Settles Discriminatory Advertising Cases

In September, ATC conducted an advertising audit of the Texas Express, a weekly classified newspaper distributed across Central Texas and published online. ATC found ads stating preferences for a "couple or roommates only" or a "single man or woman only." One ad asserted, "No children, pets, inside smoking, or loud vehicles." These ads indicate an illegal preference or limitation and discourage families with children from even considering contacting a landlord.

The investigation also found a discriminatory ad stating preferences based on religion and disability. The landlord wanted to rent to a "healthy responsible Christian."

The Fair Housing Act covers all advertising for the rental or sale of housing. It is illegal to make, print, or publish or cause to be made, printed, or published housing ads that discriminate, limit, or deny equal access to apartments or homes because of race, color, national origin, sex, religion, familial status, and disability.

Fair housing testing conducted by ATC provided further evidence of one landlord's refusal to rent to families with children. After the tester stated that she was looking for housing for herself and her daughter, the landlord responded, "We don't have children here." The landlord explained that most of her tenants were "older" so the tester would not be allowed to rent there.

ATC filed fair housing complaints against the Texas Express for publishing the illegal ads and against the individuals who wrote and placed the illegal ads. The U.S. Department of Housing and Urban Development and the Texas Workforce Commission Civil Rights Division investigated the complaints and negotiated conciliation agreements in all but two cases (these investigations are still pending). The newspaper publisher and the individual landlords agreed to take fair housing training; pay $1,500 to ATC as compensation for diversion of the agency's resources and frustration of its mission; and provide ATC with $6,000 in advertising space to run fair housing ads in the Texas Express.

2011 Texas Legislature in Session

The 82nd Texas Legislature convened on Jan. 11 and will be in session until May 30. At publication time, only one bill concerning tenants and landlords had been filed. SB 172, authored by Sen. Royce West of Dallas, would prohibit a municipality from requiring a tenant to acquire a license or permit issued by the municipality as a condition for occupying or leasing an individual dwelling unit. For legislative updates, visit ATC's blog at http://austintenantscouncil.wordpress.com.

FH Case Updates

In the settled case reported here, the respondent, unless otherwise noted, denies the allegations of discrimination made by the complainant and the parties have agreed to resolve the case prior to a trial on the merits.

Lisa Monteleon v. Oberg Properties

Within three months of moving into a new rental house, Lisa Monteleon began experiencing coughing and shortness of breath. After spending time away from the house and finding her symptoms resolved, Monteleon, who is undergoing cancer treatment, determined that mold was the cause. Because of the negative effects on her health, she asked to be released from her lease and presented the manager with a letter from her doctor, who recommended that Monteleon reside elsewhere.

After waiting two months for the manager to respond, Monteleon moved out and contacted ATC for assistance getting her $1,025 security deposit returned. Fair housing specialist Lucia Perez-Salinas helped Monteleon make a formal request for reasonable accommodation. After receiving the letter, the manager returned the deposit promptly and agreed not to hold Monteleon responsible for the remaining rent due on the contract.

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Audrease Graffread v. Park Plaza

Audrease Graffread, who uses a walker, faced several obstacles getting to and from her apartment. The accessible route was often blocked by other tenants' lounge chairs, barbecue grills, and parked cars. Two steps at the apartment entrance created additional difficulties.

Fair housing testing coordinator Morgan Morrison helped Graffread make requests for reasonable accommodation and reasonable modification. Graffread asked her landlord to address the inaccessible route and asked for permission to install ramps at her front door. The landlord agreed to both requests, and he sent written notice to all tenants advising them to keep the sidewalks clear. The Austin Chapter of the Texas Ramp Project (www.texasramps.org), which builds ramps at no cost for individuals with physical and financial need, constructed two ramps allowing Graffread easier access to her apartment.

David Taylor v. Terrace Cove

One of the perks of being a five-year tenant at Terrace Cove is access to reserved parking spaces. Long-time resident David Taylor, who is disabled and cannot walk long distances, used one of those spots until another tenant moved into his building and put her apartment number on the reserved parking sign.

After learning of the dispute, management moved the reserved parking space across the lot, knowing that Taylor is disabled and would not be able to access it easily. Taylor then parked in the handicapped parking space in front of his building. But the manager and her friends began parking their cars over the line or so close to Taylor's vehicle that he could not use this spot either.

Nekesha Phoenix, fair housing program director, helped Taylor make a request for reasonable accommodation. Taylor asked the manager to assign him a reserved handicapped parking space near the entrance to his apartment. The manager denied the request, stating that because the complex was built prior to March 13, 1991 (the date the accessibility requirements of the Fair Housing Act took effect for newly constructed multifamily properties), Taylor would have to pay to make a parking space accessible.

Taylor filed a fair housing complaint. The City of Austin Equal Employment/Fair Housing Office negotiated a conciliation agreement where Taylor received a release from his lease without penalty; one month's free rent; and a neutral rental history reference.

Court Orders Landlord to Restore Utilities

In November, Donnell Franklin Coleman fell behind on his rent. Rather than following the law, the landlord, Jefferson R. Lewis, tried to force out Coleman by illegally turning off his utilities. Lewis also filed for eviction before giving Coleman the required notice to vacate.

Housing specialist Linda Aleman advocated for Coleman to prevent the illegal eviction. When she was unable to reach the landlord, Aleman advised Coleman to ask the justice of the peace for a writ of restoration. Judge Richard Scott issued an order for the landlord to reconnect the utilities; however, Lewis refused to comply. Coleman returned to court and filed a motion for contempt. Judge Scott again ruled in the tenant's favor. Coleman received one month's rent and the restoration of his utilities.

Utility Shut Offs

A landlord may shut off any utility (electricity, water, wastewater, and gas) to carry out repairs or construction or in an emergency. A landlord may never shut off electricity, water, wastewater, or gas because the tenant is delinquent with a rent or utility payment. Any provision of a lease that purports to waive any of the tenant's rights, liabilities, or duties under the utility shut-off law is void.

Tenant Remedies for Illegal Shut Off

If a landlord or a landlord's agent violates any of the rules for shutting off electrical service, the tenant may:

- Either recover possession of the premises or terminate the lease; and
- Recover from the landlord actual damages; the greater of one month's rent or $500; reasonable attorney's fees; and court costs, less any delinquent rent or other sums for which the tenant is liable to the landlord.

Tenant's Right of Restoration

If a landlord has interrupted utility service in violation of Section 92.008 of the Texas Property Code, the tenant may obtain relief after filing a sworn complaint specifying the facts of the landlord's disconnection with the justice court in the precinct in which the rental premises are located. The tenant must also state orally under oath the facts of the unlawful utility disconnection during an appearance in court.

If the court believes that an unlawful utility disconnection has likely occurred, the court may issue an order that entitles the tenant to immediate and temporary restoration of utility service pending a final hearing.

Actualización de Casos de Vivienda Justa

En los casos resueltos reportados aquí, el demandado, a menos se declare lo contrario, negó la denuncia por discriminación hecha por el demandante, y las partes acordaron resolver el caso antes de ir a juicio por los méritos del asunto.

Audrease Graffread v. Park Plaza

Audrease Graffread, quien usa un bastón, enfrentaba varios obstáculos para entrar y salir de su apartamento. El camino de acceso solía estar bloqueado por las reposeras, parrillas y vehículos de otros inquilinos. Los dos peldaños a la entrada de su apartamento creaban más dificultades aún.

La coordinadora de examen de Vivienda Justa Morgan Morrison ayudó a Graffread a hacer pedidos de adaptación razonable y de modificación razonable. Graffread pidió al propietario solucionar la falta de acceso y pidió permiso para instalar rampas en su puerta de entrada. El propietario aceptó ambos pedidos y envió aviso escrito a todos los inquilinos instándolos a mantener el camino libre. La sede en Austin de Texas Ramp Project (www.texasramps.org), que construye rampas sin costo para personas con necesidades físicas y económicas, construyó dos rampas, permitiendo a Graffread un más fácil acceso a su apartamento.

Lisa Monteleon v. Olberg Properties

A los tres meses de haber rentado la vivienda, Lisa Monteleon comenzó a sufrir de tos y dificultades para respirar. Después de pasar un tiempo fuera de la vivienda y hallar que sus síntomas desaparecían, Monteleon, que recibe tratamiento por cáncer, determinó que el moho era la causa de su aflicción. Debido a los efectos negativos a su salud, ella pidió la cancelación del contrato y le entregó al administrador una carta de su médico recomendando a Monteleon vivir en otro lugar.

Después de esperar dos meses la respuesta del administrador, Monteleon se mudó del lugar y pidió ayuda a ATC para recobrar los $1,025 del depósito. La especialista en Vivienda Justa Lucia Perez-Salinas ayudó a Monteleon a hacer un pedido formal de 'adaptación razonable'. Al recibir la carta, el administrador devolvió el depósito prontamente y aceptó no hacer responsable a Monteleon por el resto de la renta debida por contrato.

La Corte Ordena la Restitución de los Servicios

En Noviembre, Donnell Franklin Coleman se atrasó en pagar la renta. En vez de respetar la ley, el propietario Jefferson R. Lewis trató de forzar a Coleman a irse, cortándole ilegalmente los servicios.

La especialista en vivienda Linda Aleman abogó por Coleman para prevenir el desalojo ilegal. Al no lograr comunicarse con el propietario, Aleman aconsejó a Coleman solicitar al juez de paz una orden de restitución. El Juez Richard Scott emitió la orden al propietario para que reconectara los servicios; sin embargo, Lewis se negó a cumplir. Coleman volvió a la corte y presentó una moción por desacato. El Juez Scott falló a favor del inquilino. Coleman recibió un mes de renta y la restitución de los servicios.

Corte de servicios

El propietario podría cortar los servicios (electricidad, agua, alcantarillado y gas) debido a reparaciones, construcción o por una emergencia. El propietario no puede cortar la electricidad, agua, alcantarillado o gas porque el inquilino está atrasado en el pago de renta o servicios. Toda provisión en un contrato de renta que niegue cualquier derecho, responsabilidad o deber del inquilino bajo la ley de corte de servicios carece de validez.

Recursos del inquilino por cortes ilegales

Si el propietario o su agente no cumpliera con las reglas sobre corte de servicios, el inquilino podrá:

- Recobrar posesión de la vivienda o cancelar el contrato de renta; y
- Recibir del propietario pago por daños: la mayor suma entre un mes de renta o $500, más honorarios razonables de abogado y costos judiciales, menos toda renta atrasada u otra suma por la que el inquilino es responsable ante el propietario.

Derecho de restitución para inquilinos

Si el propietario ha interrumpido un servicio en infracción a la Sección 92.008 del Código de la Propiedad de Texas, el inquilino podría obtener asistencia al presentar una denuncia especificando los hechos de la desconexión hecha por el propietario, ante la corte de la zona en que se encuentra la vivienda rentada. El inquilino también debe comunicar oralmente y bajo juramento los detalles de la desconexión ilegal de servicios, en su presentación ante la corte.

Si la corte cree que podría haberse dado una desconexión ilegal de servicios, la corte puede emitir una orden dando derecho al inquilino a la inmediata y temporal restitución de servicios, mientras se espera el fallo final.

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This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code.

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Fair Housing Program / 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.

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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 amenaza su vivienda. Call / llame al 474-1961.

Rental Repair Assistance / Ayuda con Reparaciones en su Vivenda 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 responsibilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.