

Landlord News

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RETALIATION UNDER THE FAIR HOUSING ACT – PROCEED CAUTIOUSLY- DON'T MAKE A BAD SITUATION WORSE

This resident has been trouble for a long time. Over the last 5 months, you have thought about evicting him at least a half dozen times over too many issues to remember. Of course, the other residents who are complaining the most will not cooperate. All of that is now in your rearview mirror. It's midway through month five of a six month lease. The problem resident's lease is up at the end of next month. All you have to do is serve a notice of non-renewal (Notice to Quit). Problem solved, or so you think.

The mailman brings the mail. The mail contains a letter from the Colorado Civil Rights Division ("CCRD") charging you with housing discrimination. The



accuser is the resident you are about to post with a notice to quit. If you serve the notice to quit, have you retaliated against the resident? Everyone knows that housing discrimination is illegal. However, few know that retaliation is in itself a form of housing discrimination, and also illegal. Retaliation is separate and in addition to any original housing discrimination charge.

What is retaliation? Retaliation means to pay back an injury in kind. You hurt me, I'll hurt you. Under federal law, it is unlawful to coerce, intimidate, threaten, or interfere with any person because he exercised a fair housing right. Federal law also makes it illegal to retaliate against any person because they encouraged another person to either exercise their fair housing rights, or

assisted another person in exercising their fair housing rights. The classic example would be the resident who helps someone file a fair housing complaint against the property. Both the resident filing the charge and the assisting resident are protected by the fair housing laws.

The federal regulations set forth specific prohibited retaliatory conduct. You may not retaliate against any person because that person has made a complaint, testified, assisted, or

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FIRM TO TEACH CAM CLASS IN COLO SPRINGS

The CAM class on **LEGAL RESPONSIBILITIES AND GOVERNMENT RELATIONS** for the Apartment Association of Colorado Springs will be taught by Mark Tschetter and Vic Sulzer. This class is a 6-hour program encompassing: Equal employment, OSHA and hazardous materials, lease and evictions, and vendor contracts. Part 1 of the class will be on March 16th and part 2 will held on March 21st. Both classes will be held at the AACCS training center and will run from 4:00 p.m. until 7:00 p.m.

The Certified Apartment Manager (CAM) program, sponsored by the National Apartment Association, provides a professional designation that is recognized and respected nationwide. CAM benefits the owner, manager and resident. Upon completion, the student will be equipped with the proven management tools and techniques to cope with the diverse and challenging aspects of Apartment Management. Education offerings undergo intensive annual reviews and are revised as standards change and expand.



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participated in any manner in a proceeding under the Fair Housing Act. You may not intimidate or threaten any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by the fair housing laws. You may not threaten any employee or agent with dismissal or an adverse employment action, or take such adverse employment action, for any effort to assist any person in the exercise of their fair housing rights.

A resident claims retaliation. To prevail, the resident would have to prove all of the following. The resident exercised a fair housing right. You were aware that the resident exercised such right. After the resident exercised a fair housing right, you subsequently took adverse action against the resident. You took adverse action against the resident because he exercised his fair housing right. In lawyer talk, this is called a causal link. A causal connection is established when two events are related, and the second event happens because of or in response to the first event. For example, if a resident exercises his fair housing rights and you then take negative action against him because he exercised his rights, a causal connection is established between the exercise of his rights and your adverse action. But for the resident exercising his rights, you would not have taken negative action against him.

What constitutes the exercise of a fair housing right? A resident's exercise of a right is not always obvious. Clearly, if a resident filed a housing discrimination charge with HUD or the CCRD, a resident has exercised a right. While maybe not as



obvious, all resident requests made by disabled residents for reasonable accommodations or modifications are the exercise of a right. The resident has the ability to make these requests because of rights granted to him under the fair housing laws. This does not mean that you have to automatically grant every request. However, it does mean that any adverse action taken in response to these requests potentially could be considered retaliation. For this reason, you should always grant or deny any requests for reasonable modifications or accommodations based on the facts and the law. You should never deny any request solely because the resident has exercised a fair housing right.

For the most part, property managers do not blatantly retaliate against residents who exercise

their fair housing rights. For example, managers don't say "because you filed a fair housing complaint, I am going to evict you". Usually, there is no such smoking gun. Rather, retaliation is frequently much more

subtle. For example, a resident who files a fair housing complaint might suddenly find his maintenance requests being ignored. For these reasons, similar to many fair housing complaints,



fair housing complaints based on retaliation are frequently proved by circumstantial evidence. Circumstantial evidence is the proof of a fact from which other facts may reasonably be inferred. For example, if a resident lived at the property for ten years without incident and was constantly renewed but now has been served with a notice to quit after filing a fair housing complaint, the court could infer from these facts that the property retaliated against the resident for filing the fair housing complaint.

Timing is very important in retaliation cases. If a resident exercises a fair housing right, you need to carefully think through your next move. The resident's exercise of a fair housing right closely followed by you taking adverse action against the resident can be strong circumstantial evidence that you took the adverse action because the resident exercised a fair housing right. How much time has to go by between the time the resident exercises a right and the time you can take adverse action against the resident? Unfortunately, like many legal questions, there is no clear answer. However, the law is clear that taking adverse action against a resident after the resident has exercised a fair housing right does not automatically mean that you have retaliated against the resident. In other words, it does not necessarily follow that an adverse action following a complaint must have been taken in retaliation for filing the complaint.

A resident does not become untouchable once they have filed a fair housing complaint. When you take adverse action against a resident after the resident has exercised a right, you are not required to prove an absence of retaliatory motive. Otherwise, this would invite the filing of frivolous complaints for the purpose of setting up later claims of retaliation. Thus, after a resident files a fair housing complaint he is not untouchable from all adverse actions. The resident must still prove his claim of retaliation. However, you do need to proceed with caution, and carefully evaluate your actions to determine whether they could be

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considered retaliatory. By evaluating your actions against the criteria in this article, you can determine whether any contemplated adverse action is retaliatory in nature.

If done after the exercise of a fair housing right, some actions clearly would be retaliation. Assume that the resident has loud parties. Further assume that the resident has been having loud parties for two years, you knew about the parties, and other residents have also had loud parties. You have never taken any action against this resident or any other resident for loud parties. If this resident filed a fair housing complaint and you then attempted to evict this resident for loud parties, you would be retaliating against this resident. Your claim that the eviction was filed because of the loud parties is “pretext”. Pretext is a phony reason or not the true reason. Another clear example of retaliation is the perfect resident who has been renewed five times. However, after this resident files a fair housing complaint, you serve this resident with a notice to quit.

You can avoid the “you didn’t renew me because I filed a fair housing complaint” situation. Property management is about documentation.

All too frequently property managers fail to adequately document. Not all, but the vast majority, of retaliation claims based on not renewing a resident can be avoided if you properly document. You should

have a policy regarding non-renewals. This policy should be consistently followed and applied to all residents. As part of the policy, onsite staff should meet monthly to discuss non-renewals. At the meeting, the staff should discuss the reasons for not renewing a particular resident. If a decision of non-renewal is made, you should document this decision with a memo to the resident’s file. If the resident files a fair housing complaint and then a notice of non-renewal is served, you can strongly argue that the non-renewal decision was made prior to the fair housing complaint and not because the resident exercised a fair housing right. Similar to any other fair housing policy, this policy must be consistently followed. If you decide to not renew Mr. Smith because he argues with staff, you must follow the same course with all other residents.

You should always consider the potential for retaliation charges if you are about to take adverse action against any resident who has

exercised a fair housing right. To determine whether any action could be considered retaliation against a resident who has filed a fair housing complaint, ask yourself the following questions. Do I have a legitimate non-discriminatory business reason for taking the adverse action against the resident? If the resident had not exercised a fair housing right, would I be taking this action? In other words, were you going to take this action anyway? How carefully have you documented the reasons for taking the action prior to the time the resident exercised a fair housing right? If any other resident did the same thing, would you be taking this same adverse action? When other residents have done this in the past, have you consistently taken the adverse action that you are about to take now?

If the answers to any of these questions is no or you have not documented the situation very well, you probably should not take the proposed adverse action because a strong argument could be made that you are retaliating against the resident in violation of the resident’s fair housing rights. Of course, there are exceptions to every rule. If you need assistance in evaluating a difficult potential retaliation scenario, do not hesitate to contact us. We are always available to assist you.



Client Lunch
March 17th
Rock Bottom
Brewery
11:30 – 1:00
Make Reservation
htspc.com or
milehighvections.com
or Call 303-699-3484

FIRM TO HOST CLIENT LUNCH IN COLO SPRINGS MARCH 16

The 2006 first Free Client Luncheon in Colorado Springs will be held on Thursday March 16th at the Marigold Café. It is important to make a reservation early because space is limited to 35 attendees. If you have not taken the



time to come to one of the free client lunches take time from your busy schedule to join us this time. The attorney's talk about recent updates in landlord tenant issues, discuss common problems the Firm is seeing occur among our clients and answer questions. The lively exchange of ideas, problems and solutions among the attendees always makes for an interesting and educational experience for all. You may make a reservation for lunch through our web site www.htspsc.com or www.milehighdivisions.com, or by calling Nancy at 719-550-8004 or telling any of the staff you may be speaking with that you are planning to come to the lunch. The luncheon runs from 11:30 until 1:00 p.m. For directions to Marigold's go to the events tab on our web site and click on the calendar date for the luncheon.



MARCH WEATHER LION OR LAMB

"In like a lion, out like a lamb." March brings with it one of our most familiar weather proverbs, but I find myself wondering who made it up, when, where, and whether it's true.

No one seems to know much about the origins of this particular proverb. It's just one of the many old sayings that come from our oral past. Before anyone could write, it was transmitted from generation to generation by repetition. All that's known for sure is that its first appearance in English literature was in 1624, by which time it was familiar enough to English audiences to appear as a bit of banter in a popular play.

The weather proverbs we have inherited with our language are true in the sense that they are based on the real observations of real people who worked outdoors and depended on the weather for their livelihoods. But are these persistent old proverbs true for new parts of the world the English language has carried them to,— or are they just easy to repeat and remember?

To test whether the lion/lamb proverb is true for March wherever you might live — it might be an interesting experiment in old-fashioned weather observation to pay attention to

this particular March.. Start with the first, but include several additional days to give the early part of the month a fair chance to show itself, and notice how lion-like the weather is.



Then, while you're waiting for the other end of the month to arrive, you can keep yourself attentive to the weather by counting the number of mists because another old weather proverb says, "So many mists in March, so many frosts in May." During the last week of March start looking for the promised lamb-like weather. If the weather is pleasant, enjoy it, but don't expect it to last because yet another old weather proverb says, "April borrows three days of March and they are ill."

Weather proverbs wouldn't persist if they weren't based on what generations of observers have repeated as true, but weather is variable, full of surprises, and might even be changing. Maybe the best use of these old proverbs is to make us more attentive to our own immediate weather.



DENVER COURTS CLOSED
MONDAY MARCH 27TH
CEASAR CHAVEZ DAY

