

DOMESTIC VIOLENCE: **Rights and Responsibilities** **of Landlords & Victims**

BY KENNETH A. KREMS

You come to your office Monday morning to learn that over the weekend there was a major disturbance in one apartment. There was yelling and swearing, fighting, and damage to the apartment. Lots of neighbors complained. The police had to be called to calm things down. One person was arrested.

This disturbance was certainly a serious breach of the lease, so you are sure you can evict the resident. But can you? Probably not if the resident was the victim of domestic violence.

The federal Violence Against Women Act and the Massachusetts Victims of Domestic Violence Act provide numerous protections for victims of domestic violence. It is important that landlords understand these statutes and know how they are applicable to various situations.

The Violence Against Women Act was enacted in January, 2006, later allowed to expire, and then reenacted in February, 2013. It provides that a landlord may not construe incidents of actual or threatened domestic violence as serious or repeated violations of the lease by the victim of the violence and may not use those incidents as good cause for terminating the victim's tenancy. Likewise, criminal activity directly related to domestic violence by a guest or co-tenant may not serve as good cause to evict if the victim is the tenant or an immediate member of the tenant's family. If the abuser and the victim are both tenants, the landlord may take action against the abuser while preserving the tenancy of the victim.

THE MASSACHUSETTS VICTIMS OF DOMESTIC VIOLENCE ACT TOOK EFFECT IN APRIL, 2013. THE ACT HAS THREE PRIMARY PROVISIONS:

First, it allows victims of domestic violence to terminate their leases and vacate prior to the end of the lease term. To do this, the victim must provide notice of the intention to vacate within three months of an incident. If the victim is in fear of imminent harm no such notice is required. The landlord may request proof that the tenant is a victim along with the name of the perpetrator. Proof may be a restraining order, a police report, or written verification from a physician, social worker or other similarly involved party. The victim is liable for rent for thirty (30) days after the vacate date, and the landlord must keep any information that it receives about this confidential. Any remaining tenants are still liable for rent under the lease.

Second, it allows victims to have their locks changed. A landlord has to make a good faith effort to change the locks and provide the tenant with new keys within two (2) business days of receiving such a request. The landlord may request proof as stated above, and may charge the tenant for the cost to change the

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locks. If the perpetrator is also a tenant, the landlord should not give a new key to the perpetrator if the victim provides a restraining order or police change the locks and provide the tenant with new keys within two (2) business days of receiving such a request. The landlord may request proof as stated above, and may charge the tenant for the cost to change the locks. If the perpetrator is also a tenant, the landlord should not give a new key to the perpetrator if the victim provides a restraining order or police report indicating that the perpetrator poses an imminent threat to the victim.

Third, it prohibits landlords from refusing to rent to an applicant who has vacated a previous tenancy under the provisions of the Act or who previously requested a landlord to change the locks.

So if the disturbance over the weekend had nothing to do with domestic violence, you may have enough to evict the tenants. But if one of the tenants was the victim of domestic violence, you cannot evict the tenant because of that incident.

The Violence Against Women Act does not apply if a tenant is being evicted for a reason that has nothing to do with domestic abuse. We often have cases involving tenants who have been victims of domestic violence, but who are being evicted for another reason such as failure to re-certify, threatening neighbors, illegal drug use, or non-payment of rent. The fact that they are also a victim of domestic violence does not prevent a landlord from evicting them for other reasons. There are a number of Massachusetts Housing Court cases which affirm that a tenant who is a victim of domestic abuse may still be evicted for unrelated reasons.

Often a victim will obtain a restraining order against the perpetrator. These restraining orders are usually good for ten days, and then can be extended for up to a year. If both parties are household members, once the landlord has proof that the order has been extended for a year the landlord can remove the abuser from the lease. If the order only lasts for ten days, the landlord cannot remove the abuser absent the abuser's assent.

If the abuser is removed from the lease, a question often arises as to whether the remaining tenant, the

victim, has sufficient income to qualify for or afford the apartment. Sometimes the victim has to move because of inability to pay the rent.

If the abuser is a non-resident, the landlord can serve a no trespass notice to keep the abuser off the property. A copy of the notice is sent to the local police department. This subjects the abuser to arrest for trespassing if they come onto the property.

Sometimes, regardless of whether there is an active restraining order in place or whether the landlord has served a no trespass notice, the victim keeps inviting the perpetrator back to the apartment. A 2006 Housing Court case involving an apartment in Hudson illustrates this. The landlord was seeking to evict the tenant because the police had been to the apartment at least eleven times over a period of two or three years. In each instance the incidents involved actual or threatened domestic violence by the same individual against the victim. Temporary restraining orders were issued but they were never extended by the tenant. The worst incident involved the abuser stabbing the tenant and taking one of her young children.

At trial the tenant was asked why, after all these incidents, she allowed this individual to keep returning to the apartment. She stated: "He's the father of my child. What do you want me to do?" The Court held that "the Defendant refuses to take personal responsibility for the safety of herself, her children, or the other residents" and entered judgment for the landlord for possession of the apartment. The Court did not mention and perhaps did not consider the recently passed Violence Against Women Act.

Domestic violence occurs all too often. Landlords, faced with many different fact patterns, have to respond carefully to these incidents so as to properly enforce the lease terms while also protecting the rights of victims of violence.

Kenneth A. Krems is a partner in the Boston law firm of Shaevel & Krems, LLP, where he focuses on residential and commercial real estate management and other real estate issues.