

Council Written Q&A

Section 8 non-discrimination ordinance
City of Kirkland and the King County Housing Authority
March 11, 2013

This paper addresses questions that have been raised regarding burdens that landlords might experience as a result of the proposed anti-Section 8-discrimination ordinance. In particular, we try to address concerns that the ordinance might create obligations for landlords above and beyond those they already have.

Are property owners who accept Section 8 vouchers subject or required to (and other property owners exempt from):

1. Housing unit inspections before each Section 8 tenant moves in?

Yes; to ensure that the public's money is spent on housing of reasonable quality, King County Housing Authority (KCHA) requires that each apartment be inspected (a "Housing Quality Standards (HQS) inspection") before the tenant with a Section 8 voucher moves in. (The Section 8 voucher program is also known as the Housing Choice Voucher Program.)

If an inspection finds deficiencies, the owner is asked to make the repairs. If the owner chooses to not make those repairs, KCHA will not approve the tenant to lease the unit. Therefore the Section 8 tenant would be unable to lease the unit. The landlord would have the right to take this approach so long as their response regarding repairs is the same for all prospective tenants (i.e. would not make repairs listed in the inspection for any tenant).

When a tenant finds a suitable unit, the tenant provides paperwork to the landlord, which initiates the housing process. The landlord completes a one-page form and then submits it to the KCHA. It usually takes 2 to 10 days to schedule and complete an inspection. The contract effective date can begin as soon as the unit passes the inspection.

It is noted, the most common deficiencies resulting in a failed HQS inspection are related to entry doors, windows, electric hazards, ovens and ranges, refrigerators, heating and plumbing, water heaters, flooring, inoperable smoke detectors, ventilation, decks, railings, and steps, and peeling paint in homes built prior to 1978.¹ These are basically the same habitability and life-safety items that a landlord needs to provide under the state law as well.² By failing the KCHA inspection, it is

¹ HUD ("Lead Safe Housing Rule") requires remediation or repair of chipping or peeling lead-based paint in order for a property owner to rent to someone with a Housing Choice Voucher. If an owner refuses to satisfy the Lead Safe Housing Rule, KCHA will not approve a tenant to lease the unit, and the owner will not have violated the Section 8 discrimination ordinance provided the owner doesn't then remediate or repair for another tenant who does not have a voucher. If the paint is not chipping or peeling, on the other hand, the owner may follow federal disclosure requirements instead of remediating/repairing, and still be able to rent under Section 8.

² The Washington State Landlord-Tenant Act, which applies to all multi-family housing (with some exceptions), requires landlords to keep certain items in safe, working order, including "maintain(ing) all electrical, plumbing, heating, and other facilities and appliances supplied by (the landlord) in reasonably good working order;

likely the unit would not meet the legal standard of the Landlord-Tenant Act that applies to all multi-family rental housing. Regardless of whether the city has a Section 8 discrimination ordinance, property owners are responsible for complying with the building code, Landlord-Tenant Act, and other federal and state laws regarding the safety of rental housing.

KCHA does not enforce local building codes. When KCHA finds safety or code violations in pre-lease HQS inspections, they do not report such violations to state or local governments unless there is an imminent health or safety concern. (This is uncommon; but, for example, KCHA reported a violation when a septic system was failing and sewage was entering the house.)

If KCHA's standards for the HQS inspection are more rigorous than what landlords are presently required to meet, landlords may choose not to meet the HQS standards without violating the Section 8 discrimination ordinance.

Where the deficiencies are minor, KCHA now allows landlords to self-certify that inspection issues have been addressed, rather than requiring a re-inspection.

2. Annual inspections throughout the duration of Section 8 tenancy?

Yes, KCHA does inspect Section 8 units annually. The process is similar to that of a new tenancy, described above. If the unit fails the inspection due to deficiencies that the landlord is responsible for, and the landlord refuses to make the repairs, the tenant has the same remedies under the state's Landlord-Tenant Act as any other renter.³ Note, however, that just as any other renter, the law does not allow a Section 8 tenant to withhold rent even when the landlord is not making necessary repairs.⁴

If a unit fails the annual HQS inspection and the damage was caused by the tenant, KCHA will not withhold payment, provided the landlord can document the tenant has been notified of their responsibility to make the repairs. However, if the landlord does not notify the tenant of their responsibility to repair the deficiency, KCHA will ultimately hold the landlord responsible and may withhold payment until the problem is mitigated.

Regardless of fault, if a unit fails an annual HQS inspection and the repairs are not made, the lease will end and the family will be told to find another unit if they want to continue on the program.

maintain(ing) the dwelling unit in reasonably weathertight condition; (and) providing facilities adequate to supply heat and water and hot water as reasonably required by the tenant. (State of Washington 2012)

³ The Landlord-Tenant Act is "self-enforced;" which is to say there is no public agency designated to administer it, including determine whether a landlord has kept a unit "fit for human habitation" under the law. A local code enforcement unit will inspect for local code violations, which may or may not have the effect of forcing repairs required by the Act. (Solid Ground n.d.)

⁴ In fact, if tenants want access to legal remedies, the law requires them first to be current in rent. A tenant can still request repairs from the landlord if the tenant is not current in rent, but the tenant cannot access his or her remedies under the Landlord-Tenant Act. Withholding rent will enable the landlord to initiate an eviction action against the tenant for nonpayment. There are other remedies available to tenants to get repairs done while minimizing the threat of housing loss. (Solid Ground n.d.)

3. Mitigate, at their own expense, any identified issues stemming from Section 8 inspections?

Property owners are responsible for the costs of maintaining their properties to the level of basic habitability and life safety required by law. As noted above, they also have the right to charge tenants for property damages caused by tenants. KCHA will not reimburse a property owner or pay to bring rental properties up to standard.

Again, if a unit fails an HSQ inspection, the owner may choose not to make those repairs, thus losing the voucher holder as a tenant. KCHA cannot force an owner to make repairs in order to uphold the city's building code, anti-discrimination ordinance, or any other law. If KCHA doesn't approve a unit for rental, the voucher holder cannot rent there.

4. Housing Authority approval of the amount of rent that can be charged?

In short, KCHA does not dictate what a landlord may charge. If a landlord insists on a rent price that is greater than what the housing authority allows, the voucher holder will have to seek housing elsewhere. This would not violate the proposed ordinance.

KCHA does determine what they believe is an acceptable rent amount for the unit in question. If the rent amount differs from what the landlord is asking, KCHA will ask a landlord to lower the rent to this level. If the landlord declines, the renter will need to find a different home. "Rents do not decrease when Section 8 is made a protected class" (Martin 2013). Again, this is allowed under the proposed ordinance provided that the landlord is asking the same rent he or she would ask of a renter without a Section 8 voucher.

KCHA looks at two figures to determine allowable rents. The first is the "payment standard" for the unit size in that market area. The payment standard protects the Housing Authority and tax payers from subsidizing luxury or extravagant units. Housing Choice Voucher holders are expected to pay about 28% of their incomes on housing costs, and the Housing Authority pays the balance of the rent, up to the asking rent or the payment standard, whichever is lower.

The second figure is the "reasonable rent" (or "rent comparable") for equivalent units with similar amenities in the vicinity (e.g., city or sub-market). If the asking rent is greater than the payment standard, the family is required to pay the additional amount; but in no case will KCHA allow renters to pay more than 40% of their incomes, and the total contract rent (renter's portion and KCHA's portion combined) cannot exceed the reasonable rent amount.

KCHA works with landlords who choose to hold rents below market rate for elderly, long-term, or disabled tenants so that those special cases do not reduce what the landlords are allowed to charge Section 8 tenants.

King County Housing Authority has raised the maximum rent allowable on the Eastside (including Kirkland) to reflect market rents accurately.

5. Housing Authority review of any proposed rent increases?

Landlords renting to Section 8 tenants are allowed to increase their rent as they would for any other tenant after the initial lease term. Since the initial term of a Section 8 lease is 12 months,

no rent increases are allowed during that time. After the first year, provided no new lease is signed, a landlord is able to request a rent increase as frequently as every 60 days as long as proper notice is given to KCHA and the tenant. After the landlord requests an increase, KCHA determines if the increase is in alignment with similar units in that market. Just as with any rent increase by a landlord, if the resident were not able to afford the approved increase in rent, they would then need to move.

6. Examination of the eviction history of other tenants?

Staff has found no evidence that HUD or the King County Housing Authority examines a private property owner's eviction history when the owner agrees to accept Section 8 vouchers.

7. Federal laws and regulations in addition to state laws, when evicting a tenant?

Following the initial (one year minimum) term of the lease, a landlord has the choice of renewing or not renewing the lease with Section 8 Housing Choice Voucher tenant and can ask the tenant to leave without going through eviction proceedings; that is, without cause. In this, there is no difference between Section 8 and ordinary private (i.e., non-Section 8) tenancies. There is no federal (or state) law that requires a landlord to renew a lease with a Section 8 tenant. Under the proposed ordinance, however, a landlord may not evict or refuse to renew a lease just because the tenant uses a Housing Choice Voucher.

*In the initial term of the lease, landlords of Section 8 tenants have a slightly different standard to meet when evicting such a tenant as compared to that provided for unsubsidized tenants. To evict an unsubsidized tenant, the landlord would have to prove one of the violations provided in RCW 59.12.030 had occurred. To evict the subsidized tenant, the landlord would have to prove the tenant had violated one of the provisions of 24 C.F.R. 982.310(a). Though there is a lot of similarity between them, there is at least one notable difference, which was recently made clear in the case of *Indigo v. Wadsworth*.*

There, a Section 8 tenant was evicted under RCW 59.12.030 for violating a term of her lease. She appealed that eviction and the appellate court held that, because she was a Section 8 tenant, the lower court should have used the allowable grounds for eviction contained in 24 C.F.R. 982.310(a) instead. Under those provisions, it is not enough that a tenant violate a term of the lease, which was sufficient under RCW 59.12.030. Instead the landlord must prove there was a serious violation of the lease or repeated violations of the lease to justify an eviction. Clearly, a notable difference between what one would have to prove if the violation of a lease term were the grounds under which a landlord was seeking eviction of a tenant.

*However, some legal rights advocates believe that *Indigo v. Wadsworth* could be considered immaterial because even unsubsidized tenants have protections under RCW 59.18.020, which require landlords to act in good faith, and trivial lease violations are arguably inconsistent with good faith.*

8. Hold an apartment vacant for a voucher holder while waiting for KCHA to approve a tenant, a lease, or a unit?

Under the proposed ordinance, landlords may ask for application or holding fees as some protection from income losses due to approval delays, if this is their standard practice for all rental applicants. According to the Landlord-Tenant Act, if the tenant does move in, this fee must be applied toward the security deposit or first month's rent. The landlord may not keep any of the holding fee if the unit fails a Section 8 inspection. However, if the inspection does not happen within ten days of the applicant paying the fee, then the landlord does not have to hold the place for the applicant (Northwest Justice Project 2012); in that case also, the landlord must return the fee to the applicant (State of Washington n.d.).

If the ordinance is adopted, landlords who do not require holdings would be advised to tell qualified applicants holding Section 8 vouchers that they can rent a unit if the landlord and KCHA reach an agreement, but that the landlord will not hold the apartment if another qualified applicant wants the unit in the meantime. Landlords may violate the ordinance if they tell voucher holders that they won't rent them a unit because KCHA's approval process is "too lengthy," "doesn't work for us," "doesn't fit our business model," or any presumptive reason.

9. Change their income or other screening criteria?

Nothing in the Section 8 program or the ordinance requires owners to change their income or other screening criteria—only that they apply the same way to all renters. When income-testing voucher holders, a simple way to comply with the ordinance would be to compare the tenant's income to the tenant's portion of the rent. Say, for example, that KCHA approves a lease for \$750 per month and says KCHA will pay \$500 of that amount, and approves the renter to pay \$250 per month. If the landlord's policy is to accept renters only if they make three times the rent, the landlord should accept this renter if the renter's income is at least \$750 per month (assuming the renter meets all the other criteria as well).

10. Change other parts of their business operations?

In general, Section 8 requires only that landlords treat voucher holders the same as non-voucher holders.

- *They may require Section 8 tenants to have co-signers as long as they require co-signers for all similarly-situated tenants (e.g., tenants of the same income level, including vouchers).*
- *Owners may not charge Section 8 tenants extra amounts for items customarily included in rent or provided at no additional cost to unsubsidized tenants in the same premises (U.S. Department of Housing and Urban Development 2009); by the same token, owners may charge Section 8 tenants the same amounts for items that they charge unsubsidized tenants in the same premises. (Examples: parking, amenities.)*
- *Landlords may require all residents, including Section 8 voucher holders, to pay first month's rent at move-in, or extra deposits or fees for pets. If a Section 8 tenant is unable to produce the landlord's deposits or fees, the landlord can choose not to rent to that tenant. The Section 8 program does not allow pre-payment of last month's rent.*
- *If a landlord requires all renters to carry insurance, he or she may require the same of tenants who use vouchers.*

- *A landlord may also require voucher holders to pay an administrative or screening fee, but only if he or she does the same for all renters.*
- *Nothing in the Section 8 program or the ordinance prohibits owners (such as condominium owners), who are charged penalties when their tenants violate homeowner association rules, from passing those penalties on to the tenants. KCHA will not pay such penalties on behalf of a tenant.*

Generally speaking, Section 8 requires one-year leases at move-in. Landlords who only offer shorter leases, to all tenants, will not be able to participate in Section 8 and will not violate the proposed ordinance. (KCHA does have the authority, however, to change the rule requiring a minimum one year lease if they decide, given market conditions, that allowing shorter leases is necessary for the program to operate efficiently and effectively.)

Congress made landlord participation in Section 8 voluntary; do state and local governments have the authority to require landlords to accept Section 8 vouchers?

“Federal law does not prohibit states or cities from implementing laws against source-of-income discrimination. The federal law sets the lowest permissible standard and, while voluntary, allows for other jurisdictions to create more restrictive requirements.” (Ferguson 2011) In fact, the Section 8 statute reads in part, “nothing in part 982 is intended to pre-empt operation of the State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.” (United States Congress n.d.) Courts in New Jersey, Connecticut, Maryland, and New York have upheld similar anti-discrimination laws, finding that such laws “neither conflict with nor frustrate the objectives of Congress in enacting the Section 8 program.” (Ferguson 2011)

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