

Questions & Answers

Section 8 non-discrimination ordinance

City of Kirkland

January 23, 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 before the tenant moves in (a "Housing Quality Standards (HQS) inspection"). When a tenant finds a suitable unit, the tenant provides paperwork to the landlord, and that initiates the 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.

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).

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; in other words, basic habitability and life-safety items.¹ By failing the KCHA inspection, it is likely the unit would not meet the legal standard of the Landlord-Tenant Act that applies to all multi-family rental housing. Where the deficiencies are minor, KCHA now allows landlords to self-certify that inspection issues have been addressed, rather than requiring a re-inspection.

¹ 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; 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)

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.² Note, however, that just as any other renter, the law does not allow a tenant to withhold rent even when the landlord is not making necessary repairs.³

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 landlord refuses to make the repairs necessary to pass the HQS inspection, after a short rent abatement period, the lease will end and the family will be told to find another unit if they want to continue on the program.

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

Yes; 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.

Again, if the KCHA finds that a unit fails an HSQ inspection, the owner has the option to not make those repairs, thus losing the voucher holder as a tenant. As noted previously, it would be likely that the unit would not be habitable under the Landlord-Tenant Act that applies to all multi-family rental housing.

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

² 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.)

³ 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.)

rent to this level. If the landlord declines, the renter will need to find a different home. 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.

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?

Section 8 (Housing Choice Voucher) tenants have no greater protection against eviction than non-Section 8 tenants, and receive the same eviction notices and go through the same eviction process as any tenant in Washington State. (Tenants Union of Washington State n.d.)

According to state law, a residential lease, while it is in effect, can only be terminated for “cause” —such as non-payment of rent or repeated violation of the lease. There is no federal (or state) law that creates a higher standard of “cause” for Section 8 tenants than the state’s Landlord-Tenant Act.

Following the initial term of the lease, a landlord then has the choice of renewing or not renewing the lease with the 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.

Unlike those with Section 8 Housing Choice Vouchers, residents of public housing (i.e., property owned by a public housing authority) and residents of HUD-subsidized private housing (where the property owner has a contract with HUD to keep rents at specified levels), do have greater protection against evictions than most other tenants. (Northwest Justice Project 2012)

8. 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)

9. Does the Section 8 program have requirements or obligations that force landlords to change other parts of their business operations?

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

Landlords who require all other residents to pay extra deposits or fees for pets may require the same of tenants who use vouchers. 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 fee, but only if he or she does the same for all renters.

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.)

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