

RETALIATION IN THE CONTEXT OF HOUSING DISCRIMINATION

Protected Classes under the Fair Housing Act

Race
Color
Religion
National Origin
Disability
Familial Status
Sex
Military or Veteran Status
Retaliation



Retaliation is:

Harm against a person who has

participated

in an investigation,

opposed

an illegal practice, or

assisted

somebody else in doing the above.

Most obvious (and most often seen) retaliation filing example...

Tenant files a complaint with HUD or NEOC.

Housing provider evicts tenant. (Or ends month-to-month tenancy)

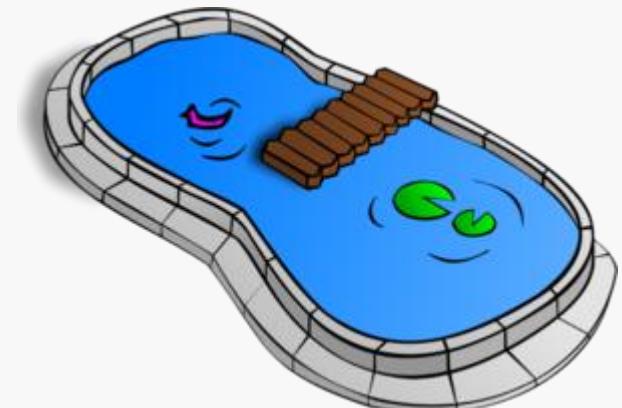


Other instances of possible retaliation seen...

1. Threat to file a counterclaim in court
2. Withholding security deposit
3. Providing a negative reference
4. Selective strict enforcement of a policy/procedure
5. Sudden change in the way a policy/procedure is enforced
6. Harassment/monitoring
7. Issuing 14/30 day notices
8. Entering a unit without 24-hour notice in non-emergency
9. Not providing needed repairs or maintenance
10. Intimidating witnesses or spreading rumors
11. Punishing/firing employee who participates

Sudden changes in enforcement, or selective enforcement

- “If you’ve always allowed me to pay rent by the 8th, why are you suddenly saying that is late and I have to pay a late fee?”
- “If you’ve always told me my dog is quiet and his barking doesn’t bother anyone, why are you now telling me my dog is too loud and I have to get rid of her?”
- “Several of my neighbors have had their kids’ friends to the pool and you allow it as long as they behave. Now when my kids took a friend to the pool you said it is against pool rules? Why?”



Failing to provide maintenance or other services

- Respondent: “We felt it best to have no contact with Complainant while his complaint was being investigated, especially since his complaint was about our maintenance workers harassing him, so we put all work orders on hold in his apartment until the situation could be resolved.”



Protection extended...

- The protection against retaliation extends to the Complainant tenant's family and co-tenants, as well as any friends or neighbors involved.
- Spreading rumors or trying to "turn neighbors against" the Complainant tenant can be retaliation. I.E. sending a letter to all tenants telling them that because Complainant filed a complaint of discrimination costs are rising and everybody's rent will be going up \$10/mo.
- Tampering with witnesses can be retaliation. I.E. sending around a letter to Complainant's neighbors instructing them not to cooperate with the NEOC's investigation, or threatening them if they do.
- In the last example, not only could the original Complainant amend their complaint to add Retaliation, but each of those witnesses who were threatened could file their own complaint of discrimination based solely on Retaliation.

What's important is the nexus...

- “Temporal nexus” – how connected in time is the alleged retaliatory action to Complainant’s protected activity?
- “Causation nexus” – selective enforcement, comparators, etc.

If a nexus cannot be drawn between the allegedly retaliatory conduct and the protected activity, there is no Retaliation, as Retaliation is almost impossible to show in such situations. However, if a nexus can be drawn, (evidence exists that the Respondent took an action against Complainant because they filed a fair housing complaint or similar,) then Retaliation becomes very easy to show.

Protection continues after investigation and/or if original allegations were ‘bad’...

- A person who filed a complaint continues to be protected after the investigation concludes, even if no discrimination was found.
- EXAMPLE: A tenant claims he is being harassed by your maintenance worker. NEOC investigates and finds that there is insufficient evidence to support the tenant’s claim. You receive a No Reasonable Cause (NRC) decision on Harassment as a final NEOC decision. After you receive the NRC decision, you send a note to the tenant telling him that because he “lied” and made a false accusation against your maintenance worker you are terminating his tenancy and suing him for damages and attorney fees. The tenant can now file a new, fresh complaint of discrimination based on Retaliation, and you have provided direct statements showing a likely nexus. (You said you are doing this to him because of his complaint.)

Best practices for avoiding the appearance of Retaliation

- Follow your own policies precisely at all times.
- Rules/policies vs Procedures vs Practice. If you're going to have exceptions, consider adding them to your rules.
- Document everything. Notices, complaints (oral or written), tenant interactions, maintenance, police or other reports, maintenance/repair receipts/orders, your own personal notes, calendars, etc. Make sure your employees are documenting the same.
- You certainly may evict or otherwise act according to the lease in case of lease violations. Just make sure your actions are consistent with past actions against Complainant and others!
- Resist the natural urge for revenge.



How the NEOC will handle Retaliation

- Amended Complaint
 - *New serve, new questions, new document requests, longer investigation requiring additional resources*
- New, separate Complaint
 - *Completely separate investigation, completely separate process requiring additional resources on your part*
- The new allegations (whether amended or separate complaint) will be investigated without regard to the merits of the original Complaint of discrimination! (In other words, a person may have a valid complaint of Retaliation even if their original complaint was unsupported/no reasonable cause!)