

Experiences with No Smoking Policy Enforcement: Cases from Washington Housing Authorities

Case 1: Due process yields win in court

Island County Housing Authority

One of the earliest instances of enforcement of a no smoking policy in Washington comes from the **Island County Housing Authority**, where a comprehensive no smoking policy was adopted May 1, 2005 (prior to CHEF/PNRC's work with the WA State Dept. of Health). It also provides important guidance to housing authorities in the enforcement of their no smoking policies.

Repeat Violations

After the policy was adopted, implementation of the no smoking policy was phased in as new tenants moved in and as annual re-certifications/lease renewals occurred for existing tenants. Tenant "C" signed a no smoking lease addendum effective August 1, 2005. In February 2009, the new Executive Director sent a letter to each tenant reminding them of the agency's no smoking policy because of reports that some tenants were violating the policy. The letter clearly spelled out expectations for compliance and the consequences, up to and including eviction for failure to comply. In April 2009, a maintenance worker went to Tenant "C's" unit to do some repairs and noticed cigarette smoke. She was trying to smoke near the kitchen vent fan, but it was not effective in masking the smell or eliminating the second-hand smoke. A verbal warning was given to Tenant "C." In June 2009 there were additional complaints that Tenant "C" and her guests were smoking in the unit. She was given a ten-day notice to comply or vacate. She did smoke outside that summer, but as the weather got colder, she began smoking in the unit again. She believed that her status as a senior and the potential legal cost of an eviction action would keep the housing authority from enforcing the no smoking policy.

At the end of 2009, an incident occurred in which the tenant stood inside her unit smoking a cigarette and told the maintenance worker that she was going to smoke inside because she was too old and it was too cold outside. She added that there was nothing the housing authority could do about it. A 30-day lease termination notice was served January 6, 2010. Tenant "C" did not exercise her right to a grievance hearing. She requested an extension on the February 28 vacate date and was granted 30 days until March 31 to find a new apartment. On that date, Tenant "C" came to the housing authority office with another tenant who created a scene by yelling at staff, telling them that they could not evict Tenant "C" for smoking in her unit because she was elderly (72 years old). The housing authority pursued legal action, and Tenant "C" appeared in Superior Court on April 19, 2010. The judge who heard the case found on behalf of the housing authority and issued a Writ of Restitution which was executed on April 28, 2010.

Observations from the Island County H.A. Executive Director:

“Sometimes bending a little for the tenant and compromising a little helps you win in the end. The 30-day extension and the opportunities for a “cure” were steps we took to avoid an eviction if at all possible. In court, I waived the attorney’s fees for two reasons: 1) I knew I would never see them, and 2) it showed the court that we did have some compassion. When it comes to low-income families, my advice is to try everything you can to work with the client, and if that fails, at least you can show that you did all you could before going the eviction route. We worked with this tenant for over a year, offering plenty of opportunities for a “cure.” In the end, it was her decision to not abide by her lease, and fortunately the Superior Court Judge agreed with the housing authority. This tenant had lived in the unit for six years and we did not charge her for carpet/vinyl replacement or repainting, but the cleaning, sealing, dump fees, and other costs to remove the ‘smoke’ from the unit came to \$2,323.”

Case 2: Budget Short-falls & Limited Coverage Have Consequences

King County Housing Authority

King County Housing Authority adopted a no smoking policy incrementally over several years. The first few buildings went smoke-free in January 2008; another 14 properties in July 2011; and 100% of its properties in December 2012. A tenant in one of the properties where smoking was banned in July 2011 refused to comply with the policy.

Refusal to comply

In August 2011, a neighbor complained about this tenant smoking in her unit. The property manager contacted the violator who denied smoking there. In April 2012, the property manager personally witnessed the tenant smoking in her unit when she served a non-payment of rent notice. A warning letter was issued to the tenant. In December 2012, the tenant once again received a non-payment notice and the manager again witnessed her smoking in the unit in violation of the no smoking policy. This time a 10-day notice to comply with the lease was issued. No further complaints were received or violations observed until April 2013, when a fire caused by an improperly extinguished cigarette occurred in this tenant’s unit. There was \$15,000 in damage to the unit and the tenant was hospitalized with smoke inhalation and burns. Her family moved her to an assisted living facility.

Observations:

The first violation was noted about one month after the policy effective date. It’s safe to assume that the tenant continued to smoke in her unit from the policy implementation date until the date of the fire, however management was only able to document three violations over approximately 20 months. This illustrates the fact that limited staff capacity and coverage (resulting in part from budget cut-backs) can make enforcement of a no smoking policy difficult. This case also demonstrates the consequence of non-compliance—\$15,000 worth of damage to the unit and injuries to the tenant. This is a potential a problem for all housing authorities and calls for innovative solutions to reduce the need for traditional lease enforcement activities.

Case 3: Innovation, compassion yield win-win solution

Spokane Housing Authority

The Spokane Housing Authority completed a lengthy policy review and implementation process (approximately 18 months) prior to adopting its no smoking policy for 100% of its units in March 2011. Management conducted a number of tenant meetings to discuss the new policy and its implications. One of the commitments that the Asset Manager made was that she would have an answer to every tenant's questions before implementation, even though she could not guarantee that the answer would please every tenant.

Extreme hardship poses dilemma

One of the most difficult situations for the Asset Manager was the case of a frail tenant (in her 90's) who had smoked almost all of her adult life and knew that she was not likely to be able to quit or comply with the no smoking policy. The tenant would awaken in the middle of the night and then need a cigarette to go back to sleep. Neither the housing authority, nor the tenant wanted her to have to go outside to smoke, especially during the winter months. The housing authority also did not want to "grandfather" this tenant and allow her to continue to smoke in her unit because of the potential precedent that it would set for other tenants.

Although this case did not constitute a "reasonable accommodation," the housing authority nevertheless engaged in an interactive process with the tenant and a solution was identified. The tenant agreed to use a nicotine patch prior to going to bed and this mitigated the craving for a cigarette until morning. The "up side" of this story is that the tenant reported that she was down to only a few cigarettes during day and was on the edge of quitting altogether.

Observations:

Although time-consuming, this solution is an excellent example of a win-win resolution to a no smoking enforcement dilemma. The tenant was able to stay in her home, and made progress toward giving up an addiction that was not only potentially damaging to her health, but to the housing authority's premises, as well. The housing authority did not have to make an exception to its no smoking policy, which made enforcement with other tenants easier. The time spent on the "front end" of this situation could very well have been spent instead on unsuccessful efforts to enforce the no smoking policy with this tenant. In the end, there was no need to resort to lease enforcement steps that could have been seen by the community as insensitive. The lesson here: don't assume there are only two choices to any given dilemma.

Case 4: Even well established policies can be ignored

Bremerton Housing Authority

The **Bremerton Housing Authority** adopted its no smoking policy in September 2010. A newly constructed smoking shelter was provided, but had mixed results with its usage. On July 24, 2013,

an elderly tenant apparently fell asleep while smoking in bed. The cigarette started a fire in the bedding and the fire alarm went off, followed shortly thereafter by activation of the unit's sprinkler system. The fire was doused, as was the tenant, but she survived with no injuries. Unfortunately, the tenant's occupancy did not survive as she was served a lease termination notice and required to find other housing.

Observations:

This case demonstrates the value of fire alarm and fire suppression systems in multi-family buildings. The sprinkler system worked perfectly and limited damage to that caused by smoke and water. Beyond that, however, it demonstrates that even several years after a no smoking policy takes effect, tenants will continue to violate the policy. Housing authorities cannot, and should not, guarantee smoke-free premises because some tenants can potentially violate the no smoking policy at any point in time. Vigilance is in order during times when staff members are present in properties and during regular inspections to determine if smoking is still occurring. This is true even after appropriate follow-up action has been taken to demonstrate that the housing authority is serious about enforcing the no smoking policy. If you are committed to adopting a no smoking policy, then you must be committed to enforcing it.

Case 5: A 4-step enforcement process

Michelle Chen, Seattle Housing Authority, participated in a panel with **the Boston & San Antonio Housing Authorities** at the recent NAHRO Annual Conference in Cleveland. She reported that both Boston and San Antonio are using a 4-step enforcement protocol as follows:

1. First complaint received, a verbal warning is issued to offender (noted in file)
2. Second complaint, a written warning is issued and visit is made to the unit
3. Third complaint, a face-to-face meeting with the offender and a second written warning is issued
4. Fourth complaint, legal action started.

Observations:

This 4-step protocol is a good outline for enforcement of any lease violation problem, including violations of a no smoking policy. Some housing authorities have included a second verbal warning, and provided tenants with smoking cessation materials and referrals to resident services staff. Others use several additional "10-day notices to vacate or remedy," as provided in the Washington State landlord-tenant law, before proceeding with actual lease termination steps.

Conclusion: Innovation, compassion, but no exceptions

Management should remember that smoking is an addictive habit. Many housing authority tenants also face multiple other challenges, including frailty, age, and mental health issues. This is not to suggest that whatever protocol is used should be discarded, but that exceptions and creative problem solving, such as the Spokane Housing Authority example above, may be appropriate. If

exceptions are made for one tenant, such exceptions should be utilized for all tenants in order to maintain consistent enforcement and avoid any suspicion of unequal treatment based upon discriminatory prohibitions.