

Redressing Landlord Overreach in Cases Involving Low-Income Section 8 Tenants



By Andrew L. Campbell and Gary M. Victor

Low-income individuals living in government-supported housing are a class of people most in need of legal assistance and often least protected. Attorneys who handle landlord-tenant cases are generally familiar with issues such as security deposits, overreaching leases, and unfair lock-outs. The typical practitioner can easily analyze these claims with an eye toward obtaining remedies for his or her clients.

Often overlooked in the landlord-tenant context is improper landlord conduct relating to low-income Section 8 tenants.¹ In that arena, the False Claims Act has proven to be a powerful tool in protecting tenants and holding landlords liable for conduct that violates the Section 8 housing program.² Section 8 and related regulations prohibit landlords from making supplemental agreements (“side deals”) and engaging in other fraudulent landlord activity.³ The act can be used to redress these side deals. This article presents an overview of Section 8 and the False Claims Act as a potential remedy for landlord overreach.

Section 8—its origins and operation

The origins of the Section 8 housing program can be traced to the Housing Act of 1937.⁴ This act established a system for the federal government to pay local public housing agencies offering safe and sanitary living arrangements for low-income families. The act was significantly revised in the 1970s, creating Section 8.⁵ The Department of Housing and Urban Development

(HUD) administers the program by paying rental subsidies to landlords who offer housing to low-income individuals and families.⁶ Although lucrative for landlords, Section 8 also requires them to follow some important rules.

Under a part of Section 8, housing-choice voucher program participants can select any housing that satisfies the program’s requirements.⁷ If the landlord agrees to the arrangement, the residence is inspected to ensure it meets current housing-quality standards. Once the standards are met and the residence’s market rate is determined to be acceptable, the tenant signs a standard lease with the landlord and pays a predetermined amount. The amount distributed under the voucher program added to payments made by a tenant comprises the full predetermined rental payments.⁸ Strict guidelines govern this program.⁹

Typically, state or local public housing agencies oversee the Section 8 program. Through funds from HUD, these agencies pay landlords on behalf of eligible tenants, and the amount distributed depends on a variety of factors.¹⁰ To receive reimbursement from a public housing agency, a landlord must enter into a housing assistance payment contract; participating in side deals outside of the contract is prohibited.¹¹ Under applicable laws, landlords who enter into side deals can be prosecuted, resulting in severe penalties. Attorneys considering representing Section 8 tenants should be on the lookout for landlord overreach, i.e., landlords engaging in side deals.¹²

The False Claims Act and other potential avenues to redress landlord overreach

The False Claims Act prohibits individuals from knowingly presenting false or fraudulent claims for payment or approval to the U.S. government.¹³ The act can apply if a person has actual knowledge of the fraudulent information, behaves in ignorance of this information, or behaves with disregard to this information.¹⁴ The housing-choice voucher program specifically notes that fraud is an activity performed with the intent to deceive or mislead.¹⁵ A landlord who receives any type of “side” payment from a tenant greater than the amount established by the voucher program can be liable under the False Claims Act.¹⁶ To successfully establish civil liability under the act, the government or plaintiff need not establish that the government was injured by the landlord’s conduct or that there was a specific intent on the part of the landlord to defraud.¹⁷

There are numerous circumstances in which a landlord can violate the requirements of Section 8 housing, leading to potential liability under the False Claims Act. The most common side deal involves a landlord’s charging additional rent or fees in excess of those in the housing assistance contract; for example, charges for additional rent, landscaping, property maintenance, services performed in lieu of payments, or utilities already included in the rent.

The False Claims Act provides for a civil penalty of \$5,500–\$11,000 for each violation plus three times the amount of damages sustained by the government.¹⁸ Each payment collected under a side deal constitutes a separate violation.¹⁹ In a qui tam action brought by the government under the act, the plaintiff is generally entitled to between 15 and 25 percent of the recovery;²⁰ in a case where the government fails to proceed, the plaintiff may recover between 25 and 30 percent.²¹ However, the court may reduce these percentages “taking into account the role of that person in advancing the case to litigation.”²² Whether the case is brought through government intervention or by an individual, attorney fees are available.²³ A civil action by a private litigant has a six-year statute of limitations from the time of the commission of the violation.²⁴

An attorney inexperienced with the False Claims Act should not get the impression that he or she can draft a complaint and run off to court. There are significant impediments to filing and managing these cases. First, any False Claims Act complaint and supporting documentation must be submitted under seal to the government for review, and the government will have 60 days to determine if it will intervene.²⁵ If the government intervenes, it will control the litigation.²⁶ Second, and perhaps more importantly, a False Claims Act case will be dismissed if the allegation was previously “publicly disclosed” unless “the person bringing the action is an original source of the information.”²⁷

Other claims can be combined with the False Claims Act or may be used independently to remedy landlord misconduct, including claims under the Michigan Consumer Protection Act,²⁸ the Landlord Tenant Relationship Act,²⁹ statutory conversion,³⁰ and the Regulation of Collection Practices Act.³¹

FAST FACTS

Section 8 landlords who seek or enter side deals with their tenants may be subject to liability under the False Claims Act.

Section 8 tenants who enter into side deals may lose their benefits.

Representing Section 8 tenants requires careful analysis and client selection.

All of these statutes provide for attorney fees with the exception of the Landlord Tenant Relationship Act; claims under this act can usually be joined with the Michigan Consumer Protection Act, which allows for such fees.³² When combined with the False Claims Act, these claims are subject to the limitations of False Claims Act cases previously discussed.

Some caselaw regarding landlord overreach

The statutory definition of a side deal is broad and can cover myriad landlord impositions. Also, the size of the side deal does not matter. For example, in *US ex rel Sutton v Reynolds*, the court found an unlawful side deal where the landlord increased the tenant’s monthly rent by \$30 for landscape maintenance.³³ Any side deal outside the housing assistance payment contract can be actionable. In *US ex rel Mathis v Mr. Property*, the court found an unlawful side deal where the landlord’s housing assistance contract did not include details about a pool maintenance fee.³⁴

Harm to the government is not a required element of an unlawful side deal. In *Doe v Gormley*, the court rejected the landlord’s defense claiming the side deal had not harmed the government.³⁵ In False Claims Act–Section 8 cases, the housing assistance payment contract is controlling and not the terms of any applicable lease, and including a lease with a housing assistance payment contract does not result in the terms of that lease being added to the contract. In *US v Win Win Real Estate Inc*, the court declined to recognize the landlord’s defense that the terms of a lease controlled the housing assistance payment contract because the lease agreement was attached to that contract.³⁶

Practical advice

The most important concern for the practitioner is protecting the interests of the Section 8 client. Tenants can lose their benefits and be barred from the Section 8 program for initiating and participating in illegal deals.³⁷ When considering the representation of a Section 8 client, one must be extremely careful in obtaining full information of the circumstances and warn the potential client of the consequences of instituting

an action. The *Housing Choice Voucher Program Guidebook* is helpful in making such a determination. For example, the guidebook contains a chart that distinguishes errors and omissions from fraud and abuse.³⁸

An ideal client is one who is no longer in Section 8 because of improved economic circumstances and who did not initiate or benefit from a side deal. Another characteristic of an ideal client is one whose role was more of a victim than a participant. For example, a safe case would be one in which a client received text messages, emails, or writings with demands from a landlord to make additional payments that were never put in writing or mutually agreed upon at an earlier date.

Conversely, a case in which the tenant proposed the side deal to secure more ideal housing should be avoided. Each situation must be analyzed with a view as to how the government will see the situation and the scope of the tenant's involvement or participation in the wrongdoing. This requires not only a frank discussion with the client, but also a careful analysis of the *Housing Choice Voucher Program Guidebook*, specifically regulations related to a tenant's obligations under the program and secondary sources analyzing administrative decisions and applicable caselaw.³⁹

Conclusion

Low-income individuals living in government-supported housing under Section 8 of the Housing Act are often taken advantage of by unscrupulous landlords. Landlords who participate in Section 8 housing contracts will sometimes look for ways to increase their profits by making side deals with their tenants. These side deals are prohibited under Section 8.

This article has discussed how the Section 8 program operates; the potential avenues for redressing landlord violations, especially the False Claims Act; the penalties for such violations; and some caselaw in the area. Cases involving Section 8 tenants are not generally within the experience of most consumer attorneys. However, with sufficient knowledge, attorneys may find a place in their practices to assist these individuals under the appropriate circumstances. With careful client selection, attorneys will be able to use their knowledge and experience to incorporate into their practices protection of this vulnerable population. ■

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ENDNOTES

- 42 USC 1437f and 24 CFR 982. See also US Dept of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet* <https://www.hud.gov/topics/housing_choice_voucher_program_section_8>. All websites cited in this article were accessed February 7, 2018.
- 31 USC 3729 *et seq.* See generally Sutton, *Construction and Application of the False Claims Act—Supreme Court Cases*, 37 ALR Fed2d 543, Thomson Reuters (2009) and US Dept of Justice, *The False Claims Act: A Primer* (April 22, 2011) <https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf>.
- 31 USC 3729(a)(1)(A)–(G).
- United States Housing Act of 1937, Pub L No 75-412, 50 Stat 888 (1937) (codified as amended at 42 USC 1437 *et seq.*), sometimes called the Wagner-Steagall Act.
- Housing and Community Development Act, Pub L No 93-383, 88 Stat 633 (1974) (codified as amended at 42 USC 5301 *et seq.*).
- US Dept of Housing and Urban Development, Program Offices, Public and Indian Housing <https://www.hud.gov/program_offices/public_indian_housing>.
- 24 CFR 982.202(b)(2) and 24 CFR 982.353.
- See generally US Dept of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet* <https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet>.
- 24 CFR 982.1 *et seq.*
- 24 CFR 982.4(b) and 24 CFR 982.451.
- 24 CFR 982.305 and 24 CFR 982.451(b).
- 24 CFR 982.453(b) and False Claims Act, Pub L No 99-562, 100 Stat 3153 (1986) (codified as amended at 31 USC 3729–3733).
- 31 USC 3729–3733.
- 31 USC 3729(a)(b)(1)(A)(i)(iii).
- US ex rel. Sutton v Reynolds*, 564 F Supp 2d 1183, 1187–1188 (D Oregon 2007). See also US Dept of Housing and Urban Development, Program Offices, Public and Indian Housing, *Housing Choice Voucher Program Guidebook*, Chapter 22 “Program Integrity,” pp 22.1–22.2 <https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook>.
- 24 CFR 982.451(b).
- 31 USC 3729(b)(B).
- 31 USC 3729(a).
- Coleman v Hernadez*, 490 F Supp 2d 278, 281 (D Connecticut, 2007).
- 31 USC 3730(d)(1).
- 31 USC 3730(d)(2).
- 31 USC 3730(d)(3).
- 31 USC 3730(d)(2)–(3).
- 31 USC 3731(b)(1).
- 37 USC 3730(b)(2).
- 31 USC 3730(b)(4)(A).
- 31 USC 3730(e)(4)(a). See generally *Construction and Application of “Public Disclosure” and “Original Source” Jurisdiction*, 117 ALR Fed 263, Thomson Reuters (1994).
- MCL 445.901 *et seq.*
- MCL 554.601 *et seq.*
- MCL 600.2919a *et seq.*
- MCL 445.251 *et seq.*
- Smolen v Dahlmann Apartments, Ltd*, 127 Mich App 108, 120; 338 NW2d 892 (1983).
- US ex rel Sutton v Reynolds*, 564 F Supp 2d 1183 (D Oregon, 2007).
- US ex rel Mathis v Mr. Property*, ___ F Supp 3d ___, 2015 WL 1034332 (D Nevada, 2015).
- Doe v Gornley*, ___ F Supp 3d ___, 2016 WL 4400301 (D Maryland, 2016).
- US ex rel Holmes v Win Win Real Estate*, ___ F Supp 3d ___, 2016 WL 880027 (D Nevada, 2016).
- 24 CFR 982.551(b) and *Dowling v Bangor Housing Authority*, 2006 ME 136; 910 A2d 376, 382 (2006).
- Housing Choice Voucher Program Guidebook*.
- 24 CFR 982.551. See, e.g., *Construction and Application of the False Claims Act—Supreme Court Cases*, 37 ALR Fed2d 543; *Construction and Application of “Public Disclosure” and “Original Source” Jurisdiction*, 117 ALR Fed 263; and *Specific Intent to Defraud Government as Necessary to Impose Liability Under the False Claims Act*, 26 ALR Fed 307, Thomson Reuters (1976).