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# Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches

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**A**t the United Nations Regional Consultation on Women and the Right to Adequate Housing in North America, hosted by the National Law Center on Homelessness and Poverty in October 2005, several women raised the issue of “sex for rent.”<sup>1</sup> The women claimed that landlords would propose that tenants perform sexual favors in lieu of rent or in exchange for reduced rent.<sup>2</sup> The center became concerned that landlord sexual violence against tenants could contribute to homelessness by forcing tenants to choose between becoming homeless and staying in unsafe housing situations and by limiting options for safe housing, particularly for low-income individuals.<sup>3</sup>

I spoke to sexual assault advocates and housing attorneys to determine the prevalence of landlord sexual harassment of tenants.<sup>4</sup> Learning about tenants’ experiences, advocates and attorneys expressed concern that, because of underreporting, the number of tenants who sought legal assistance did not reflect the extent of the problem. A survey focused specifically on incidents of sexual assault or rape reveals that 58 percent of respondents received at least one report from a tenant who was sexually assaulted or raped by a landlord, property manager, or property owner last year.<sup>5</sup>

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<sup>1</sup>U.N. Economic and Social Council, Commission on Human Rights, 62d Sess., Agenda Item 10, *Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination*, U.N. Doc. E/CN.4/2006/118 (Feb. 27, 2006), available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/118&Lang=E>.

<sup>2</sup>E.g., Tracey Little, oral testimony to the U.N. Special Rapporteur on Adequate Housing (Oct. 16, 2005) (on file with National Law Center on Homelessness and Poverty) (noting that “[w]omen who are desperate for housing are being harassed by unscrupulous landlords and realtors who are asking for ‘side deals’ of money or sex”), NATIONAL ALLIANCE OF HUD TENANTS, INSTITUTIONAL SUBMISSION TO THE U.N. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING 7 (2005) (on file with National Law Center on Homelessness and Poverty) (“Many property managers ... routinely solicit sexual favors from women applicants for vacant apartments, transfers, forgiveness of rent area[r]ages....”).

<sup>3</sup>Domestic violence survivors have a similar conundrum. See Emily J. Martin and Naomi S. Stern, *Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy*, 38 CLEARINGHOUSE REVIEW 551, 552 (Jan.–Feb. 2005).

<sup>4</sup>The term “sexual assault advocates” refers to sexual assault counselors, advocates, and others who provide services and support to victims of sexual assault.

<sup>5</sup>Not all numbers in this article total 100 percent because percentages have been rounded to the nearest 1 percent. For ease of reading, “landlord” collectively refers to landlords, property owners, and property managers.

In this article I look at the development and distribution of the survey and examine the data. I explore legal remedies under the federal Fair Housing Act and recommend measures based on the need for more cross-referral and collaboration among local and national sexual assault advocates, other community advocates, and civil legal aid providers in the poverty, housing, and homelessness communities.

### I. Survey Development and Distribution

The first and only survey of sexual harassment in housing was conducted nearly twenty years ago.<sup>6</sup> Regina Cahan, a law student at the time, surveyed 150 public and private fair housing centers, agencies, and organizations across the country about complaints received each year from 1980 to 1985 and before 1980.<sup>7</sup> Sixty-five percent of respondents received 288 sexual harassment housing complaints.<sup>8</sup> As Cahan recognized, her survey captured only those complaints of sexual harassment made to fair housing centers.<sup>9</sup> Since then, most (if not all) published pieces on the subject cite her survey findings for statistical evidence of the problem. The National Law Center on Homelessness and Poverty opted for a different approach by developing its survey by focusing on sexual assault and rape and by directing the surveys primarily to rape crisis centers. The survey's purposes were to see patterns, if any, before and after a sexual assault or rape; to serve as an educational tool for legal aid providers about clients they may not be seeing; and to identify ways legal aid providers and other community advocates can work together to serve tenants' needs better.

Developed in consultation with sexual assault advocates, the survey proceeded

on several assumptions. First, victims may not know what qualifies as "sexual harassment" under the law or may choose not to report it and instead are more likely to turn to the privacy and anonymity of crisis hotlines for victims of sexual assault or rape. Second, victims may not know where to go for assistance but are more familiar with services for rape or sexual assault than with resources for housing discrimination. And, third, victims may not seek legal help at all because of location or cost but are more likely to turn to free and accessible crisis hotlines.

The survey was distributed across the country via eighty-nine personal e-mails to sexual assault advocates and staff at rape crisis centers and to over ten e-mail listservs, such as those focused on fair housing, domestic violence and housing, domestic violence law, and sexual assault advocacy. Of the eighty-nine surveys sent out, fourteen were returned, a 16 percent response rate. The other ninety-eight surveys, representing the majority of responses, came through other channels since the survey's cover letter encouraged advocates to forward the survey to their e-mail contacts and listservs.<sup>10</sup> So many surveys unlikely would have been returned without the help of sexual assault advocates.

Because the survey was not distributed in a controlled way and participation was voluntary, assessing the statistical significance of the 58 percent response rate for reports of sexual assault or rape is difficult. For example, there is no way to know how many organizations received no reports and did not complete a survey. However, over 40 percent of respondents received no reports and still responded. Overall the number of tenants who were sexually assaulted or raped is likely high-

<sup>6</sup>Regina Cahan, Comment, *Home Is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 WISCONSIN LAW REVIEW 1061, 1062 n.3 (1987).

<sup>7</sup>*Id.* at 1066

<sup>8</sup>*Id.*

<sup>9</sup>*Id.* at 1066 n.16.

<sup>10</sup>Generous advocates informed me that they sent the survey to the following listservs: ABA domestic violence, Violence Against Women Act housing, fair housing advocates, state/territory sexual assault coalitions, and allied national organizations. The survey likely also reached other networks of which I am not aware. I wish to thank, among others, Jessica Mindlin, attorney at law, and Cathy Nardo, information specialist, National Sexual Violence Resource Center.

er than indicated by the survey results for a number of reasons. First, several organizations with no reports last year indicated that they received reports in the past. Second, some organizations noted that they classified perpetrators of sexual assault or rape as “family member,” “acquaintance,” or “stranger”—a classification that would not reveal sexual assaults by landlords. Other organizations might have been using this same classification without indicating it on their survey response. And, third, underreporting must have occurred since sexual assaults and rapes are underreported crimes. For example, from 1992 to 2000, women reported only 36 percent of rapes, 34 percent of attempted rapes, and 26 percent of sexual assaults to the police.<sup>11</sup> Underreporting may be an even greater problem in rural communities, and a large proportion of organizations responding to the survey serve rural areas.<sup>12</sup>

## II. Survey Findings

Advocates in twenty-nine states returned 112 surveys.<sup>13</sup> Rape crisis centers accounted for 87 percent of the responses, while 5 percent were from legal aid providers.<sup>14</sup> About 58 percent of respondents had at least one tenant report of sexual assault or rape in 2005. Overall 152 women and 9 men said that they had been sexu-

ally assaulted or raped by their landlord, property owner, or property manager.<sup>15</sup> Of the organizations with reports from women, 92 percent received between one and five reports, while 8 percent received between six and ten reports.<sup>16</sup>

The survey’s findings suggest a need and an opportunity for further cross-referral and collaboration among advocates to prevent these assaults by addressing three areas: (1) what happened before the sexual assault or rape; (2) what the tenant did following the assault or rape; and (3) the prevalence of repeat offender landlords.

### A. Before the Sexual Assault or Rape

Before a sexual assault or rape, a majority of tenants in rental housing faced problems regarding the physical condition of their living quarters or received unwanted attention by the landlord or both. Specifically 79 percent of women reported that, before the sexual assault or rape, the landlord engaged in one or more of the following: failing, such as by refusing to repair locks or to supply heat or hot water, to make the living place safe despite the tenant’s request; sexually propositioning the tenant; stalking the tenant; or engaging in unwanted sexual contact with the tenant.<sup>17</sup>

<sup>11</sup>CALLIE MARIE RENNISON, U.S. DEPARTMENT OF JUSTICE, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION, 1992–2000, at 1 (2002), available at [www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf](http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf)

<sup>12</sup>For a discussion of rural communities’ characteristics that may deter reporting of sexual assault, see SUSAN H. LEWIS, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER, UNSPOKEN CRIMES: SEXUAL ASSAULT IN RURAL AMERICA (2003), available at [www.nsvrc.org/publications/booklets/rural.pdf](http://www.nsvrc.org/publications/booklets/rural.pdf).

<sup>13</sup>Some organizations submitted more than one survey either because they had multiple offices or because advocates worked with different clients. The remaining surveys were from the following states: Arkansas (1); California (6); Connecticut (2); Delaware (2); Georgia (1); Illinois (3); Indiana (1); Iowa (2); Kansas (2); Kentucky (3); Maryland (1); Massachusetts (1); Michigan (2); Minnesota (2); New Mexico (3); New York (5); North Carolina (5); North Dakota (1); Ohio (5); Oklahoma (4); Oregon (15); Pennsylvania (12); South Carolina (1); Tennessee (3); Texas (17); Vermont (3); Virginia (6); Washington (2); and Wisconsin (1).

<sup>14</sup>The remaining 8 percent comprised organizations that primarily provide counseling, housing, substance abuse treatment or counseling, or criminal proceeding support or are tenants’ rights organizations.

<sup>15</sup>This number does not include some organizations’ estimates of the number of individuals who contacted them or the two reported sexual assaults by maintenance staff.

<sup>16</sup>All five of the organizations with reports from men received one to three reports. Since only nine men responded, the sample is too small for larger conclusions. This is not to say, however, that male tenants do not face this problem. Reports from men are described in footnotes of each relevant section. For this reason, “tenant” refers to female tenants, unless otherwise noted.

<sup>17</sup>Six of the nine men who reported being sexually assaulted or raped indicated that something happened beforehand. Three said that the landlord refused to make the living space safe, while three others said that the landlord engaged in unwanted sexual contact. By contrast, many of the women reported that the landlord engaged in more than one instance of such behavior.

Of the women who indicated that these problems occurred before the sexual assault or rape, 49 percent said that the landlord failed to make the living space safe, 42 percent were propositioned, 25 percent were stalked, and 58 percent reported unwanted sexual contact.<sup>18</sup> Since the survey did not ask the order of events if more than one occurred, we do not know whether the need for repairs could have given the perpetrator access that led to an assault or rape.<sup>19</sup> Alternatively a refusal to repair broken facilities could be intertwined with sexual harassment, such as when a landlord conditions repairs on the tenant's acceptance of sexual advances or refuses to repair facilities because the tenant has rejected the sexual advances.<sup>20</sup> A tenant who refuses a landlord's sexual advances and needs repairs is left in a bind: allow a threatening individual into the home or live without necessary repairs.

### B. After the Sexual Assault or Rape

A lack of other housing options or financial resources often forces tenants to stay in unsafe environments even after a sexual assault or rape. Significantly the survey demonstrates that 71 percent of women who were sexually assaulted or raped wanted to move after the incident but could not either because they had

nowhere else to go or because they could not leave without financial penalty.<sup>21</sup>

The advocates surveyed expressed frustration with the lack of, and access to, alternative housing, particularly in rural areas and for those tenants with disabilities. Of the organizations that responded with information about their communities, 63 percent serve rural areas and 34 percent serve a mix of urban and rural areas.<sup>22</sup> In rural communities, there may be no emergency housing, and alternative housing may be too far or inaccessible because of transportation obstacles. Organizations in Washington, Kentucky, Oregon, Texas, and Virginia, among others, cited the lack of public transportation, the inability of tenants to access transportation, and the need for emergency transportation as impediments to tenants leaving in an emergency. Moreover, tenants with disabilities may face added difficulties in finding accessible housing. Of the women reporting sexual assault or rape by a landlord, 30 percent had one or more physical or mental disabilities.<sup>23</sup>

Even if housing options were available, they might mean little if they were not affordable. According to the survey, 45 percent of women who were sexually assaulted or raped lived in some kind

<sup>18</sup>The survey did not ask respondents to specify what the landlord proposed; however, cases brought under the Fair Housing Act and state laws serve as examples: *DiCenso v. Cisneros*, 96 F.3d 1004, 1006 (7th Cir. 1996) (brought under the Fair Housing Act, a sex discrimination suit: landlord caressed tenant's arm and back and told her that if she could not pay rent, she could take care of it in other ways); *Brown v. Smith*, 64 Cal. Rptr. 2d 301, 305 (Ct. App. 1997) (tenant brought a suit against landlord for violations of the Fair Employment and Housing Act and Unruh Civil Rights Act after her landlord said that he would forgo a planned rent increase if she would meet him "for fifteen, twenty minutes a week" for sex).

<sup>19</sup>See, e.g., *Beliveau v. Caras*, 873 F. Supp. 1393, 1395 (C.D. Cal. 1995) (a claim of discrimination filed against landlord under the Fair Housing Act and California's Ralph Civil Rights Act after the resident manager who, while fixing a leaky shower, put his arm around the plaintiff tenant, grabbed her breast, and then grabbed her buttocks after she pushed him away).

<sup>20</sup>In *Grieger v. Sheets*, No. 87 C 6567, 1989 WL 38707, at \*1 (N.D. Ill. Apr. 10, 1989), Gina Grieger sued her landlord for sexual harassment in violation of the Fair Housing Act; she alleged that landlord threatened her with loss of her apartment if she did not have sex with him once a month. Soon after she refused, landlord stopped repairs. When Grieger asked about the repairs, he told her that she "would get the repairs done when she got them." *Id.* at \*1 n.2. Grieger lived with her husband. *Id.* at \*1. In the survey, women who lived with a spouse, partner, or in a romantic relationship made up 11 percent of those who reported sexual assault or rape, as did two of the nine men.

<sup>21</sup>By contrast, 39 percent of women moved. The number of female tenants who wanted to move and those who actually did constituted over 100 percent because several organizations indicated that tenants did both: they moved, but only after their leases expired. While four men out of nine moved after the sexual assault or rape, two of the nine wanted to move but did not because they had nowhere else to go.

<sup>22</sup>The remaining 3 percent serve urban communities.

<sup>23</sup>Four of the nine men had a physical or mental disability. Although outreach to disability-focused organizations was conducted, none of the organizations completed a survey.

of subsidized housing, such as public housing, Section 8 voucher-subsidized housing, or project-based Section 8.<sup>24</sup> In Pennsylvania up to 80 percent of the victims served by rape crisis centers cannot afford basic needs.<sup>25</sup> A majority (67 percent) of those who reported sexual assault or rape in the survey were single heads of households. Of those, 45 percent of women lived alone and 22 percent were single mothers with children.<sup>26</sup> For low-income single women facing loss of housing or homelessness, there is more pressure to accede to landlord demands or not to report a sexual assault or rape.<sup>27</sup>

For the women who stayed in their housing following a sexual assault or rape, 12 percent experienced from the landlord some kind of retaliation, including having their water turned off, having personal property damaged, or being threatened with eviction. Many immigrant and refugee women reported immigration-

related threats.<sup>28</sup> For those who provide in-home services, such as child care or domestic work, threats also included loss of employment.<sup>29</sup>

### C. Repeat Offenders

The survey results reveal that landlords who sexually assault or rape tenants tend to do so repeatedly and often target more than one tenant. In fact, 33 percent of women reported that the landlord sexually assaulted or raped them more than once, and 13 percent of women said that another current tenant also had been sexually assaulted or raped by the same landlord.<sup>30</sup> Further, 9 percent of women in the survey indicated that a former tenant had a similar experience with the same landlord. Despite the prevalence of repeat-offender landlords and over 30 percent of women with reports of being sexually assaulted or raped more than once, only 42 percent of women reported the rape or sexual assault to law enforcement.<sup>31</sup>

<sup>24</sup>This figure may be inaccurately low because only some of the survey respondents were aware of the tenants' housing situation. Of those reporting, four of the nine men lived in some kind of government-subsidized permanent housing. The number does not include the 1 percent of women and the one man who lived in emergency shelter or transitional housing.

<sup>25</sup>*Sexual Violence and Homelessness*, 3 TECHNICAL ASSISTANCE BULLETIN 1 (Pennsylvania Coalition Against Rape, Enola, Pa.), March 2006, at 1, available at <http://pcar.org/resources/bulletins/Winter%202006%20TAB.pdf>.

<sup>26</sup>See *Krueger v. Cuomo*, 115 F3d 487, 490 (7th Cir. 1997) (Clearinghouse No. 52,211) (brought under the Fair Housing Act, a suit for sexual harassment: landlord touched and grabbed single mother at least once in front of her children). None of the men who reported sexual assault or rape was a single parent. Three men lived alone, three with roommates, and two with a spouse, partner, or someone with whom they had a romantic relationship. The ninth man's living situation was not reported.

<sup>27</sup>See, e.g., *Grieger*, 1989 WL 38707, at \*2 (after wife refused landlord's sexual advances, she and her husband feared losing Section 8 certification if landlord evicted them).

<sup>28</sup>A few immigrant or refugee women also reported immigration-related threats before the sexual assault or rape. Survey respondents described 8 percent of women as immigrant or refugee, although the number could be higher because 52 percent of respondents either did not know or did not indicate the tenant's background. None of the men described himself as immigrant or refugee. The survey did not ask for detailed information about tenants' ethnicity or race. The following categories were included: having one or more disabilities; lesbian, gay, bisexual, transgender; immigrant/refugee; tribal member: Native American, Native Hawaiian, or Alaskan native; other; did not know/did not ask; more than one of these categories. Two men who identified themselves as gay, bisexual, or transgender reported being raped or sexually assaulted. One organization also said that it received reports every other year from gay men or men perceived to be gay. About 2 percent of women identified themselves as lesbian, bisexual, or transgender. Although outreach was extended to organizations serving these clients, only one organization completed the survey.

<sup>29</sup>One man and 8 percent of the women who reported sexual assault or rape lived at their place of employment.

<sup>30</sup>Four of nine men indicated that they had been raped more than once. One man reported that another current tenant had also been sexually assaulted or raped. Newspapers also reveal examples of repeat-offender landlords. E.g., Frederick Melo, *Suit Says Landlord Demanded Sex from Renters. Building Owner Denies Government Claim that He Evicted Women for Refusing Advances*, ST. PAUL PIONEER PRESS, Dec. 20, 2005, available at 2005 WLNR 20536962 (describing Department of Justice lawsuit against owner of seven properties for evicting female tenants unless they accepted his demands for sexual favors and noting that three other female tenants separately sued him for sexual assault); Mark Morris, *Tenants Win \$1.1 Million in Sex Case; Landlord Preyed on Vulnerable Women*, KANSAS CITY STAR, May 14, 2004, at 1, available at 2004 WL 78445856. (describing jury award against landlord for sexually harassing eleven young female tenants over a decade); *Landlord Pays \$100,000 to Settle Justice Department Housing Bias, Sexual Discrimination Lawsuit*, STATES NEWS SERVICE, April 19, 2004, at A4, available at 2004 WL 76674824 (noting landlord's settlement to pay \$92,500 to thirteen tenants and \$7,500 in civil penalties to the federal government).

<sup>31</sup>None of the men reported the sexual assault or rape to law enforcement.

### III. Legal Remedies

For tenants who have been stalked, propositioned, or touched by a landlord, laws prohibiting sexual harassment may offer a solution. Under the federal Fair Housing Act, sexual harassment qualifies as illegal sex discrimination.<sup>32</sup> The Act prohibits “discriminat[ion] against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities ... because of ... sex.”<sup>33</sup> Beginning with *Shellhammer v. Lewallen*, courts have often “borrowed” the sexual harassment framework of *quid pro quo* and hostile environment from employment cases.<sup>34</sup> And courts have applied the framework under a Fair Housing Act analysis.<sup>35</sup> Nevertheless, this approach has been criticized for not recognizing the differences between the workplace and the home.<sup>36</sup> To address this problem, several commentators have proposed alternatives, including using

those parts of the Fair Housing Act that differ from Title VII standards for sexual harassment in the workplace or considering sexual harassment as a breach of quiet enjoyment.<sup>37</sup>

Under the Fair Housing Act, a tenant may sue in federal court or file an administrative complaint with the U.S. Department of Housing and Urban Development.<sup>38</sup> Unfortunately the Act neither applies when landlords live with tenants in a building with four or fewer units nor protects a tenant in a single-family home owned by a landlord who maintains three or fewer single-family homes.<sup>39</sup> For the 12 percent of women who reported being sexually assaulted or raped by a landlord who lived in their building, the Act may not apply.<sup>40</sup>

Other legal causes of action have been brought by tenants under state analogs to

- the Fair Housing Act,<sup>41</sup>

<sup>32</sup>42 U.S.C. §§ 3601–3619 (2000).

<sup>33</sup>*Id.* § 3604(b).

<sup>34</sup>*Shellhammer v. Lewallen*, No. 84-3573, 1985 WL 13505 (6th Cir. July 31, 1985) (Clearinghouse No. 49,358)

<sup>35</sup>See, e.g., *DiCenso*, 96 F.3d 1004, 1008; *Grieger*, 1989 WL 38707, \*2; *Beliveau*, 873 F. Supp. 1393, 1398; see also *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).

<sup>36</sup>Compare Michelle Adams, *Knowing Your Place: Theorizing Sexual Harassment at Home*, 40 ARIZONA LAW REVIEW 17 (1998) (contending that courts have ignored context in which harassment occurs); Nicole A. Forkenbrock Lindemyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW AND INEQUALITY 351 (2000) (arguing that using Title VII standards ignores how harassment at work and home differ); Deborah Zalesne, *The Intersection of Socioeconomic Class and Gender in Hostile Housing Environment Claims Under Title VIII: Who Is the Reasonable Person?*, 38 BOSTON COLLEGE LAW REVIEW 861 (1997) (proposing that courts focus their analysis on the landlord as harasser and the power imbalance in landlord-tenant relations rather than on the victim); and Cahan, *supra* note 6, at 1073 (arguing that housing sexual harassment is more traumatic than employment); with Robert Rosenthal, Note, *Landlord Sexual Harassment: A Federal Remedy*, 65 TEMPLE LAW REVIEW 589, 597 (1992) (proposing that the Fair Housing Act is the “most promising avenue” for tenants bringing sexual harassment claims). According to one study, “[i]n the workplace, feelings of hostility or attitudes that women ‘do not belong’ are common, whereas in housing, these types of attitudes are less common than is the desire to possess the tenant sexually and the sense of entitlement by the landlord to consider his tenants part of his ‘property.’” Maggie E. Reed et al., *There’s No Place Like Home: Sexual Harassment of Low Income Women in Housing*, 11 PSYCHOLOGY, PUBLIC POLICY AND LAW 439, 458 (2005).

<sup>37</sup>See, e.g., Robert G. Schwemm & Rigel C. Oliveri, *A New Look at Sexual Harassment Under the Fair Housing Act: The Forgotten Role of § 3604(c)*, 2002 WISCONSIN LAW REVIEW 771 (2002); Deborah Dubroff, *Sexual Harassment, Fair Housing, and Remedies: Expanding Statutory Remedies into a Common Law Framework*, 19 THOMAS JEFFERSON LAW REVIEW 215, 235 (1997).

<sup>38</sup>42 U.S.C. §§ 3610, 3613 (2000). Administrative complaints can be submitted by phone at 800.669.9777, by mail, or online at [www.hud.gov/complaints/housediscrim.cfm](http://www.hud.gov/complaints/housediscrim.cfm). For more information on bringing a claim, see NOW LEGAL DEFENSE AND EDUCATION FUND, LEGAL RESOURCE KIT: SEXUAL HARASSMENT IN HOUSING (2003), available at [www.legalmomentum.org/pub/kits/SexHarassInHousingLRK0120.pdf](http://www.legalmomentum.org/pub/kits/SexHarassInHousingLRK0120.pdf).

<sup>39</sup>42 U.S.C. § 3603(b) (2000).

<sup>40</sup>Five men in the survey lived in the same building as their landlord. For a proposed property-based alternative to the Fair Housing Act, see my *An Implied Warranty of Freedom from Sexual Harassment: The Solution for Harassed Tenants Where the Fair Housing Act Has Failed*, 38 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 397 (2005).

<sup>41</sup>See, e.g., MASS. GEN. LAWS ANN. ch.151B, § 4(6) (2004); see also *Gnerre v. Massachusetts Commission Against Discrimination*, 524 N.E.2d 84 (Mass. 1988) (finding that landlord’s sexual harassment of tenant qualified as unlawful sex discrimination under state law).

- tort claims, including negligent hiring and intentional infliction of emotional distress,<sup>42</sup> and
- breach of the covenant of quiet enjoyment.<sup>43</sup>

A handful of states, such as

- Illinois,<sup>44</sup>
- North Carolina,<sup>45</sup>
- Oregon,<sup>46</sup> and
- Washington,<sup>47</sup>

also allow tenants who have been sexually assaulted to terminate their leases early.<sup>48</sup> Sexual assault or rape is often a crime under state laws.<sup>49</sup>

#### IV. Recommendations

The incidents of sexual assault or rape can be reduced through early intervention. As the survey results demonstrate, many tenants face repair problems or are propositioned, stalked, or touched by their landlords before a sexual assault or rape occurs. Legal aid advocates can play a critical early intervention role in four significant ways. First, advocates must be made more aware of the issue and should

seek to uncover sexual assault or rape that might underlie a tenant's difficulty in obtaining repairs or in an eviction proceeding. Second, a landlord's rape or sexual assault of a tenant is both an act of sexual violence and a denial of safe and adequate housing, so any attempt to address the problem requires collaboration by those in the sexual assault and housing advocacy communities.<sup>50</sup> Third, legal aid advocates should collaborate with rape crisis centers, which are often on the frontline for tenants seeking assistance for a rape or sexual assault by a landlord. Fourth, advocates should place special emphasis on the cultivation of relationships with community organizations through education and outreach.

##### A. More Awareness and Questioning by Housing Attorneys

Instances of landlord sexual assault or sexual harassment may come to light only when a tenant seeks legal help to obtain repairs or to defend an eviction notice. Advocates need to be aware of this potential and should tailor their questioning accordingly. For example, advocates in Texas uncovered a case of sexual harassment because the tenant was having trou-

<sup>42</sup>*Beliveau*, 873 F. Supp. at 1395.

<sup>43</sup>*Honce*, 1 F.3d at 1087.

<sup>44</sup>On July 21, 2006, the governor of Illinois signed the Safe Homes Act, Public Act 094-1038, which provides for early lease termination and lock changes in certain circumstances and is effective January 1, 2007. See Sargent Shriver National Center on Poverty Law, *Safe Homes Act Signed Into Law*, [www.povertylaw.org/news-and-events/woman-view/safe-homes-act-signed-into-law.html](http://www.povertylaw.org/news-and-events/woman-view/safe-homes-act-signed-into-law.html) (last visited Sept. 22, 2006).

<sup>45</sup>N.C. GEN. STAT. § 42-45.1 (2005).

<sup>46</sup>OR. REV. STAT. § 90.453 (2005)

<sup>47</sup>WASH. REV. CODE § 59.18.575 (2006).

<sup>48</sup>However, I am not aware of any landlord sexual assault cases brought under these laws. Other housing laws, such as those that provide for lock changes, may assist sexual assault victims but would likely be useful only if the perpetrator is not the landlord or employed by the landlord. For a complete list of states with housing protections for sexual assault victims, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *STATE LAWS AND LEGISLATION TO ENSURE HOUSING RIGHTS FOR SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE* (2006), available at [www.nlchp.org/FA\\_DV/DVHousingstatelaws3-06.pdf](http://www.nlchp.org/FA_DV/DVHousingstatelaws3-06.pdf)

<sup>49</sup>For a list of state sexual assault statutes and other online resources, see DOUGLAS E. BELOOF ET AL., CENTER FOR LAW AND PUBLIC POLICY ON SEXUAL VIOLENCE, *A CRIMINAL JUSTICE GUIDE: LEGAL REMEDIES FOR ADULT VICTIMS OF SEXUAL VIOLENCE* 113-66 (2005), available at [www.lclark.edu/org/nclvi/objects/L&C77576criminalbook.pdf](http://www.lclark.edu/org/nclvi/objects/L&C77576criminalbook.pdf).

<sup>50</sup>Consistent with international human rights standards, housing means more than four walls and a roof; it must provide an environment that is secure and endangers neither the health nor physical well-being of its occupants. For a discussion of how adequate housing under human rights law includes security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & CENTRE ON HOUSING RIGHTS AND EVICTIONS, *HOUSING RIGHTS FOR ALL: PROMOTING AND DEFENDING HOUSING RIGHTS IN THE UNITED STATES: A RESOURCE MANUAL ON INTERNATIONAL LAW AND THE HUMAN RIGHT TO ADEQUATE HOUSING* 43-44 (2005), available at [www.nlchp.org/content/pubs/Human%20Rights%20Resource%20Manual%20April%2025%202005.pdf](http://www.nlchp.org/content/pubs/Human%20Rights%20Resource%20Manual%20April%2025%202005.pdf).



ble getting repairs completed.<sup>51</sup> Similarly advocates in Oregon who have litigated several cases of sexual assault and sexual harassment of female tenants note that these cases often begin as evictions. In fact, there is a common scenario: the perpetrator, such as a landlord or property manager, makes unwanted sexual advances and then sexually assaults the tenant.<sup>52</sup> The tenant reports the incident to the perpetrator's superior, if there is one, and then receives an eviction notice.<sup>53</sup> To identify tenants who have been sexually assaulted or sexually harassed, attorneys stress the need for more awareness among housing attorneys that sexual assault, rape, or sexual harassment can be a potential reason for an impending eviction or other housing problem.<sup>54</sup> Attorneys should also seek to ask questions at the intake or screening stage that may encourage clients to reveal a sexual assault or sexual harassment.<sup>55</sup>

**B. More Cross-Referrals and Collaboration Between Legal and Housing Community Organizations**

Given that tenants may seek legal help without revealing a sexual assault or sexual harassment, all attorneys should be aware of the potential of an underlying sexual assault and of the resources available in order to make referrals either within the attorney's own organization or to other organizations.<sup>56</sup> For instance, Legal Aid Services of Oregon refers its cases involving landlord sexual assault

or harassment to the Oregon Law Center and often serves as cocounsel because, as a Legal Services Corporation grantee, Legal Aid Services may not seek attorney fees.<sup>57</sup> Texas Rio Grande Legal Aid, another Legal Services Corporation grantee, similarly sends tenants who need assistance on fair housing complaints to the Austin Tenants' Council.<sup>58</sup>

A tenant may contact, instead of a legal services provider, a community housing advocacy group, such as a tenants' rights group, for a housing-related problem. The Austin Tenants' Council, which negotiates and mediates between tenants and landlords, discovered a case of sexual harassment while speaking with a tenant about another issue.<sup>59</sup> Thus, to identify tenants who need assistance as well as to provide tenants with both legal and other related services, legal aid providers should build relationships with other community groups that provide housing advocacy. For example, the Austin Tenants' Council in Texas not only receives fair housing referrals from Texas Rio Grande Legal Aid but also refers tenants who need other kinds of legal help back to that organization.<sup>60</sup> Some housing-related community groups provide tenants with security deposits or other rental assistance to enable them to move out of dangerous living situations. Being aware of assistance such as this can help housing attorneys provide tenants with practical housing assistance in addition to legal help.

<sup>51</sup>Interview with Kelli Howard, Staff Attorney, Texas RioGrande Legal Aid (May 17, 2006).

<sup>52</sup>Interview with Ed Johnson, State Support Unit Attorney for Housing and Homeless Rights, Oregon Law Center (May 26, 2006)

<sup>53</sup>*d.*

<sup>54</sup>Interview with Sybil Hebb, Director of Legislative Advocacy, Oregon Law Center (Dec. 7, 2005), Johnson, *supra* note 52; Howard, *supra* note 51.

<sup>55</sup>Howard, *supra* note 51.

<sup>56</sup>For a list of organizations that provide fair housing assistance, see [www.fairhousing.com/index.cfm?method=agency\\_search](http://www.fairhousing.com/index.cfm?method=agency_search) (last visited Sept. 22, 2006).

<sup>57</sup>Johnson, *supra* note 52.

<sup>58</sup>Howard, *supra* note 51.

<sup>59</sup>*d.*

<sup>60</sup>*d.*

### C. More Cross-Referrals and Collaboration Between Legal Aid Providers and Rape Crisis Centers

Unlike a tenant who seeks legal help for repairs or eviction but does not disclose the action's connection to sexual assault or sexual harassment, a tenant who contacts a rape crisis center discloses the sexual assault but may not disclose a housing problem. An overwhelming majority (69 percent) of organizations that received reports of landlord sexual assault or rape heard from tenants through their sexual assault or rape crisis hotlines.<sup>61</sup> Given tenants' reliance on crisis hotlines, rape crisis centers can help identify the extent of the problem of landlord sexual assault of tenants by asking more information about the identity of the perpetrator. In their survey responses, some organizations noted that they did not know if they had received reports of landlord sexual assault because they classified perpetrators according only to "family member," "acquaintance," or "stranger"—a classification, as noted above, that would not specifically reveal landlord sexual assaults. By keeping more statistics about requests for assistance, rape crisis centers can help monitor the prevalence of the problem.

Legal aid providers can help rape crisis centers identify tenants who need assistance by educating rape crisis centers not only about the problem of landlord sexual assault but also about available legal resources so that rape crisis centers can

inform tenants of their potential legal options. For example, sexual assault legal advocates from the Victim Rights Law Center in Boston will soon begin training rape crisis workers to issue-spot for legal problems so that crisis workers can give appropriate legal referrals to sexual assault victims.<sup>62</sup> Conversely attorneys should be aware of the resources of local rape crisis centers so that the attorneys can refer tenants to counseling services and other available programs.<sup>63</sup>

### D. Fostering Relationships

For organizations seeking to foster collaboration, legal aid advocates stress the importance of community education and outreach.<sup>64</sup> Relationships can begin by simply attending another group's meeting or event or by inviting the community group to speak to the legal services provider. By conducting cross-training with one another or joint meetings for a third party, each organization learns what the other does and can be a source of future referrals. For instance, Victim Rights Law Center and the Boston Area Rape Crisis Center collaborate through training, cross-training, and referrals to help tenants who have been sexually assaulted.<sup>65</sup>

By fostering relationships, legal aid providers and other community organizations such as rape crisis centers and tenants' rights groups can work together in a variety of ways. They can educate tenants about landlords' duty to maintain habitable premises and about laws prohibiting

<sup>61</sup>The remaining ways women contacted organizations each accounted for less than 10 percent: other, including walk-ins, referrals (8 percent); individual counseling (6 percent); civil legal advocacy (6 percent); hospital/medical accompaniment (4 percent); emergency or other shelter (4 percent), and support groups or group counseling (2 percent). Half of the organizations that received reports from men heard from tenants through crisis hotlines.

<sup>62</sup>Interview with Colby Bruno, Staff Attorney, Victim Rights Law Center (May 18, 2006).

<sup>63</sup>For a list of state as well as tribal sexual assault coalitions, see [www.nsvrc.org/resources/orgs/index.html](http://www.nsvrc.org/resources/orgs/index.html) (last visited Sept. 22, 2006).

<sup>64</sup>Johnson, *supra* note 52; Howard, *supra* note 51; Bruno, *supra* note 62.

<sup>65</sup>Bruno, *supra* note 62.

sexual harassment.<sup>66</sup> They can identify tenants who need assistance and inform tenants of available resources. Through collaboration, legal advocates can provide the array of legal and other services that tenants may need, such as collecting their belongings, finding immediate housing, terminating their leases early when possible, defending an eviction, locating and paying for new permanent housing, accessing transportation, navigating the criminal justice system, or obtaining mental health or other counseling services to deal their trauma. On a broader scale, advocates can promote the increase of resources for affordable and accessible housing and hold landlords accountable for their failure to maintain habitable premises.



The survey results demonstrate that sexual assault and rape by landlords

is a prevalent and often unidentified problem. With both legal and nonlegal needs, victims seek assistance from several organizations. Legal remedies are available, but early intervention is critical. Legal aid providers and other community advocates, including rape crisis centers and tenants' rights groups, must work together to intervene and attend to the problem of landlord sexual assault of tenants. Thus organizations can be holistic in their approach and at the same time acknowledge tenants' individual needs.

[**Editor's Note:** Theresa Keeley wrote this article when she was a Women's Law and Public Policy Fellow/Staff Attorney at the National Law Center on Homelessness and Poverty.]

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<sup>66</sup>However, advocates must consider how the lack of accessible and affordable housing, particularly in rural areas, forces tenants to stay in unsafe housing situations. For a discussion of the implied warranty of habitability, see 15 WILLISTON ON CONTRACTS § 48:11 (4th ed. 1990). Given that the survey focused on landlord sexual assault or rape, it did not capture the number of tenants who requested repairs and then were sexually harassed but were not sexually assaulted or raped. The high number of women who reported problems getting repairs suggests that tenants may have been living in compromised housing before the repair request and perhaps even when they moved into the unit. See U.N. Economic and Social Council, *supra* note 1, at 11 (noting "the reciprocal relationship between violence against women and women's adequate housing, where the lack of adequate housing can make women more vulnerable to various forms of violence, and conversely, violence against women can lead to the violation of women's rights to adequate housing").