CHAPTER 6: CIVIL CASES INVOLVING DOMESTIC VIOLENCE

Summary ........................................................................................................................................ 3

Landlord-Tenant Cases .................................................................................................................. 4
  Residential Leases .......................................................................................................................... 4
  Eviction Process for Residential Property ...................................................................................... 5
    Jurisdiction .................................................................................................................................. 5
  Hearing .......................................................................................................................................... 7
  Abandoned Personal Property of Domestic Violence Victims May Be Protected ..................... 8

Federal and State Protections Against Housing Discrimination .................................................. 8
  Violence Against Women Act ......................................................................................................... 8
    Qualified Victims of Actual or Threatened Domestic Violence, Dating Violence, Sexual Assault or Stalking ........................................................................................................................................ 9
  VAWA Protects Against Evictions and Loss of Housing Benefits ............................................... 10
  Exception in Cases of Demonstrated Threat to Other Tenants and/or Employees................. 11
  Evidence of Protected Status ....................................................................................................... 11
  Victim Rights Under VAWA .......................................................................................................... 12
    The right to transfer Section 8 Vouchers ...................................................................................... 12
    PFAs Ordering Housing Relief Must Be Honored ...................................................................... 13
  Fair Housing Act ............................................................................................................................ 13
  Pennsylvania Human Relations Act (PHRA) ................................................................................ 14
  Retaliatory Evictions .................................................................................................................... 15
  PFA Order to Vacate ...................................................................................................................... 15

Municipal Code Violations .............................................................................................................. 16
  Nuisance Ordinances ..................................................................................................................... 16
    Briggs v. Borough of Norristown .................................................................................................. 16
  Act 200 .......................................................................................................................................... 17

General Civil Cases ........................................................................................................................ 18
  Process .......................................................................................................................................... 18
Summary

This chapter focuses on the ways domestic violence issues manifest in civil cases, including housing cases, municipal code violations and small claims matters.

Studies indicate that domestic violence creates and sustains poverty for victims. On the other hand, economic stress and hardship may increase the risk of domestic violence. Abusers commonly use money as a strategy to control their victims and families – for example, by keeping control of household finances, interfering with the victim’s ability to work and failing to make support or mortgage payments. Research of female welfare recipients in several states indicates high rates of domestic violence. Racial, ethnic and cultural factors can also multiply the effects of poverty for women of color who are domestic violence victims.

Victims overwhelmingly cite financial obstacles as reasons for staying with an abuser. Legal service providers have reported hundreds of cases of domestic violence survivors being evicted from housing for violence perpetrated against them. Survivors are particularly vulnerable to losing housing and becoming involved in eviction cases after leaving their abuser. Many women who do escape abusive relationships experience a lower standard of living once they leave, living

---


3 See Tricia Bent-Goodley, Eradicating Domestic Violence in the African American community: A Literature Review and Action Agenda. 2 TRAUMA, VIOLENCE AND ABUSE, 316-330 (2001). Research on male perpetrators also suggests that men who experience unemployment are at a greater risk of perpetrating domestic violence. “[C]omparing ... femicide perpetrators with other abusive men, ... unemployment was the most important demographic risk factor for acts of intimate partner femicide.” Jacquelyn C. Campbell, Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study, 93 AM J PUBLIC HEALTH, 1089 (2003) available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/.


in poverty, depending on government assistance, or becoming homeless.\(^6\) For women of color, racially discriminatory employment and housing practices compound abusers’ control tactics.\(^7\)

**Landlord-Tenant Cases**

Domestic violence victims have housing protections under the Pennsylvania eviction process and state and federal laws, including:

- Violence Against Women Act
- Fair Housing Act
- Pennsylvania Human Relations Act

Women are the overwhelming majority of victims of domestic violence, dating violence, sexual assault and stalking. Some housing protections are based in part on the premise that evicting a victim of domestic violence as a result of the violence she endured constitutes **UNLAWFUL GENDER DISCRIMINATION** because domestic violence disproportionately impacts women.

Protections pursuant to the Violence Against Women Act are gender neutral and apply equally to both male and female victims of domestic violence, dating violence, sexual assault and stalking. Also, some jurisdictions in Pennsylvania, such as Philadelphia, have adopted ordinances that explicitly prohibit discrimination against victims of domestic violence, protecting both women and men.

In conventional housing, what may be most relevant to domestic violence victims is **WHERE THERE IS NO LANDLORD TENANT RELATIONSHIP**. An abuser may try to evict a victim from a home she occupied solely on the basis of the romantic relationship, but not from any agreement to rent property. In such instance, a valid landlord tenant case does not exist and the magisterial district court does not have jurisdiction. However, abusers often attempt to evict the victim through multiple filings, any of which may be filed as a general civil case before a magisterial district judge.

**Residential Leases**

Collectively, the Landlord Tenant Act of 1951\(^8\) and the Manufactured Home Community Rights Act\(^9\) govern most residential arrangements for rental housing in Pennsylvania. In conventional housing, a lease may be oral or written.\(^10\) A lease for real property that is for a term more than three years must be in writing and signed by the parties.\(^11\)

---

\(^8\) 68 P.S. 250.101 – 250.602
\(^9\) 68 P.S. 398.1 – 398.16
\(^10\) 68 P.S. § 250.201.
Tenants shall have the following rights so long as their obligations as a tenant are observed:

- To invite to his or her apartment or dwelling employees, business visitors, tradesmen, deliverymen, suppliers of goods and services, and the like;
- To invite to his or her apartment or dwelling social guests, family or visitors for a reasonable period of time.\(^\text{12}\)

These rights cannot be waived by any provisions of a written rental agreement and the landlord and/or owner may not evict a tenant, charge any fee, service charge or additional rent for exercising these rights.\(^\text{13}\)

**Eviction Process for Residential Property**

An action for recovery of possession of real property shall only be brought in the magisterial district where the real property is located.\(^\text{14}\) An action is commenced by filing a written complaint that is signed and verified by the plaintiff or plaintiff’s agent.\(^\text{15}\)

**Jurisdiction**

In order for a case to proceed, the court must also determine that both of the following are true:

- The plaintiff is the owner or agent of the owner of the property; and
- A landlord-tenant relationship exists between the plaintiff and defendant.

Each of these elements must be satisfied for the court to assert jurisdiction in an action for recovery of real property. In a case involving domestic violence a landlord-tenant relationship does not typically exist between intimate partners or family members living together. However, that may not stop an abuser from attempting to evict a domestic violence victim in an action for recovery of real property. Where a judge finds that there was never a bona fide agreement establishing a landlord-tenant relationship between the parties, including a contractual agreement for payment of rent, the magisterial district court **must** decline to assert jurisdiction.

When a landlord-tenant relationship exists, there are three reasons available for a residential eviction in conventional housing:

- Failure to pay rent
- Expiration of the lease
- Breach of the lease\(^\text{16}\)

---

\(^{12}\) 68 P.S. § 250.505-A.

\(^{13}\) Id.

\(^{14}\) Pa.R.C.P.M.D.J. No. 502.

\(^{15}\) Pa.R.C.P.M.D.J. No. 503(A) & (B).

\(^{16}\) 68 P.S. § 250.502-1(a).
In a manufactured home community, rental agreements must be in writing. There are four grounds to terminate a lease for space in a manufactured home community:

- Failure to pay rent
- Violation of the rules of the manufactured home community for the second (or more) time in six months
- Use of the manufactured home community has changed
- Manufactured home community closure

In addition to the jurisdictional and standing requirements mentioned above, proper service by the landlord of a notice to quit is a condition precedent to an action for recovery of real property. In a landlord tenant cases involving domestic violence, it is important for judges to ensure that the notice to requirements have been followed.

Service

At the time the complaint is filed, the magisterial district judge shall set a hearing date not less than seven or more than 15 days from the date of filing. The magisterial district judge shall serve the complaint by:

- Mailing a copy, by first class mail, to the defendant/tenant, and
- Delivering a copy for service to the sheriff or any certified constable of the county in which the magisterial district judge’s office is situated

The magisterial district judge shall note on the docket the date that the service copy was mailed.

Service can be made by any certified constable in the Commonwealth if the local sheriff or constable are unavailable. Service can be personal or by posting the complaint in a conspicuous place if no one is found at the premises. The appearance of a defendant or representative, or the filing of a claim in the case shall be deemed a waiver of any defect in service, but not a defect in venue.

---

17 68 P.S. 398.4.1
18 P.A.R.C.P.M.D.J. No. 504(1).
19 P.A.R.C.P.M.D.J. No. 506(A).
20 P.A.R.C.P.M.D.J. No 507(A).
21 Id. at 506(A).
22 Id. at 506(A)
23 Id. at 507(B).
Hearing

The plaintiff must appear at the hearing and present testimony. In a hearing, the magisterial district judge shall be bound by the rules of evidence. If it appears at the hearing that the complaint has been proven, the magisterial district judge shall enter a judgment against the defendant/tenant to deliver the property to plaintiff/landlord, and shall enter judgment by separate entries for the following:

- Amount of rent, if any, which remains due
- Amount of damages, if any, for unjust detention
- Physical damage, if any, to the leasehold premises
- Costs of the proceeding less any amount due to the defendant on any cross-complaint filed
- Identifying the sum of the money found to constitute the monthly rental

Claims for property damage are typically undetermined at the time of the landlord tenant hearing, as a landlord has limited ability to inspect rental property in the possession of the tenants for the duration of a tenancy. As such, landlord claims for property damage, as well as tenant claims for recovery of security deposits may arise as distinct civil actions brought separately from an action for recovery of real property.

The landlord shall, within 30 days of a lease termination or surrender of the property, whichever occurs first, provide tenant with a written list of damages for which tenant is liable. Except when there is outstanding rent, the damages list shall include payment for the difference between the amount deposited in escrow plus interest and the actual payment for damages. A tenant cannot waive rights to recover her or his security deposit.

A tenant is not responsible for property damage resulting from normal wear and tear. However, a landlord may recover for damage caused by tenant abuse or neglect. Thorny issues arise in the domestic violence context where property damage is not caused by a tenant, but rather a non-tenant abuser. Generally, landlords bear the insurance risk for damage to a dwelling; while tenants carry the burden to ensure against personal property loss. For example, following a burglary to rental property, the landlord is typically the party to ensure against damage to the structure (such as to a door, door jam, and door locks); while the tenant would ensure against theft of her or his personal property.

---

25 Judges are bound by the rules of evidence except that a bill, estimate, receipt, or statement of account, which appears to have been made in the regular course of business, may be introduced into evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity. Pa.R.C.P.M.D.J. No. 512(B).
27 68 P.S. § 250.512(a).
28 Id.
29 68 P.S. § 250.512(d).
In the case of damage caused by acts of domestic violence by an abuser who is not a party to the lease, a similar approach may apply, such that a tenant might not be liable to a landlord for property damage caused by a third party. Interpretive case law delineating liability for damages caused by third parties beyond control of the landlord or tenant remains undeveloped.

Abandoned Personal Property of Domestic Violence Victims May Be Protected

In conventional housing, personal property of tenants remaining in the leased property following an eviction, or when a tenant vacates the rental housing, is governed by the abandoned property law.\(^{30}\) In light of the hardships a domestic violence survivor may endure when fleeing from an abuser, the abandoned property law provides an exception for domestic violence victims. After an eviction, if a landlord has actual knowledge or is notified that a PFA has been entered on behalf of the tenant or a member of their immediate family, the landlord may not take custody of the tenant’s personal property for 30 days from the date of the notice.\(^{31}\) If the owner of the property requests it, the landlord is obligated to store personal items for a period of 30 days from the date of the request.\(^{32}\)

Federal and State Protections Against Housing Discrimination

Tenants can use federal protections against housing discrimination as defenses in Pennsylvania landlord tenant cases. Article VI of U.S. Constitution, known as the Supremacy Clause, provides that federal law prevails over contrary laws of any state.\(^{33}\) Therefore, it is important for magisterial district judges to be familiar with federal discrimination protections and ways they may affect Pennsylvania landlord tenant law.

Violence Against Women Act

Lack of housing options creates a serious safety risk as victims often return to abusive partners because they cannot find long-term housing.\(^{34}\) The Violence Against Women Act (VAWA) was first passed in 1994 and reauthorized in 2000, 2005 and 2013. The 2005 reauthorization added legal protections for domestic violence victims who live in public or subsidized housing. Those protections were expanded in the 2013 reauthorization because women and families were being denied access to or evicted from public and subsidized housing, specifically because of their status as victims of domestic violence.\(^{35}\)

**VAWA PROHIBITS DISCRIMINATION IN HOUSING APPLICATIONS, IN EVICTION OR TERMINATION OF ASSISTANCE BASED ON THE APPLICANT’S STATUS AS A VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING.**\(^{36}\)

---

30 68 P.S. § 250.505a
31 68 P.S. § 250.505a(h).
32 *Id.*
33 U.S. CONST. ART. VI, CL. 2.
34 42 U.S.C § 14043e(7).
35 42 U.S.C. § 14043e(3).
VAWA applies to the majority of government housing programs including:  

- Public Housing  
- Section 8 Housing Choice Voucher program  
- Project-Based Section 8  
- Supportive Housing Programs under Section 202 and 811  
- Low Income Tax Credit Properties  
- Rural Housing Programs  
- Housing Opportunities for Persons with AID  
- McKinney-Vento Homeless Program  
- HOME Investment Partnerships Program  
- Below Market Interest Rate Program  
- Section 236 Housing

**VAWA does not apply to private landlords, unless** the housing unit falls under one of the aforementioned housing programs.

VAWA prohibits all covered housing programs from denying an application for housing benefits or admission to a covered housing program unit based on the applicant’s status as a victim of domestic violence, dating violence, sexual assault or stalking. As a matter of policy, the federal Department of Housing and Urban Development (HUD) encourages preferential treatment for victims of domestic violence.

**Qualified Victims of Actual or Threatened Domestic Violence, Dating Violence, Sexual Assault or Stalking**

To qualify for VAWA protections, an individual must be a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking as defined by law. These acts are defined specifically in VAWA as follows:

1. Domestic violence is defined as a felony or misdemeanor crime of violence committed by a:
   - Current or former spouse or intimate partner of the victim;
   - Person with whom the victim shares a child in common;
   - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
   - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or

---

• Any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.\textsuperscript{41}

(2) Dating Partner refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such relationship shall be determined based on a consideration of:
• The length of the relationship;
• The type of relationship; and
• The frequency of interaction between the persons involved in the relationship.\textsuperscript{42}

(3) Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of which is determined based on a consideration of:
• The length of the relationship;
• The type of relationship; and
• The frequency of interaction between the persons involved in the relationship.\textsuperscript{43}

(4) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
• Fear his or her safety or the safety of others, or
• Suffer substantial emotional distress.\textsuperscript{44}

The definition of stalking includes stalking by an acquaintance or stranger and does not require an intimate relationship between the victim and the perpetrator.

(5) Sexual Assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.\textsuperscript{45}

The victim’s immediate family members are also protected.\textsuperscript{46}

\textbf{VAWA Protects Against Evictions and Loss of Housing Benefits}

VAWA prohibits discrimination in housing applications and in eviction or termination of assistance. A victim cannot be evicted or lose benefits for any of the following reasons:

(1) The victim or her abuser committed a crime or engaged in criminal activity related to her abuse or stalking.\textsuperscript{47}

(2) The abuser or stalker’s violence or threats violated her lease.

VAWA creates an express exception to the federal “One-Strike Rule” by providing that incidents of actual or threatened domestic violence, dating violence, or stalking

\textsuperscript{41} 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.
\textsuperscript{44} 42 U.S.C. § 13925(a)(30); 24 C.F.R. § 5.2003.
\textsuperscript{47} 42 U.S.C. § 14043e-11; 24 C.F.R. § 5.2005(b).
may not be construed as serious or repeated violation of the lease by the victim.\textsuperscript{48} Likewise, such incidents do not constitute good cause for terminating a victim’s tenancy or occupancy rights.\textsuperscript{49}

(3) The victim acted in self-defense.

**Exception in Cases of Demonstrated Threat to Other Tenants and/or Employees**

Although victims of domestic violence have legal protections under VAWA, they can be evicted if the housing program can demonstrate that an actual or imminent threat to other tenants and/or employees exists.\textsuperscript{50} Actual or imminent threat is defined as “a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.”\textsuperscript{51}

**Evidence of Protected Status**

A housing provider has the discretion to provide VAWA protections based solely on an individual’s statement or corroborating evidence,\textsuperscript{52} or request certification. A housing provider that wants certification must submit a written request to the victim.\textsuperscript{53} The victim has 14 business days to provide the requested certification, but the victim can request extra time.\textsuperscript{54} If the victim does not provide the documentation within the timeframe allotted, the housing provider may start the process to evict the tenant or deny assistance.\textsuperscript{55}

The following documents can be provided for certification:

- A HUD Self-Certification Form\textsuperscript{56}
- Qualified Third-Party Statement from a domestic violence advocate, medical professional or attorney\textsuperscript{57}
- Police or Court Record\textsuperscript{58}
- Alternative documentation or statement by the victim at the discretion of the owner or manager of the covered housing program\textsuperscript{59}

\textsuperscript{49} 42 U.S.C. §14043e-11.
\textsuperscript{50} 42 U.S.C. § 14043e-11(b)(3)(C)(iii).
\textsuperscript{51} 24 C.F.R. 5.2005(d).
\textsuperscript{52} 42 U.S.C. § 14043e-11(c)(3)(d) & (c)(5).
\textsuperscript{53} 42 U.S.C. § 14043e-11(c)(1).
\textsuperscript{54} 42 U.S.C. § 14043(c)(2); 24 C.F.R. § 5.2007(a)(1).
\textsuperscript{55} Id.
\textsuperscript{56} 42 U.S.C. § 14043(c)(3); 24 C.F.R. § 5.2007(a)(1).
\textsuperscript{57} 42 U.S.C. § 14043(c)(3)(B).
\textsuperscript{58} 42 U.S.C. § 14043(c)(3)(C).
\textsuperscript{59} 42 U.S.C. § 14043(c)(3)(D).
Victim Rights Under VAWA

The right to transfer Section 8 Vouchers

Section 8 vouchers can be used anywhere within the jurisdiction of the PHA or the county in which the PHA is administering a voucher program. Under the program rules for portability, a tenant may also “port” the subsidy into another jurisdiction where a Section 8 voucher program is administered by a different entity. A family that has complied with other obligations of the program may port the voucher to another PHA jurisdiction to protect the family or someone in the household from domestic violence, dating violence or stalking. There is no limit to the number of times a victim can port a voucher or how often a victim may move. Also, a victim may port a voucher even if she is leaving the old unit in violation of the lease, when the breach is related to the domestic violence.

The right to request emergency transfers

A victim may be granted a transfer if she reasonably believes that she is at risk of imminent harm from further violence or if she was sexually assaulted on the premises during the 90 days prior to the request. Under VAWA, federal agencies that administer covered housing programs (e.g., HUD, IRS, Department of Agriculture) are required to adopt a model emergency transfer policy that will allow a victim to move to another available and safe dwelling. The plan must include reasonable confidentiality measures to ensure that the victim’s new location is not disclosed to the perpetrator.

The right to amend the lease to remove an abuser

VAWA provides that the PHA owner or manager of a covered housing program can bifurcate the lease to remove a household member from the residence. Bifurcation or removal allows the housing program or provider to evict, remove, terminate occupancy rights, or terminate assistance to a tenant who engages in criminal activity directly related to domestic violence, dating violence, or stalking without interrupting the rights of the victim to retain her housing assistance or subsidy.

Covered housing programs must notify tenants of their rights under VAWA, including the right to confidentiality. Notice must be included in all leases and the lease addendum in programs and must be provided in multiple languages. The notice must also be posted in a public area of the housing. In addition, the Pennsylvania Housing Finance Agency (PHFA) requires all Low

---

60 42 U.S.C. §1437r(5).
61 24 C.F.R. § 982.353(b).
63 Id.
64 Id.
67 Id.
68 Id.
Income Housing Tax Credit properties to have a lease addendum outlining the protections of VAWA.\textsuperscript{69}

**PFAs Ordering Housing Relief Must Be Honored**

Covered housing programs must honor court orders addressing rights of access to or control of property. For example, \textit{they must honor a PFA order} granting exclusive possession or other housing-related remedies to a victim. Covered housing programs also have a duty to recalculate a household’s rent to reflect the new family composition.

**Fair Housing Act**

The goal of the Fair Housing Act (FHA) is to ensure that a person’s background does not arbitrarily restrict access to the housing or rental market. The Fair Housing Act, among other things, prohibits sex discrimination in housing and protects both prospective and current tenants. Landlords are prohibited from purposely discriminating against women and against taking actions that predominantly affect women, even if landlords did not intend to discriminate.

The FHA prohibits both \textit{direct intentional discrimination} and \textit{indirect acts that have a disparate impact} on a protected group, including:

- The refusal to sell or rent a dwelling to any person on the basis of race, color, religion, sex, national origin, disability, or familial status
- Discrimination based on race, color, religion, national origin, disability, or familial status in the terms, conditions or privilege of the sale or rental of a dwelling
- Advertising the sale or rental of a dwelling indicating a preference of discrimination based on race, color, religion, sex, disability, familial status, or national origin
- Represent that any dwelling is not available for inspection, sale, or rental because of race, color, religion, sex, disability, familial status, or national origin, when in fact the property is available\textsuperscript{70}
- Coercing, threatening, intimidating, or interfering with a person’s enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights\textsuperscript{71}

Housing nuisance ordinances may lead to discrimination that a victim can challenge under the FHA. For example, if a landlord’s response to a nuisance ordinance violation affects female victims of domestic violence more substantially than other kinds of tenants, the landlord may be discriminating against women and violating the FHA.

The U.S. Department of Housing and Urban Development (known as “HUD”) is the administrative agency charged with enforcing the provisions of the FHA. However, victims may also file a complaint in the common pleas court. HUD has stated that \textit{when a landlord’s...}

\textsuperscript{69} 42 U.S.C. §41043e-11(d)
\textsuperscript{70} 45 U.S.C. § 3604.
\textsuperscript{71} 45 U.S.C. § 3617.
In a hearing for recovery of real property, a plaintiff/landlord may be denied relief if the defendant establishes that the determination by the landlord to terminate the lease is based on the tenant’s gender. Judgment may also be awarded to a defendant who shows that enforcement of a lease provision alleged by the landlord to have been breached has a discriminatory impact, by effecting women disproportionally over men.

Public Housing Agencies hold an additional obligation to “affirmatively further fair housing.”73 Beyond merely refraining from discriminatory conduct in its own right, a PHA must adopt written policy in its planning process, stating actions it will take to aid individuals in identified groups suffering discrimination in housing.74

**Pennsylvania Human Relations Act (PHRA)**

PHRA prohibits housing discrimination based on handicap or disability. Prohibited acts include *direct, intentional* discrimination against a protected group and *indirect acts that have a disparate impact* on a protected group.75 The PHRA codifies the Federal Housing Act and adds the following protected parties:

- Any person who uses a guide or support animal because of blindness, deafness or physical handicap; and
- A handler or trainer of support or guide animals76

The PHRA also adds the following prohibited acts:

- To evict or attempt to evict an occupant before the end of the term of the lease because of pregnancy or birth of a child;
- Discrimination based on the use of a guide or support animal;
- Discrimination or refusal to rent because the individual has a known relationship or association with an individual with a handicap or disability;
- Refusal to permit, at the expense of the person with the handicap or disability, reasonable modifications to afford such person full enjoyment of the premises;
- Refusal to make reasonable rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy the housing accommodations; and
- Make any inquiry, elicit any information, make or keep any record or use any form application containing questions or entries concerning a persons’ status in one of the protected categories.77

---

74 24 C.F.R. §§ 903.15, 903.7(o)(3).
75 43 P.S. § 952.
76 Id.
77 43 P.S. § 955(h).
Retaliatory Evictions
A landlord may not retaliate against a tenant who has exercised a legal right, including:

- Participating in a tenant association or assembling a tenant union\(^{78}\)
- Filing a complaint with a government agency about unsafe or illegal living conditions\(^{79}\)
- Exercising any legal right allowed by state or local law, such as escrow of rent due to an uninhabitable unit\(^{80}\)

There is also a presumption of retaliation if the landlords’ actions occur within six months of a tenant’s exercise of legal rights. Covered acts that are considered retaliatory actions include:

- Terminating a lease or filing an eviction;
- Increasing the rent;
- Decreasing services or access to services, e.g., locking the laundry room.\(^{81}\)

PFA Order to Vacate
A Protection From Abuse order may grant possession of the residence or household to one party by evicting and excluding another party.\(^{82}\) Upon learning of the exclusion of a tenant through a PFA order, a landlord may respond by voluntarily bifurcating the lease in this circumstance. The landlord cannot evict a tenant for seeking a protection order or for excluding an abusive household member via a protection order. If the property is subsidized, the landlord must abide by the VAWA protections.

When an abuser is evicted by a protection order, legal issues may be presented to the magisterial district court concerning the remaining liabilities among the parties. Although a PFA defendant may lose the right to possess rental property through a PFA proceeding, he or she may remain liable to a landlord for rent for the unexpired lease term. Between the tenants, liability for damages is joint and several under the general rule. Where a tenant is displaced by a protection order, the equitable principle of “unclean hands” may inform the apportionment of liability for remaining rent liability. Courts have historically applied the doctrine of unclean hands to deny relief premised on immoral behavior.\(^{83}\) In the context of domestic violence, the doctrine might inform refusal to excuse future rent liability to the abuser in relation to the remaining innocent tenant.

\(^{78}\) 68 P.S. § 250.205.
\(^{79}\) while we are unaware of published authority; the prohibition on retaliatory evictions in this circumstance is generally recognized.
\(^{80}\) Id.
\(^{81}\) Id.
\(^{82}\) 23 P.A.C.S. § 6108(a)(2).
Municipal Code Violations

Nuisance Ordinances

Nuisance ordinance enforcement cases often begin in the magisterial district court. Nuisance ordinances take several different forms and may also be referred to as “disorderly” or “disruptive house” laws. Nuisance ordinances may perniciously discriminate against domestic violence victims and their children because the abusive behaviors of the perpetrator are often categorized as disruptive and disorderly. Such ordinances put victims at risk of harm either by evicting the victim from stable housing or deterring victims from accessing police protection or emergency assistance when needed for fear of eviction.

These ordinances can come in the form of:

- **Tenant Fines** - This type of ordinance requires tenants to pay a fine each time the police are called to their home within a certain time period. For example, three calls or more within a 90-day period may result in a fine.

- **Landlord Abatement/Eviction** - This type of ordinance requires the landlord to evict any tenant who has a certain number of calls to the police from or about the tenants’ home within a certain period of time or risk being penalized. For example, even though a landlord may not want to evict the tenant, the ordinance may require landlords to evict or be penalized with a fine or loss of their rental license or certificate.

- **Crime-Free Zones** - “Crime-Free Rental Housing Ordinances” are designed to force eviction or deny admission to of tenants who repeatedly commit crimes, such as drug dealing or gang-related crimes. Unfortunately, domestic violence victims may be included in this category of targeted tenants. An eviction notice may be received even if the tenant was the victim, not the perpetrator, of the crime and even if the perpetrator is not a resident.

If a municipality has a nuisance ordinance in place, THE MAGISTERIAL DISTRICT JUDGE HAS THE DISCRETION TO FOREGO ENFORCEMENT OF THE ORDINANCE if, for example, it impedes on safety, a person’s right to enjoyment of property, or if enforcement may result in a future chilling effect. Pennsylvania Act 200 of 2014, Protection for Victims of Abuse or Crime, provides protections for a resident, tenant or landlord when a municipality tries to enforce any of these nuisance ordinances.

**Briggs v. Borough of Norristown**

In Briggs v. Borough of Norristown, tenant Lakisha Briggs suffered extreme abuse at the hands of her ex-boyfriend. Norristown, Pennsylvania’s local ordinance 245-3 penalized landlords and encouraged them to evict tenants who called the police three or more times in a four-month period.

---

84 American Civil Liberties Union, Briggs v. Borough of Norristown et al., at https://www.aclu.org/cases/briggs-v-borough-norristown-et-al
After the first attempt to receive help from the police, Briggs was warned that additional calls to the police could result in eviction. The abuser knew this so he continually went to her home to attack her. In the final attack, he stabbed Briggs and knocked her unconscious. When she came to, she was afraid to call the police for fear of eviction. She ran out of her apartment and a neighbor saw her bleeding on the street and called 911. Briggs was airlifted to the hospital.

A few days after returning home from the hospital, she was served with eviction papers for violating the disruptive conduct nuisance ordinance. Briggs, the ACLU-Women’s Rights Project and her team of lawyers filed a federal lawsuit. Ultimately the case was settled and the ordinance was repealed. This case culminated in HB 1796 and the passage of Act 200.

Act 200

Act 200, codified as 53 Pa.C.S. § 304, ensures that all victims of abuse and crime and individuals in an emergency are able to contact police or emergency assistance. It is intended to shield residents, tenants and landlords from penalties that may be levied pursuant to enforcement of an ordinance or regulation if police or emergency services respond to a residence or tenancy to assist a victim of abuse or crime or individuals in an emergency.85

It further states that no ordinance shall penalize86 a resident, tenant, or landlord if the person who called for assistance reasonably believed that intervention or emergency assistance was:

- Necessary to prevent the perpetration or escalation of the abuse, crime or emergency
- Actually needed in response to the abuse, crime or emergency.87

If a municipality enforces or attempts to enforce an ordinance against a resident, tenant or landlord, that person may bring a civil action for a violation of Act 200 and seek an order from the court for any of the following remedies:

- Requiring the municipality to cease and desist the unlawful practice
- Payment of compensatory damages, provided that the resident, tenant or landlord make reasonable efforts to mitigate damages
- Payment of reasonable attorney fees
- Payment of court costs
- Other equitable relief, including, but not limited to, reinstating a rental license or rental permit, as the court may deem appropriate88

---

85 53 PA.C.S. § 304(a)(3).
86 53 PA.C.S. § 304(e) the term “penalize” includes the actual or threatened revocation, suspension or nonrenewal or a rental license, the actual or threatened assessment of fines or the actual or threatened eviction, or the actual or threatened eviction from leased premises.
87 53 PA.C.S. § 304(b).
88 Id. at § 304(C).
General Civil Cases

For victims of domestic violence, civil actions often arise when the parties separate and need to divide personal and household property. For example, abusers may take items belonging to victims, or hide or destroy items in retaliation for the victim leaving the relationship. Victims may also use civil suits to recover damages for the value of property taken by an abuser. It is important that magisterial district judges are aware that abusers may prolong or complicate civil court proceedings by filing multiple civil actions against their victim as a way to harass or to maintain contact with them.

Civil actions include any action within the jurisdiction of the magisterial district judge, except an action by a landlord against a tenant for recovery of the possession of real property, as discussed elsewhere in this chapter. Magisterial district courts hear civil cases with claims to recover up to $12,000 not including court costs.

Process

A civil action for damages up to $12,000 may be brought against any individual only in the magisterial district where the individual may be served, the action arose, or a transaction or occurrence took place out of which the cause arose. A written complaint signed and verified by the plaintiff or the plaintiff’s agent must be filed to commence a civil action. A hearing date must be set at the time of filing. The date shall not be less than 12 or more than 60 days from the date of filing.

Service shall be made at least 10 days before the hearing by sheriff, or any certified constable in the county in which the magisterial district judge’s court is situated. If this service is not available, the judge may use any certified constable of the Commonwealth. If service is to be made in a county other than the magisterial district, the sheriff shall deputize the sheriff of the county in which service is to be made. An appearance by the defendant’s or a representative of the defendant or the filing of a claim shall be deemed a waiver of any defect in service but not venue.

If the complaint is not served in time to permit holding the hearing within 60 days of the filing of the complaint, the complaint shall be dismissed without prejudice. A complaint dismissed for lack of service may be reinstated at any time and for any number of times.

---

89 PA.R.C.P.M.D.J. No. 301(A).
90 42 Pa.C.S. § 1515(a)(3).
91 PA.R.C.P.M.D.J. No. 302.
92 PA.R.C.P.M.D.J. No. 304.
93 PA.R.C.P.M.D.J. No. 305.
94 PA.R.C.P.M.D.J. No. 307.
95 Id.
96 Id.
97 PA.R.C.P.M.D.J. No. 314(C).
98 PA.R.C.P.M.D.J. No. 314(D).
Because a defendant may assert any claim against the plaintiff that is within the jurisdiction of the judge by filing a complaint at least five days before the date set for the hearing, abusers can also use this as another way to harass and maintain contact with the victim. It is important to note that the complaint does not have to arise out of the same transaction or occurrence and need not be the same type of claim as the plaintiff. All hearings are bound by the rules of evidence. Complaints can also be withdrawn at any time prior to the commencement of the hearing by filing written notice.

If the plaintiff does not appear, but the defendant does and the plaintiff has been given notice of the defendant’s intention to defend, the judge shall enter judgment for the defendant or continue the case for cause. This may occur in cases involving domestic violence as the victim may be unable to appear due to fear of their abuser. However, it is important to determine whether or not the plaintiff was given notice of the case because if they were not, the case shall be continued. If the defendant does not appear, regardless of whether or not the plaintiff appears, the judge shall enter judgment for the plaintiff or continue the case for cause. A judgment shall be given at the end of the hearing or within five days thereafter and shall be entered on the complaint form with a separate entry for costs. The judge may include an order for payments to be made in periodic installments not to exceed beyond 12 months from the date of judgment.

99 PA.R.C.P.M.D.J. No. 314(E).
100 PA.R.C.P.M.D.J. No. 315(A).
101 Id.
102 The hearing is bound by the rules of evidence except that a bill, estimate, receipt or statement of account can be introduced without an affidavit. PA.R.C.P.M.D.J. No. 321.
103 PA.R.C.P.M.D.J. No. 320.
104 PA.R.C.P.M.D.J. No. 319(A).
105 Id.
106 PA.R.C.P.M.D.J. No. 319(B).
107 PA.R.C.P.M.D.J. No. 322.
108 PA.R.C.P.M.D.J. No. 323.