

# Representing DV Survivors in Eviction Hearings

LANCASTER  
COUNTY

Domestic violence (DV) and eviction are traumatic events that influence life outcomes including social, physical, and mental health. Housing instability can cause and/or exacerbate domestic violence and domestic violence can often lead to housing instability. In Nebraska, there are laws, policies, and organizations that can help tenants who are facing eviction and have experienced DV. Please utilize the following checklist and resources when assisting in eviction cases involving DV.

## What qualifies as domestic violence under the Nebraska Uniform Residential Landlord and Tenant Act?

Under NEB. REV. STAT. § 76-1431(5), DV definitions from § 42-903, § 28-319, § 28-320.0, § 28-323, § 28-311.03, § 28-831, and § 28-386 are utilized and include:

- Bodily injury, attempt to cause bodily injury, a credible threat placing a person in fear for their own bodily safety or that of their family, or sexual contact or penetration without consent by a household member.
- Sexual assault or domestic assault.
- Stalking (willful harassment of another person with the intent to injure, terrify, threaten, or intimidate).
- Sex or labor trafficking.
- Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior.

## What if the tenant/survivor or their household member has been given a 5-day notice for unlawful activity?

Under NEB. REV. STAT. § 76-1431(5), a landlord shall not take action to evict the tenant based upon unlawful activity if the alleged unlawful activity is or is related to “an act of domestic violence [and] the tenant or household member receives certification of the activity from a qualified third party.” Questions to ask to determine the applicability of NEB. REV. STAT. § 76-1431(5):

1. Is the tenant a DV survivor or do they have a household member who is a DV survivor? Remember, they could be a survivor of physical violence, threats, sexual assault, stalking, trafficking, or a vulnerable or senior adult who experienced abuse, neglect, or exploitation.
2. Could the alleged criminal activity equate to or include DV (see list above)? **Be aware that the criminal activity that was the basis for the 5-day notice does not necessarily have to be DV for you to argue that this provision applies.**
3. Was a police report or protection order filed? If not, did the survivor ask for or obtain assistance from a victim services provider (see list of “qualified third party” service providers on next page) Is it possible for the client to obtain “certification”?
  - a. Certification must be signed by the tenant/household member and an employee of the qualified third party from whom the tenant/household member sought assistance and it must state under penalty of perjury that:
    - i. The employee believes the incident occurred; and
    - ii. The activity meets the definition of DV under the NE Landlord and Tenant Act (see above.)
4. If your client meets all other definitions but has not sought assistance—or has sought assistance but has not gotten a certification—consider asking for a continuance under NEB. REV. STAT § 76-1443 to get the assistance/certification. Note that tenants can also discuss DV certification with TAP on the day of their hearing.

### What if the tenant/survivor or household member of the survivor has been given a 7-day notice for unpaid rent?

Nebraska law currently does not provide survivors of domestic violence with protection against a 7-day notice for unpaid rent. However, arguments and negotiation tactics can and should be considered by defense attorneys that the spirit of § 76-1431(5) should afford some protections for client survivors who are attempting to get rent together after being able to escape their abuser.

You should also consider whether the client was issued the notice as a pretext for discrimination. For example, has the landlord allowed other tenants to be late on rent? Has the landlord made comments to the DV survivor client about wanting them out because of “disruptions” or law enforcement being called to the unit in the past? If so, you should refer the client to the Lincoln Commission on Human Rights (LCHR) or the Nebraska Equal Opportunity Commission (NEOC) to file a claim of discrimination.

- **LCHR:** Phone: 402-441-7624; Email: [lchr@lincoln.ne.gov](mailto:lchr@lincoln.ne.gov); Web: <https://www.lincoln.ne.gov/City/Departments/City-Attorneys-Office/LCHR/Filing-a-Complaint>
- **NEOC:** Phone: 402-471-2024; Web: <https://neoc.nebraska.gov/complaint/complaint.html>.

### What if the tenant/survivor or household member of the survivor wants to end their lease early as a result of domestic violence?

Questions to ask:

1. Is the client a tenant who was the DV survivor or do they have a household member who is a DV survivor?
2. Could what they experienced equate to or include domestic violence (see list above)?
3. Did survivor ask for or obtain assistance? Is there a possibility for them to obtain “certification”? Did they get a protection order or file a police report?
4. If your client meets all other definitions but has not sought assistance—or has sought assistance but has not gotten a certification—refer them to a certifier (see attached list of service providers) and have the certifier fill out the attached notice. Note that filable forms are available through the third-party certifiers listed below.
  - a. Tenant needs to provide landlord with a copy of protection order against perpetrator OR certification as described in § 76-1431(5) AND
  - b. Written notice containing date released from rental agreement (must give at least 14 days, but not more than 30 days), and the names of all household members to be released in addition to the tenant.

### If my client receives federal housing assistance, do they have other protections under the Violence Against Women Act?

Yes. If your client’s housing is federally subsidized (e.g., Public Housing, Section 8 Housing Choice Vouchers, Project-based Section 8 etc.) and they are a survivor of DV, they may have additional housing protections under VAWA.<sup>1</sup> Some of these protections include emergency lease transfers and lease bifurcations.

#### Lancaster County Third-Party Certifiers

The Housing Justice Clinic and the Resource Navigator for the Housing Justice Program/Tenant Assistance Project have established procedures to refer clients to Voices of Hope and Friendship Home for certifications. Questions about referral procedures can be directed to Kaitlyn Evans: phone: 402-707-0912; email: [kevans16@unl.edu](mailto:kevans16@unl.edu).

To make referrals directly to these service providers, please use the following procedures:

**Friendship Home:** Contact their administrative office at 402-434-6353 and state that you are seeking a domestic violence certification for yourself or on behalf of a domestic violence survivor. Friendship Home will then follow their in-house procedures.

\*\*In emergencies, contact their 24/7 Crisis Line at 402-437-9302.

**Voices of Hope:** Contact their office at 402-476-2110—or visit their office at 2545 N Street during walk-in hours—and report that you are seeking domestic violence certification for yourself or on behalf of a domestic violence survivor. Voices of Hope will then follow their in-house procedures.

\*\*In emergencies, contact their 24/7 Crisis Line at 402-475-7273

<sup>1</sup> See VAWA, 34 U.S.C. §