

**Subject: Re: Fwd: Compilation Bulletin Revision -- Subject: Disconnected Utilities**

**Date:** 2/2/2007 8:36:40 P.M. Eastern Standard Time

**From:** [Bernie1603@aol.com](mailto:Bernie1603@aol.com)

**To:** [elizabeth\\_a\\_hanson@hud.gov](mailto:elizabeth_a_hanson@hud.gov)

**CC:** [judy\\_wojciechowski@hud.gov](mailto:judy_wojciechowski@hud.gov)

Liz/Judy.....REAC is playing an April fools joke a little early on this don't you think.....  
your now gonna penalize properties whos residents have their utilities turned off for NON-  
Payment.....could someone please explain to me the reasoning behind this decision? I apologize  
if I seem a little put off but this one from my point of view seems way out of line.

Best Regards

Bernie Morosco

**Subject: Re: Fwd: Compilation Bulletin Revision -- Subject: Disconnected Utilities**

**Date:** 2/9/2007 4:32:40 P.M. Eastern Standard Time

**From:** [Elizabeth A. Hanson@hud.gov](mailto:Elizabeth_A_Hanson@hud.gov)

**To:** [Bernie1603@aol.com](mailto:Bernie1603@aol.com)

**CC:** [elizabeth\\_a\\_hanson@hud.gov](mailto:elizabeth_a_hanson@hud.gov), [judy\\_wojciechowski@hud.gov](mailto:judy_wojciechowski@hud.gov)

Yes, it is correct.

We discovered that some inspectors were assuming that when an **occupied** unit came up in the sample, but had its utilities disconnected because the tenant had failed to pay the utility bill, that it was okay to skip that unit. That is not okay.

As we all know, the HA sample lease (Section 9, item z) does require the tenant:

"To promptly pay any utility bills supplied to Tenant by a direct connection to the utility company, and to avoid disconnection of utility service for such utilities"

So, the tenant is required to pay their utilities so that services aren't disconnected. A basic premise of the inspection is that appliances, among other things, are supposed to work as they were designed to work. If the power has been turned off, then obviously the appliance won't work as it was designed to work. Also, the PHAs rule talks about having the basics in terms of utilities.

Also, I have contacted some of the code enforcement offices in a couple of the larger cities in the State of GA and those City codes have a warranty of habitability which basically says that a unit must have the appropriate utilities, such as heat, water, light. The person that I spoke to in Atlanta said that if they were informed of those units they would go out and require the resident be moved and the units bordered up until utilities are restored. Not that I would imagine we'd ever find that in the Atlanta HA.

But, if the HA or owner knows that utilities have been turned off because the tenant did not pay the bill, there is obviously some responsibility for them to take some action as I would image the people that don't have the utilities are still going to find a way to light the place, cook, provide heat and take care of personal hygiene items and some of those alternatives have proven dangerous

to the residents and others living around them.

An occupied unit without utilities cannot be considered by anyone as decent, safe, sanitary and in good repair. Hope this clarifies.

**Subject: Re: Compilation Bulletin Revision -- Subject: Disconnected Utilities**

**Date:** 2/10/2007 10:04:31 P.M. Eastern Standard Time

**From:** [Bernie1603](mailto:Bernie1603)

**To:** [Elizabeth A. Hanson@hud.gov](mailto:Elizabeth.A.Hanson@hud.gov)

**CC:** [judy\\_wojciechowski@hud.gov](mailto:judy_wojciechowski@hud.gov)

Liz,

Thank you for your reply. I feel I need to make a plea to have you reconsider this issue (or its scoring implication) and please, please read my reasoning. (I do heavily respect yours and Judy's opinion and am only trying to offer a dose of "field reality") as I think you will be feeling some serious whiplash on this issue by holding PHA's responsible (in essence) for tenant responsibilities that resident utility bills are paid.

This issue is very reminiscent of the "switched lighting" issue where in 2002 (with the issue of the compilation bulletin) REAC insisted that there be an "operable" switched lighting source in every room not taking into account that there are as part of the design rooms who's lighting switch actually controls a fixed wall receptacle. Inspectors were told that if there was no "lamp" in the room it was a level 3 defect. Agencies when a little spastic and eventually I believe REAC realized that this was an issue where there was little PHA control and rescinded it in November 2003.

Here are the issues as my almost 9 years of experience in REAC inspections and 12 years PHA experience and over 20 years of being in Code and Building Enforcement certified with the ICC makes me see them

1. The issue about inspectors not inspecting units without utilities has always been in place since I have been an inspector (9/1998). My learned reasoning for this is not whether or not the unit was in decent, safe and sanitary condition but if the unit could be considered a "statistically valid" sample and it was decided way back when that it could not. (how can you determine if a stove works if the resident is not responsible enough to pay their utility bill).

a. As a reality, residents know that most PHA's start the eviction process when utilities are turned off and as a result NEVER report that they have been turned off. (much in the same way that residents do not report resident caused damage....they have to pay for it.....I know, I know they eventually get it found out but why pay today for something you can pay for a year from now.) I have conducted thousands of PHA annual inspections and have come across MANY units where the resident has had no gas (sometimes its been off for several months). But they always admit that they have never reported it. So I am left to consider with this new standard of application how much is the PHA supposed to be responsible for with respect to Resident provided utilities. And you can say they are responsible for enforcing the lease....which they do....when the issue is "discovered" or brought to their attention. I don't think it prudent to hold PHA's responsible for something BEFORE it was discovered by the staff

2. This new standard represent a significant change to past practice and gives an unfair advantage to PHA properties that are master metered who have the utilities in their name (so never being turned off) when compared to PHA properties that are individually metered with resident responsibility to pay. So PHA's with master metered utilities will now on average have a

scoring advantage especially when you take into account issue 1. (while some PHA's may have an agreement with the local utility company to notify them if a resident utilities are going to be turned off, I can tell you with absolute clarity that most utility companies will not do it. I manage units and have utilities supplied in the Northeast by National Grid and they absolutely will not citing privacy concerns..weird huh...) National Grid supplies utilities to a very large portion of the U.S.

3. You are correct in citing the HA section of the least but that is NOT reality. The reality is that many residents may chose for a variety of reasons not to pay their utility bill. And the fact or truth of the issue is that if residents don't report it how can it be considered reasonable to be penalized for it with significant point deductions.

4. Your point about an appliance not working as designed without having utilities applied to it does not seem to make sense (applying that logic. LOWES and HOME DEPOT are full of non-working appliances). The working capacity can ONLY be proven or dis-proven if power or utilities are in fact applied....whose responsibility is it to apply the utility...I would argue that in PHA's where the resident is required to pay for their own utilities. The PHA has provided the means and opportunity for that to happen but it is ultimately up to the resident to remain responsible and when discovered they are then evicted....MAYBE....

I just finished annual inspections for the Poughkeepsie PHA (Bernard Wells, ED). They are master metered but when talking about evictions for damage to units or bad housekeeping he told me that the court system there distinguishes between monies owed for RENT and moneys owed for other issues such as damages when considering eviction cases and most times will not evict for anything other than non-payment of RENT moneys.....which leads me to my next point.

5. Court systems tend to NOT evict for this issue in several parts of the country.....mainly in main cities (in the Atlanta PHA for example, how many evictions were conducted successfully for no utilities? I dont know but I would guess it would not be many) Judges tend to view public housing as housing of last resort ("where are they gonna go") and I have been in front of those judges on evictions (I didn't know that we had a constitutional right to housing but some judges think that way). If it can be shown that in a PHA district that the court system does not evict...what scoring disadvantage does this put them at when compared to a PHA district who's court system is more apt to evict. With respect to the PHAS rule talking about having basics in terms of utilities....The rule also talks about the standards being "intentionally" broad to accommodate the wide spectrum of types of systems and housing stock in the country and this issue I though was one of them.

6. In speaking of Codes I have extensive experience in working with and enforcing a variety of Building Codes in Georgia, Florida and New York and I can offer some insight. Warranty of habitability places the responsibility of the continued supply of the utility on EITHER the landlord (if supplied within the rent payment...400 per month with heat for example) OR the tenant. I am not sure who you talked in Atlanta but I did research the Municode for the City of Atlanat and I could not find any written section requiring that all utilities be turned on and the responsibility of the property owner or agent for example: here is the City of Atlanta section of the code with respect to HEAT.

*"Whenever the supply of heat from heating equipment is controlled by the owner, operator or person **other than the tenant**, such person shall supply heat to all occupied dwelling units from September 15th through May 1st of each year in such amounts as is necessary to maintain a minimum temperature of:*

*68 degrees Fahrenheit from 7:30 A.M. to 10:30 P.M.  
63 degrees Fahrenheit from 10:30 P.M. to 7:30 A.M."*

I hope you read that the same way I did. Here is the link to the full section (<http://www.municode.com/resources/gateway.asp?sid=10&pid=10376>)

For another example in NY there is a state wide regulation about this. It states in part:

#### **WARRANTY OF HABITABILITY**

Tenants are entitled to a livable, safe and sanitary apartment. Lease provisions inconsistent with this right are illegal. Failure to provide heat or hot water on a regular basis, or to rid an apartment of insect infestation are examples of a violation of this warranty. Public areas of the building are also covered by the warranty of habitability. The warranty of habitability also applies to cooperative apartments, but not to condominiums. **Any uninhabitable condition caused by the tenant or persons under his direction or control does not constitute a breach of the warranty of habitability.** In such a case, it is the responsibility of the tenant to remedy the condition. (Real Property Law §235-b)

Here is the link to the full section ( <http://www.oag.state.ny.us/realestate/habitability.html> )

Now that is in force NY State Wide. Most codes place the responsibility of Tenant Paid utilities on the tenant. While codes can require an alleviation of the situation (through eviction, unit condemnation etc) they don't cite the owner. HUD's application of this new standard cites the owner....

I would fully agree with you that if a PHA is made aware of a resident who has had utilities turned off for non-payment that they should act (and in my experience they do) many end up with the resident getting them back on. Some get more complex....A resident owing a gas company 2 or 3 thousand dollars (believe me it happens) get evicted and go into the private sector and live without gas....why.....bad credit. Which is a major stumbling block for getting utilities turned back on,

In Georgia for example, there are many gas suppliers. Residents crank up their bill in the winter.....(for the heat) and get it turned off in the summer (electric is a separate utility company) and they buy a hotplate to cook food and heat water and yes they do not bath as much or do laundry (or do their laundry in a laundromat)

I would agree that without proper utilities turned on residents do some extraordinary things (what gets me really upset is when I do an annual inspection and there is a resident and no utilities and I ask how long the utilities have been off and they say 2 months and there are small children in the unit) the world is full of irresponsible persons or maybe just persons who have to make a choice between gas and food. But I have also seen a normal apartment where residents use their gas ovens to heat because they can not get the unit hot enough for their comfort (many are elderly who always seem to be cold even in summer).

I would fully agree with you that an occupied unit without utilities does NOT meet HUD standards but the PHAS rule also states as part of its consideration that ....

***"The rule only applies to aspects of the housing that are within the ownership of the PHA."***

the question is the PHA owns the wires and lights and the hot water tank but does it in PHA's with resident paid for utilities OWN the power being supplied, and if the PHA has little control or knowledge of the issue.....Why are we going to penalize them with point deductions.....

Now I know that generally once REAC has issued a change the organization tends to be stubborn about reconsideration or admitting an "error" in regulatory application (and I am not saying that is occurring) BUT...please consider that If the desire to document and inspect units with no utilities is very strong within REAC then I ask you to consider these issues and defects in units in the same way as we treat smoke detectors where there is a H&S issue but no points are deducted from the property score.

A final question.....in the process toward rendering this change did anyone consult with PHA's where the resident pays their own utility bill? If so I would be very curious as to whom you talked with.

Best Regards

Bernard J. Morosco