

How to Protect Yourself From Fair Housing Threats by Vena Jones Cox

Q: I recently rejected a potential tenant's application to rent because her previous landlord told me that she had people in her apartment at all hours of the day and night and he was constantly getting complaints from the other residents. When I told the applicant she couldn't have the unit, she threatened to sue me for discriminating against her because she had five kids. Am I in danger, and what should I have done?

A: Fair housing law was put in place with the goal of ending discrimination in housing, and to assure equal access to housing for members of "protected classes." What fair housing law basically says is that your willingness to rent or sell housing to a particular person cannot be based, even in part, on that person's race, religion, color, sex, handicap, nationality, or familial status.

Lately, I've seen an unfortunate trend in applicants threatening to file discrimination suits against landlords who refuse their applications for any reason. It is unfortunate both because these applicants are abusing the laws put in place to protect them, and because landlords are becoming more and more fearful of dealing with people in protected classes. However, the fact that someone threatens you with a suit or complaint doesn't mean they will actually follow through, and the fact that they do file a suit doesn't mean they'll win.

The key to staying safe is to have clear criteria for renting (or selling) to an applicant, and then sticking to them. These criteria should be objective, easy to quantify, and unrelated to the applicant's membership (or non-membership) in a protected class. You should use criteria that you have found to be good predictors of the tenant's ability to fulfill the requirements of the lease—that is, to pay the rent on time every month and keep the unit in good condition. The criteria don't need to count equally; you can choose to give some more weight than others.

Examples of criteria that I've seen used include:

- Whether the applicant earns at least 3 times (or in some cases, 4 times) the amount of the rent or rent plus utilities
- Whether the applicant has ever been evicted; whether the applicant has any unpaid judgments
- Whether the applicant has a dog
- How long the applicant has been on the job
- How many places of residence the applicant has had in the last 2 years and
- Whether the applicant lied about rental history, employment or income.

These are all safe criteria, because they can be independently verified through sources like courthouse records, credit services, and so on.

Slightly dicier are criteria that depend on opinion, such as reports by previous landlords. I ask previous landlords four simple yes/no questions: "Did they pay \$xxx in rent?" (based on what the applicant has told me), "Were they always on time with rent payments?", "Did they leave the unit in good condition?" and "Would you rent to them again?"

You can select any criteria you like, as long as it is not discriminatory. For instance, one landlord I know will not rent to smokers.

Whatever your criteria, it's crucial that they be in writing, that they be applied equally to all applicants, and that rejected (and accepted) applications be KEPT ON FILE for at least five years with the details of why the application was disposed of in the way that it was. Furthermore, you should be certain that you investigate each applicant to the same extent, and not go further in digging up dirt on one applicant vs. another.

Assuming that you do not in fact discriminate against members of protected classes, most fair housing suits will go away when "testers" employed by your local fair housing agency find that you treat everyone equally and when your written records back up this fact.

So write down your reasons for rejecting this applicant, put together some criteria for the next one, call your local fair housing agency for additional advice, and don't be cowed by people who try to use the law as a bludgeon.

Reprinted from the Real Deal, a monthly newsletter for Real Life Real Estate Investors with permission of Vena Jones-Cox. Get a free 3-month trial subscription by logging onto www.regoddess.com. One per household, please.