

## **Refusing Rent Concessions . . . Discrimination?**

By Scott Clark, Attorney at Law

When a landlord grants lease concessions to one resident but fails to provide this to another person renewing a lease, a question may arise as to whether discrimination exists. An examination of the Fair Housing Act, along with some relevant case law, is important in assessing the feasibility of a discrimination claim against a landlord under such circumstances.

The Fair Housing Act specifically prohibits landlords from refusing to rent “after the making of a bona fide offer, or refuse to negotiate for the...rental of...a dwelling to any person because of race, color, religion, sex, familial status, or national origin,”

One may argue that a landlord who grants lease concessions only to a member of the majority, but not to minority class residents, discriminates. However, federal case law suggests that if the landlord has a legitimate business reason for refusing to renew a lease, such reasons may overcome a claim of discrimination.

In *Cavaliere-Conway*, the property owner and his management refused to renew Ms. Cavaliere-Conway's lease. She, in turn, refused to vacate the apartment and sued the landlord for violating the Fair Housing Act. She claimed she was subjected to sexual harassment, and management refused to renew her lease because she was a single woman living alone.

Ms. Cavaliere-Conway claimed the owner's management discriminated by holding her to a higher moral standard than other residents. She also alleged management harassment, so she abstained from having a sexual partner in order to remain in the apartment.

The court held that the plaintiff failed to submit adequate direct or circumstantial evidence of the landlord's intent to discriminate against her based on her sex. Her only evidence was bare accusations. Moreover, the court continued, she failed to show that management applied the same treatment to other similarly situated, single female residents or that the landlord treated them more favorably.

Ms. Cavaliere-Conway met the basis for a prima facie discrimination case because she was a woman, the landlord knew she was a woman, and she was qualified to rent the apartment with housing assistance, but the landlord refused to renew her lease.

The landlord introduced evidence that he refused to renew the lease based on her “bizarre and unsatisfiable, demanding behavior.” For example, Ms. Cavaliere-Conway received a discounted rental rate and her requests for repairs were met, he said. Despite this, she sued the landlord for \$10 and wrote anti-Semitic letters to him.

The court accepted the landlord's reasons for refusing to renew Ms. Cavaliere-Conway's lease as legitimate. The plaintiff failed to provide evidence that would allow an ordinarily, reasonable person to infer that the landlord's business reasons were merely a pretext for discrimination. The court determined that Ms. Cavaliere-Conway's claim of sexual discrimination under the Fair Housing Act failed.

A landlord may be able to follow the court's reasoning in *Cavaliere-Conway* to justify granting negotiated lease concessions to some residents but not to others. Arguably, a landlord who grants concessions to a renter who negotiates, but not to others because they failed to negotiate, has a legitimate business reason.

However, this argument is tenuous. First, if the landlord only negotiates with nonprotected class residents and refuses to negotiate with protected class residents, such actions may show a direct discriminatory intent. Second, the renter may show circumstantial evidence if the landlord negotiates with all residents, but only nonprotected class residents receive the concessions. Third, if a protected class resident shows the landlord's business reasons are merely pretextual, the landlord may be liable for violating the Fair Housing Act.

Hence, if a landlord is going to negotiate a lease or lease renewal, he should give all residents an opportunity to negotiate the terms of the lease or the renewal to avoid any potential claims of discrimination.

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