

How to Avoid Lawsuits When Rejecting Applicants

by Jan Leasure

Denying an applicant while complying with federal and state fair housing laws can be tricky business. Not only is it unpleasant to deliver bad news, the specter of an inadvertent fair housing violation is always present. Furthermore, an applicant who has been rejected for a legitimate reason may feel that he was rejected due to his membership in a protected class. Just remember, you can (and should!) be a discriminating landlord. Just don't be a landlord who *illegally* discriminates!

If you do elect to deny an applicant based on his credit, the Fair Credit Reporting Act requires you to give the applicant a letter explaining his rights under the Act.

The word "discrimination" has a negative connotation in the housing industry. However, a quick check of the dictionary yields the definitions "to distinguish" and "to differentiate." Those definitions do not have negative connotations; in fact, they describe exactly what we do when we select a tenant. We use the information provided in the prospects' applications to differentiate one from another. We distinguish qualified tenants from unqualified tenants. So do we discriminate when selecting a tenant? Of course we do! We discriminate on the basis of past landlord history, employment (present and past), and ability to pay rent and maintain the property. We do not discriminate on the basis of race, religion, or familial status (among others).

So how do we reject applicants without becoming the target of an illegal discrimination claim?

First, have a written policy that describes what your criteria are for tenant selection. Be sure that your policy describes the legal ways that you plan to discriminate in choosing a tenant. For example, your policy might say what the ratio must be between the rent and the tenant's income. Your policy might state that the applicants must have positive references from prior landlords. It may say that the applicants must have or be able to obtain a renter's insurance policy. It will probably also state whether pets are accepted, as well as what deposit amount is required. This is the first piece of evidence that you have consistent and fair criteria for deciding to whom you will rent (see the Forms section of this newsletter for a sample policy).

Second, apply the policy you have established. A written policy is only worthwhile if you apply it consistently. If you don't apply your policy, or if you make exceptions to the policy, an applicant who is not accepted may rightfully feel that you made an exception for another applicant because of your preference for his race, religion, or familial status, for example.

Your application instructions should make clear that you do not select residents on a "first-come, first-served" basis. Residents will be offered the opportunity to rent available units based on a best-qualified basis and on the landlords' needs.

In order to demonstrate your commitment to fair tenant screening procedures, your application to rent or the instructions that accompany it might contain a statement such as the following: *(Your name or your company name) will assist all applicants without regard to race, color, creed, sex, religion, national origin, familial status, handicap, ancestry, physical or mental disability, medical condition, marital status, citizenship status, military service status, sexual orientation, source of income, or age.*

Keep in mind that you do not have to give a reason for not selecting an applicant. Also keep in mind that "not selecting" an applicant is not the same as "denying" an applicant. I recommend that you never "deny" an applicant. However, you may not select that applicant from among the possible applicants. If an applicant asks why he/she was not selected, one possible answer is, "There was someone more qualified than you." This leaves open the possibility that, while an applicant may have had a good credit score and good references, there was someone else who applied who had great credit scores and great references. If you do tell an applicant, "There was someone more qualified than you," he/she may ask you how it is that the person was more qualified. Keep in mind that you cannot discuss the qualifications of one applicant with another.

If you do elect to deny an applicant based on his credit, the Fair Credit Reporting Act requires you to give the applicant a letter explaining his rights under the Act. ***[Call your local AOA office for the proper Tenant Rejection Form.]***

Use a list of qualifying criteria such as the following to determine whether you will rent to applicants who apply for your vacancies.

Sample Qualification Criteria for Renting

1. A complete application. ALL LINES MUST BE FILLED IN. Incorrect or misinformation will disqualify you as a prospective renter.
2. A credit report that demonstrates a willingness to pay financial obligations in a timely fashion.
3. Favorable responses from references.
4. Copies of pay stubs may be required to verify income.
5. If self-employed, copies of up to three years' tax returns or other documents to verify income may be required.
6. Rent-to-income ratio in the range of 33-38% or better.
7. An up-front payment of approximately two month's rent, by cashier's check, when signing a rental contract.
8. Pet rent of \$25 per pet per month in homes where pets are allowed.
9. Proof of renter's insurance when signing a rental contract.

You may have other criteria. If so, list them. But be certain they do not illegally discriminate against any protected classes.

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