

Law Prohibits Mental Disability Discrimination

Fair housing law prohibits discrimination based upon a disability, including mental competency. You cannot conclude that such a person would not be able to fulfill the obligations of tenancy.

In many cases management will not know a prospective resident has a mental disability. The information about the condition would usually come from the individual if he or she acknowledges it during the application process. If a person makes such a disclosure, management cannot inquire about the mental situation.

Management, in some instances, may deny residency to a person if his or her behavior “would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”

In order to establish that the prospect would pose such a “direct threat” to either other individuals or the property, the landlord must establish objective evidence of violent or property destructive behavior.

An obvious example of such a “direct threat” would be a fire investigation report, which establishes the prospect intentionally and deliberately set a fire at his or her previous residence and there is no evidence of a change in behavior since.

Case Example

A recent case in Illinois involved the denial of residency to an individual with a mental disability who disclosed this information on his rental application. The leasing agent contacted the prospect’s former landlord who gave the man a positive recommendation. However, he also said the person removed a window and replaced it claiming his non-existent twin was responsible.

The leasing agent obtained the prospect’s police report. This revealed an arrest for property damage and battery, although there was no conviction.

Unfortunately, the leasing agent did not accurately record this information. She rejected the applicant because a criminal background check showed he assaulted his former landlord and damaged property. Neither of these statements was correct.

The leasing agent also did not take note of the individual’s explanation of his arrest. The prospective resident sued the property owner and leasing agent, alleging discrimination because of his mental disability.

The administrative judge ruled that the individual was not a direct threat to the safety of others or the property. The court essentially concluded that the leasing agent denied the individual’s application as a pretext to her actual bias and discrimination toward the mentally disabled. The incident resulted in the owner paying more than \$20,000 in damages to the prospect.

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Reasonable Accommodation

Landlords also should note that even if there is credible and objective evidence that an applicant poses a threat, he or she must still accept an application for residency if that behavior no longer is present or is curable. Essentially, if the prospect asks for a reasonable accommodation, management should still accept the application.

An example of this accommodation would be if an applicant's prior violent or destructive behavior occurred while the individual stopped taking medication and corrected this by again taking the medicine.

The law calls this an "extenuating circumstance." If the prospect provides evidence from his or her medical provider that the violent or destructive behavior occurred only when he or she was not taking the medicine, a reasonable accommodation may be to accept the application of the prospect.

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