

Court Upholds Rule Change On Sex Offenders

A recent case from the state of Washington addressed a landlord's decision to adopt a new rule excluding sex offenders from the property upon 30 days notice and retroactively applying it to existing residents.

In this case, an individual moved into a low-income housing project in 1996. The person acknowledged on his rental application that he was a convicted felon. The application, however, did not inquire as to the nature of the offense. The landlord approved the individual, who continued his residency without any difficulties with management for over three years.

Management, however, later discovered that three renters were convicted sex offenders. It determined that it should not knowingly permit such individuals to continue to reside at the community and adopted such a rule upon providing 30 days notice to all of its residents. Two of the three convicted sex offenders vacated the premises, but the aforementioned individual did not.

The landlord initiated an eviction proceeding against the resident. The individual argued that it was unreasonable to retroactively apply the rule to him. He stated that management knew of his status as a felon and that he did not commit further offenses while residing at the property. Additionally, he said he complied with his treatment plan and had not exhibited any threatening behavior toward other residents.

The court set forth the general proposition that a sex offender's tendency to slip back into his or her previous criminal habits constitutes an increased risk to the public. It went on to refer to federal housing policy that prohibits convicted sex offenders from residing in federally assisted housing. The court expressed sympathy with the resident's predicament, but found management's new rule reasonable.

The Arizona Residential Landlord and Tenant Act permits a rule change upon 30 days notice as long as "it does not constitute a substantial modification of the tenant's rental agreement" (A.R.S. 33-1342B). It is conceivable that Arizona landlords could adopt such a rule change that the courts would uphold if challenged. However, it may be in management's best interest to make a full inquiry at the application stage and adopt a stringent policy concerning the types of criminal offenses that would disqualify an individual from residency.

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