

Refusal To Rent To Felons

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On January 4, 1994, the United States Court of Appeals in the Seventh Circuit reached an important decision regarding the rental of apartment units to potential tenants with past criminal records. The Court ruled that a landlord had discretion to rent to someone with a criminal record and that refusal to rent to someone with such a record would not constitute discrimination.

In *Talley vs. Lane*, an action was instigated in Chicago by an aggrieved potential tenant, Talley, after his housing application was rejected. Although Talley had been diagnosed as "statutorily blind" from cataracts and was receiving Supplemental Security Income, he did not claim that he was discriminated against because of his disability. Instead, Talley claimed that the landlord denied him housing solely because of his past criminal conduct which included convictions for theft, rape, possession of burglary tools, possession of cocaine, unlawful use of a weapon, and outstanding warrants for both robbery and armed robbery.

In reaching its conclusion, the Court looked to two provisions of the Federal Fair Housing Act. First, the Court stated that the Act clearly prohibits discrimination in tenant selection that is based upon race, color, religion, sex, handicap, familial status, or national origin. Because "ex-convicts" are not included in this statutorily protected group, a landlord is not prohibited from considering past criminal actions of a prospective tenant. Thus, the Court gives a landlord the discretion to establish his own tenant selection criteria with regard to criminal convictions.

However, the Court ruled that a landlord's discretion is not without limitations. In screening potential tenants, a landlord can only refuse to rent to a person whose past criminal records involve either property or assaultive crimes. This is because a provision of the Fair Housing Act states that an individual may refuse to rent to an applicant who would pose a health or safety risk to other tenants or whose tenancy would result in substantial physical damage to the property owners.

In this case, the Court found that the landlord was solely exercising his discretion in refusing to rent to Talley because of Talley's status as a convicted felon. Such an action was not violative of the Fair Housing Act. Furthermore, the Court found that because Talley's past criminal convictions fell within the realm of both property and assaultive crimes, they were indicative of potential danger to other tenants in the complex. Thus, the landlord's refusal of Talley's application constituted protection of other tenants, which is clearly espoused by the Fair Housing Act.

Talley vs. Lane is an important case because it illustrates the power that a landlord possesses when faced with a prospective tenant who has a criminal record. However, although the result is indicative of the judiciary's review regarding renting to persons with a criminal record, the Court's decision is not to be universally applied. Due to the fact that Talley had an extensive

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record, it is unclear how the Court would rule if a potential tenant had a singular conviction on his record that had occurred several years prior to his application for rent.

Because of this uncertainty, a landlord, if faced with the decision of whether to rent to an applicant with a criminal record, should consider the number of convictions, type(s) of crimes committed, and the time period in which these convictions occurred. An informed decision based on such an examination will likely prevent any violations of the Fair Housing Act.

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