

Equal Treatment of Prospective Residents Necessary

A federal court recently addressed a resident's contention of racial discrimination by a property owner and on-site manager.

A black resident alleged overhearing the on-site manager say, "the owners don't want to rent to blacks." The resident contacted a fair housing organization, which sent testers to the apartment community.

Testers Treated Differently

As part of its investigation, a white fair housing tester posed as a prospective renter and contacted the property in regards to a vacancy. The owner did not inquire about the individual's marital status or current residence, and made no negative references to the community and surrounding area. He instructed the tester to come to the community to view one of the units.

Later that day, a black tester also called the owner requesting information about the vacant apartment. The owner quoted her the same rental rate as the white tester but inquired about her marital status. The woman stated she was married. He told her there would be an additional \$50 monthly charge for the other occupant.

He also said the unit was small, and he preferred to rent to single persons. Additionally, the owner said that there was only one parking space per unit and she would have to find another one for her occupant.

The owner then asked her where she was currently living, saying her present residence was probably safer. He again reiterated about the small size of the unit.

The tester went back to the community the following day to inspect the apartment. The on-site manager showed her the unit, but said she couldn't tell her of any details of residency and she needed to contact the owner directly.

However, when the white tester arrived later that day, the on-site manager informed her of all the requirements for residency, including the cost of rent, security deposit and move-in requirements.

The resident later filed a lawsuit in federal court alleging the owners discriminated against blacks on the basis of race and color in the operation of their community, thereby violating the Federal Fair Housing Act. The court commented that it is unlawful to misrepresent the availability of a dwelling based on the race of the prospective residents.

Additionally, it looked to various U.S. Department of Housing and Urban Development regulations. These state it is unlawful to:

- Provide false or inaccurate information regarding the availability of a dwelling for rental to any person, including tester, regardless of whether such person is actually seeking housing because of race.

Equal Treatment of Prospective Residents Necessary

- Discourage any person from inspecting or renting a dwelling because of race.
- Discourage the rental of a dwelling because of race by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood or development.
- Deny or delay the processing of an application because of race.

The court found the owner treated the rental testers differently in a number of respects:

- He expressed his rental preference to the black tester but not the white tester.
- He informed the black tester that she would have to pay \$50 for an additional occupant. He did not tell this to the white tester.
- The owner told the black tester the unit was small but did not mention this to the other tester.
- He informed the black tester that the area was unsafe while not telling the white tester this information.

Additionally, the on-site manager also treated the individuals differently. This included:

- Informing the white tester the terms of the lease while instructing the other tester to call the owner for information.
- Inviting the white tester into her apartment to contact the owner while instructing the black tester to get the telephone number from a sign outside of the property.
- Introducing the white tester to the owner as a "beautiful girl I'd love to have as my neighbor" while not endorsing the black tester.

The court concluded that the resident brought forth a prima facie disparate claim under the Fair Housing Act since the black tester was a member of a protected class and discouraged from renting.

Even though these actions concerned the activities of fair housing testers, the court stated the resident could still use these findings as basis for her case. The act protects persons allegedly deprived of the opportunity to live in an apartment free of housing discrimination.

Owners should note that they can present a defense under these facts but must show nondiscriminatory reasons for their behavior. In the above case, the owner argued that the conversations were merely a consequence of bad timing and different personality types,

Equal Treatment of Prospective Residents Necessary

rather than any discriminatory intent. This argument, however, is unlikely to be persuasive.

The resident further stated the owner's actions were not consistent with a person wanting to rent out an apartment. She added that the on-site manager was merely a "filter" for screening blacks.

While this case appears to be an extreme example of discrimination practices, it does underscore the basic premise that owners and management should treat all residents consistently.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

June 2000 / Apartment News