



Courtside *Newsletter*

Don't Want to Rent to College Students? Better Have a Good Reason

BY: MARK A. ABELL, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL

From cash flow to keggers, many landlords may have a host of concerns about renting to college students. With the new school season fast approaching, the question arises: can a landlord refuse to rent to these (oftentimes) young tenants? The answer isn't as clear cut as one might anticipate. Ultimately, it depends. Long story short, a landlord may not unlawfully discriminate against a college student in an arbitrary manner, or on the basis of the college student being a member of a protected group. The landlord must be able to establish that he has a legitimate, nondiscriminatory justification for his decision, which he has applied equally. We discuss this further below.

The Law

Generally speaking, landlords have discretion to select acceptable tenants. However, landlords cannot unlawfully discriminate. What constitutes unlawful discrimination is governed by Federal law, California state law, and local ordinances, making it complex and dependent on factual situations. Collectively, these regulations prohibit decisions to rent being made in an arbitrary and/or discriminatory manner against protected groups by:

- advertising property for rent in a specific manner
- refusing to rent
- charging higher rent
- imposing more onerous rental agreement terms
- denying certain rental privileges
- impeding accessibility of the rented premises
- terminating tenancies

As defined by Government Code § 12955, it is unlawful to “discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability,

or genetic information” of a person in any of the above manners. The above-described categories are considered “protected groups.”

Without any specific facts as to a particular tenant, a college student may be in at least three protected groups because of his or her marital status, age, or source of income.

1. Marital Status

The California Fair Employment Housing Act (FEHA) expressly prohibits housing discrimination on the basis of marital status. Specifically, “the opportunity to seek, obtain, and hold housing without discrimination because of...marital status...[is] recognized as...a civil right” under Government Code § 12921(b). (See also, Gov.C. §§ 12920, 12955; Fam.C. § 297.5(f).) FEHA’s “marital status” group protects a broad range of persons from housing discrimination including single men and women, students, and unmarried couples.

2. Age

The Federal Fair Housing Act (FHA) (42 USC § 3604), the state FEHA and California’s Unruh Civil Rights Act (Civil Code § 51, et seq.) prohibit housing discrimination based upon age. Specifically, the Unruh Civil Rights Act broadly proscribes age-based housing discrimination via CC §§ 51.2 (state-wide) and 51.10 (for the county of Riverside).

3. Source of Income

FEHA expressly prohibits housing discrimination or harassment on the basis of source of income. As with marital status, the opportunity to seek, obtain, and hold housing without discrimination based on source of income is considered a civil right and discrimination is “against public policy.”

Continued ...

Arbitrary Discrimination

While the Unruh Act lists specific protected groups, California courts have expanded the discrimination ban beyond those expressly mentioned categories. The classifications listed in the statute are construed by the courts as “illustrative, and not restrictive” of the kinds of discrimination prohibited by the Act. Broadening this view, California courts have concluded the Unruh Act protects *all persons* from *all forms* of arbitrary discrimination.

Landlord Protection

To protect himself, a landlord should be able to produce evidence that the decision not to rent to a certain tenant or tenants was for a “legitimate, nondiscriminatory reason.” In *Harris v. Capital Growth Investors XIV*, the landlord offered proof that it rejected female heads of low income families as tenants because they could not satisfy the landlord’s minimum income policy. Further proof was offered that policy had been applied equally to all prospective tenants. As a result, this was a valid defense to a charge of unlawful gender-based rental discrimination. Such a policy makes permissible distinctions among persons that are justified by the landlord’s legitimate business interest in assessing the capability of prospective tenants to pay full and timely rent on a continuing basis.

However, in *Fair Housing Council v. Ayres*, a landlord’s interest in preventing damage and destruction to apartments from excessive wear and tear, and desire to reduce ongoing maintenance costs was rejected as a “legitimate business justification” for its two-bedroom/two-person maximum occupancy restriction in a FHA familial status discrimination case.

Conclusion

In the end, a landlord may not unlawfully discriminate against a college student in an arbitrary manner, or on the basis of the college student being a member of a protected group. The landlord must be able to establish that he has a “legitimate, nondiscriminatory justification” for his decisions that he has applied equally to all applicants, as described above.

If you are a property manager or landlord, you should seek qualified legal counsel to review your rental policies and terms to ensure you’re not accidentally discriminating or unlawfully denying tenancy.

Calendar

RPA with Forms

Date: August 3, 2017

Time: 9:30 a.m. – 4:00 p.m.

Location: Pacific West Association of REALTORS® - Long Beach

Contact PWR for more info!

www.pwr.net

Broker Supervision

Date: August 11, 2017

Time: 9:00 a.m. – 1:00 p.m.

Location: Pacific West Association of REALTORS® - Anaheim

Contact PWR for more info!

www.pwr.net

Risk Management for Property Managers

Date: September 13, 2017

Time: 10:00 a.m. – 12:00 p.m.

Location: Southwest Riverside County Association of REALTORS® - Hemet

Contact SRCAR for more info!

www.srcar.org

Legal Update (Two Sessions!)

Date: September 15, 2017

Times: 12:30 p.m. – 2:00 p.m.

3:00 p.m. – 4:30 p.m.

Location: Pacific West Association of REALTORS® - Anaheim

Contact PWR for more info!

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