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## **What Tenants Need To Know About Fair Housing**

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### **A Two-Part Series**

Fair Housing is a literal mine field fraught with confusion and hazards for both the landlord and the tenant. This article strives to provide you, the tenant, with a partial list of practices and procedures that are the “best practices” for leasing which the tenant may expect to see from a landlord. Just because the landlord does not follow the recommended practices in this article does not necessarily constitute a Fair Housing violation. If you have questions or concerns, it is advisable that you discuss the specific situations with your own attorney or with a Fair Housing advocacy group.

Fair Housing alone could fill, in its briefest form, twenty of these columns. That is obviously not practical for your use. Basic Fair Housing Law prohibits discrimination against people because of their: (1) race or color; (2) national origin; (3) religion; (4) sex (currently, in this region, this does not include sexual orientation); (5) familial status; and (6) disability. In the rental of housing, no one may take the following actions based upon the categories described above: (a) refuse to rent housing; (b) refuse to negotiate housing; (c) make housing unavailable; (d) set different terms or conditions or privileges for the rental of the dwelling; (e) provide different housing services or facilities based upon a protected classification; (f) falsely deny that the housing is available for inspection or rental; (g) for profit persuade owners to rent (also known as block busting); or (h) deny anyone access to a membership in a facility or service (such as an apartment locator service related to the rental of housing). There are several places in the interaction with your landlord, without explaining the entire Act, where Fair Housing is involved. The golden rule of Fair Housing is to treat everyone the same.

Finally, Fair Housing does not end at the signing of the Lease. There are ongoing requirements of the Fair Housing Act that apply during the tenancy, for example, the speed and dispatch at which maintenance requests are handled. It is not that the landlord may be slow in handling maintenance requests, but if the landlord handles maintenance requests for some people faster than those requests from members of a protected class, this could be a violation.

#### **I. Displaying the Fair Housing Poster and Using the Fair Housing Logo**

The Fair Housing Act requires the display of a Fair Housing poster in one of the following locations. These locations are provided in order of preference under the Act:

1. In the rental office where the prospect will make the first contact with the landlord;
2. If there is no office available where the prospect would meet the landlord, then in the common area of the building where the leasing agent may first meet the prospective tenant.
3. If neither of these is available, then the poster must be prominently displayed in the unit which is available for rent.

You should expect to see a Fair Housing logo on rental materials from the landlord, including, but not exclusively, the following documents: any business card; the guest card; rental application; rental standards; the lease document; and any brochures or promotional materials.

## **II. Rental Standards**

You should expect to receive a set of written Rental Standards either when you visit the apartment or if you request, when you call on the telephone, or send an e-mail inquiry about the apartment. Please make sure to provide a good e-mail address or fax number if you want to receive the Rental Standards from the landlord before touring the apartment. Rental Standards provide you with advance information about the requirements a landlord has for such items as credit, past landlord history, and criminal history before you apply for the apartment. This way, you do not have to spend money on application fees if you know your credit, criminal or landlord history does not meet the advanced declared requirements of the landlord. An example of items you may see in written Rental Standards are: (1) An income-to-rent ratio; (2) a credit score requirement; (3) the amount of the application fee and any additional charges you may incur as a result of applying for the apartment; (4) the amount of a deposit required to hold an apartment, and what happens to the deposit if you are accepted and do not take the apartment; (5) the documents that may be required to be verified such as a tax return, a W-2 or pay stub; (6) employment history or requirement of employment, or not employed asset requirement; (7) willingness to accept someone who has filed bankruptcy; (8) past landlord histories; (9) past eviction history; (10) criminal record including specific crimes that have been committed which may be excluded forever or for a period of time, and other documentary requirements that the landlord may have to verify your identity.

Please note that Rental Standards can be changed by the landlord. If you are considering an apartment and do not end up applying for it immediately, please check with the landlord to make sure that Rental Standards have not changed before you submit your application.

## **III. Rental Application**

You should expect to receive a rental application to complete. Often, the landlord will require each adult occupant to complete a separate application. The application will ask you questions about your identity, the proposed occupants in the apartment, your source of income, credit and criminal history, and will include a release allowing the landlord to run the various credit, criminal and background checks which the landlord requires a listed in either the application or in the Rental Standards.

## **IV. Adverse Action Notices**

After submitting a rental application, if you are refused housing on the basis of a credit issue, which can include items such as previous bankruptcies, existing court judgments, prior disputes with landlords, etc., then you should expect to receive from the landlord an Adverse Action Notice explaining to you where the landlord obtained your credit information and giving you the

right to dispute the accuracy of that information with the credit reporting service that provided the landlord with the information.

#### **V. Lead Paint Disclosure**

You should expect to receive from your landlord for any property built prior to 1978 a copy of the HUD Publication called *Protecting Your Family From Lead*, and to receive a Disclosure Form indicating ownership and agent's knowledge of the existence of lead paint in the premises. Please note the landlord is required to disclose any actual knowledge of lead paint in the building. The landlord is required to obtain a receipt from you indicating that you received your Disclosure Form and a copy of the *Protecting Your Family From Lead* handbook. If the disclosure form does not identify known lead hazards, this does not mean that the apartment is certified lead-free, just that the landlord does not have actual knowledge from actual testing for lead paint.

Any time the landlord is disturbing an area of plaster or paint inside your apartment greater than 2' x 2', outside greater than 20 square feet outside, i.e. scraping paint or replacing a ceiling on the inside of the unit, the landlord should to offer you a new copy of the *Protecting Your Family From Lead* brochure.

#### **VI. City of Cincinnati - Specific Issues**

Specific to properties located within the City of Cincinnati, a landlord is are required to give you a notice form which describes the Cincinnati Municipal Code Tenant Rights sections. The landlord is required to obtain a signed receipt for this notice.

If the landlord provides heat, the Cincinnati Municipal Code requires the landlord to provide 70°F heat during the day (6:00 a.m. to 11:00 p.m.), and 64°F at night (11:00 p.m. to 6:00 a.m.), any time it is colder than 55°F outside.

#### **VII. Security Deposit Disposition.**

\_\_\_\_\_ Security deposits are discussed in Chapter 5321 of the Ohio Revised Code. A security deposit by definition is any deposit of money or property to secure performance by the tenant of their rental agreement. Thus, a security deposit does not become property belonging to the landlord until after a rental agreement is executed, and some would argue until possession is taken. Thus, many landlords are willing to take a security deposit in advance of the execution of the lease. If it is called a "security deposit", it is not forfeitable if you do not return to sign the Lease or you do not take possession of the premises. Rather, many landlords call it an "earnest money deposit" and converted into a security deposit upon your taking possession. At the termination of the term, the security deposit may be held by a landlord as security to be applied to the payment of past due rent and a payment of the amount of damages that the landlord has suffered by reason of your non-compliance of your responsibilities. However, any deduction from the security deposit must be itemized and identified by the landlord in a written notice delivered to the tenant, together with any

amount due, no more than thirty days after delivery of possession to the landlord. The local Court of Appeals (the Ohio First District Court of Appeals) has made it known that the itemization must be clear enough to the tenant to demonstrate that damages are in excess of what would otherwise be ordinary wear and tear. As an example, if the landlord says “clean refrigerator” on the security deposit disposition statement, this is not adequate enough to let the tenant know that it was cleaning above and beyond ordinary wear and tear. Rather, the the itemization should read “removed moldy food, mold, bugs, etc. from the refrigerator, replace shelf missing from refrigerator, etc.” A security deposit can not, by its nature, be automatically forfeitable, i.e., there should not be listed in the lease automatic deductions from a security deposit for items such as carpet cleaning or other turn over charges which are otherwise considered ordinary wear and tear and necessary charges at every turn over, nor can the security deposit be forfeited in early buy-out or other lease violation. The security deposit itself must, by its nature, remain refundable to the tenant if the tenant complies with the lease in full, and if not, disposition of security deposit must be made at the time that the lease actually terminates and the landlord can itemize its actual damages.

### **Conclusion**

Professional landlords strive to make housing available to all who qualify and that every applicant and eventual tenant the same way. However, landlords are allowed to set non-discriminatory guidelines for who qualifies to live in their property.

Knowing these guidelines in advance will allow you to apply at apartments where you fit these criteria and likewise allow you to send your rent in an apartment community that values your residency.

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