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Fair Housing Newsletter

Keeping you current on fair housing news and issues

LAW OFFICE OF
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Manager and Owner Pay $335,000 to Settle Sexual Harassment and Race Discrimination Lawsuit

The U.S. Department of Justice has settled another sexual harassment and race discrimination lawsuit. This time, it cost the owner and manager $335,000.

The lawsuit, filed by the DOJ, claimed the manager made unwelcome sexual comments and advances toward female tenants, offered housing benefits in exchange for sexual acts, and took or threatened adverse housing actions against women who refused his sexual demands. The lawsuit also alleges the manager used racial slurs with respect to tenants and tenants' guests, and prohibited or attempted to prohibit tenants from having African-American guests in their homes.

Under the settlement agreement, the owner and manager will pay $330,000 to compensate eight victims of discrimination and any others who have been harmed by the manager's actions. In addition, the owner and manager will pay $5,000 as a civil penalty to vindicate the public interest.

The Justice Department has filed or settled 24 sexual harassment cases since January 2017, providing for over $3.1 million for victims of sexual harassment in housing. Don't let the next case be your property.

Note From the Editor: October has finally arrived, which means the holidays are just around the corner. For those who may still need fair housing training, there are multiple COVID safe ways. Drop me an email or give me a call to find out more.

HUD Issues Final Rule on Disparate Impact Standard

On September 3, 2020, the U.S. Department of Housing and Urban Development issued a final rule on the implementation of the Fair Housing Act's disparate impact standard.

The new rule changes HUD's disparate impact rule to reflect a 2015 U.S. Supreme Court decision. Many fair housing advocates are opposed to the new rule as it appears to reduce the burden on landlords. However, it also provides additional layers of complexity through the new burden-shifting analysis. We will just have to wait and see if the new rule decreases the number of Fair Housing Act disparate impact claims or just increases litigation costs. The final rule becomes effective 30 days from the date of publication in the Federal Register.

Condo Association's Strict Enforcement of "No Dog" Policy Lands Them in Trouble with HUD

The U.S. Department of Housing and Urban Development announced it has filed a charge against a New Jersey Condominium Association alleging it violated the Fair Housing Act when it refused to allow an assistance animal.

The Condo Association had a strict policy of "No Dogs" on the property. An owner purchased a condo knowing the rule. However, sometime after the purchase, the owner informed the association that he would be obtaining a service animal. He was disabled and the animal was being trained to retrieve specific items, wake the owner, and help mitigate the symptoms of the owner's disability. The association denied the request for an exception to its "No Dog" policy.

The owner provided information from multiple healthcare providers stating he needed the dog. The Association again denied the request. The owner provided information from the non-profit who was training the dog. The Association again denied the request. The owner hired an attorney and again, the Association denied the request. Finally, the owner filed a complaint with HUD.

HUD investigated the complaint and found evidence the Association had violated the Fair Housing Act by denying the animal. Now what? HUD's charge will be heard by a United States Administrative Law Judge unless any party to the charge elects to have the case heard in federal district court. The Association may be liable for attorney fees, fines and/or punitive damages.

Familial Status Charge for Refusing Children

The U.S. Department of Housing and Urban Development has filed a new charge alleging a Rhode Island landlord refused to rent to a tester who had children. The four-bedroom apartment was advertised on Craigslist and was close to a university. When a tester applied alleging he was a student and had roommates, he was given an application. When another tester applied and told the landlord she had three children, ages 5, 11, and 15, she was told it would not be a good fit. The apartment was older and had elevated lead paint levels, plus the children would be around all the college students. Now the case will be heard by an Administrative Law Judge unless either party choose to go to federal court or settle the case.

HOUSING CROSSROADS
WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

Addressing Domestic Violence on the Property

Wednesday, December 2, 2020
10:00 a.m. - 11:30 a.m. central

Domestic violence can happen anywhere. More importantly for landlords, when it happens at your property, domestic violence can invoke many different laws. Landlords need to know who is protected and who needs to go.

In this webinar, we will discuss the different laws landlords should consider when dealing with a victim of domestic violence and what to do when the laws overlap. Our discussion will include:

- State Domestic Violence Laws
- Violence Against Women's Act
- Disparate Impact Claims
- Requesting the "Right" Documentation
- Sending the Right Notice
- Banning the Perpetrator

$34.99
Register Now

Nathan Lybarger
Law Office of Hall & Associates

Speakers

Angelita Fisher
Law Office of Angelita E. Fisher

Court Holds No Connection Between Failure to Pay Rent and Disability

An Ohio Court of Appeals has held a landlord did not violate fair housing laws when he refused to grant a resident's accommodation request. In this case, the disability and the failure to pay rent were not connected.

Most landlords know the Fair Housing Act requires landlords to provide reasonable accommodations to disabled applicants and residents. In order to qualify, the resident/applicant must be disabled and they must need the accommodation because of his/her disability. In other words, there has to be a connection between the disability and the accommodation.

In the Ohio case, the resident simply did not pay rent. She owed $27 a month after her voucher. After not paying rent for one month, the resident was served with a 10-day notice to vacate due to her failure to pay. The resident got an attorney.

The attorney sent a letter claiming the resident was a "person with a disability" and that her "disabilities have impacted her ability to comply with program rules." The attorney then asked for the following accommodations:

1. Revoke the 10-Day Notice to Vacate;
2. Accept all past due rent;
3. Provide a copy of any future notices, letters or other documents to the resident and to her caseworker; and
4. Dismiss the pending eviction.

The landlord refused. The resident had called the property manager the day she received the 10-day notice and stated it had been a busy month and she had forgotten to pay rent. Moreover, she had never attempted to pay rent. She even testified in court that a family member had stopped giving her any financial assistance the same month. The landlord moved ahead with eviction.

In court, the judge held on behalf of the landlord. There was no necessary connection between the resident's failure to pay and her disability. There was also no connection between her financial status and her disability. As such, the accommodation requests were not reasonable.

Occupancy Standards Complaint Settles for $6,000

A California landlord has agreed to settle a fair housing complaint filed with the U.S. Department of Housing and Urban Development. The complaint alleged the landlord refused to rent a two-bedroom apartment to a husband and wife with three kids. The agreement does not specify the age of the children or size of the bedrooms.

Because the agreement does not outline all the facts, it is impossible to determine exactly where the landlord may have gone wrong. However, putting the questions about the age of the children and size of the bedrooms aside, if a landlord had a two-person per bedroom policy, it would have been reasonable to refuse to rent a two-bedroom unit to a family of five. Regardless, under the settlement, the landlord agreed, to pay $6,000 to the couple.

Texas Landlords Settle DOJ Lawsuit Alleging They Charged Unlawful Lease Termination Fees to Servicemembers

The U.S. Department of Justice has reached settlement with the former owners of two apartment complexes in San Antonio, Texas. The agreement resolves allegations the properties violated the Servicemembers Civil Relief Act when they charged 41 servicemembers lease termination charges and refused to allow four other servicemembers to terminate their leases early.

The suit allege the properties required service members to pay back rent concessions or discounts they had received during their tenancies. These so-called "concession chargeback" fees ranged from $116 to $1,012 per servicemember. The DOJ's suit also alleges that the owners wrongfully denied lease termination requests made by four other servicemembers.

Under the agreement, the owners will pay over $71,000 to compensate servicemembers and a $64,715 civil penalty to the U.S. Treasury. The agreement is still subject to court approval.

The SCRA allows servicemembers to terminate a lease early after entering military service or receiving qualifying military orders. Under the law, qualifying orders include orders for a permanent change of station, orders for a deployment of at least 90 days, and separation or retirement orders. If a servicemember terminates a lease under the SCRA, the law prohibits the landlord from imposing any early termination charges.

Lesson Learned: In this case, the landlords had used a lease which attempted to waive the servicemember's rights under SCRA. The release did not work.

Fair Housing Webinar
Tackling the Top Six Accommodation/Modification Requests

Wednesday, October 14, 2020
10:00 a.m. - 11:00 a.m. Central

Disability complaints make up around 50% of all fair housing complaints filed with HUD or state agencies. Why? Possibly because landlords have the duty to make accommodations or allow modifications when they are reasonable. The process of determining if the request is reasonable is often where landlords go awry. In this webinar, we will discuss six of the most common requests and how to evaluate if the request is reasonable. Our discussion will include:

- Emotional Support Animals
- Parking Spaces
- Ramps
- Transfers
- Grab Bars
- Rent Payments

$24.99
Register Now

Reconsideration of HUD Complaint Ends In $8,000 Settlement

Most landlords are relieved to learn a tenant's fair housing complaint has been dismissed and the agency found no evidence of discrimination. We sometimes forget, however, the agency can always change their mind. This happened in a recent case involving a HUD investigation.

A resident filed a complaint alleging the landlord failed to accommodate his disability. HUD investigated and found no evidence of discrimination. Landlord is off the hook…right? Not so fast. The tenant asked HUD to reconsider its decision and HUD agreed. This time HUD reversed its decision and held the landlord violated fair housing laws by failing to accommodate the tenant's disability.

Although the landlord continued to deny he had violated the law, he decided to settle the case. The landlord agreed to pay $8,000 to the tenant. Lesson learned: Just when you think the HUD investigation is over, remember the tenant can always ask for a reconsideration.

Wyoming Landlord in Trouble of Child Restrictive Rules

Children must be in by 9:00 p.m. Children can only play in designated areas. Children under 12 must be supervised. Sound familiar? If these are your rules, you may end up in the same boat with a Wyoming landlord.

The Wyoming landlord was having problems with children riding bikes in the parking lot and generally causing noise and problems on the property. So, instead of addressing each child's behavior with the parents, she sent out a general notice stating: "PLEASE SUPERVISE YOUR CHILDREN WHEN THEY ARE OUTSIDE – We are having way too many complaints about kids on bikes driving in front of cars in the parking lot and have notice [sic] that most of these children do not have helmets."

Then, a short time later, she issued new rules which were posted on tenant's doors and stated: "Due to the NUMEROUS complaints we have received regarding unsupervised children disrupting the peace of the community at all hours of the day and night these rules will be going into effect IMMEDIATELY: -Children 12 and under must be supervised by an adult while outside -The playground area and field with the basketball hoop are the ONLY designated play areas-there will be no more playing or hanging out behind building, entryways/stairwells, in parking lots or in the dog park -Curfew is 9pm—children should not be left outside unattended after hours -Excessive noise will not be tolerated." "If you are a resident who is being disturbed due to any of these above mentioned issues please do not hesitate to relay any information to the office. If behavior continues LEASE VIOLATIONS AND POSSIBLE EVICTIONS will be delivered."

One family filed a complaint with HUD and now HUD has filed a charge. According to HUD, these policies violate the Fair Housing Act.

ESA Denial Brings Another HUD Charge

By now, all landlords and attorneys who represent landlords should know all about emotional support animals. Not so. On September 30, 2020, the U.S. Department of Housing and Urban Development announced it had filed yet another charge against a landlord who refused an ESA. This time it is a New York landlord who repeatedly refused the animal until finally she stated she would discuss it with her attorney. After her discussion, she stated she would allow the animal, but it had to be trained and it had to be certified. Both requirements violated fair housing laws.