

The following article is a fictitious case study designed to demonstrate the practical application of Fair Housing laws in issues faced by landlords and tenants.

Alex a single Hispanic male, learned about a vacancy at an apartment complex where his co-worker, Jill, currently resides. They both work for a construction company where Alex a craftsman and Jill does bookkeeping. Jill described the good value and amenities of the complex to Alex. She said the complex did not have vacancies often, and the units that open up are filled quickly. Jill told Alex one of her neighbors had moved out, and he was interested in viewing the apartment.

Alex called to arrange an appointment that same day. The manager said he could show the apartment at 5:00 p.m. and Alex agreed to meet him at that hour. He rushed from the job site in his work clothes and arrived just in time.

When they met, the manager asked Alex to fill out some paperwork before viewing the apartment. The forms included a rental application and a permission form to conduct a criminal background check. The manager agreed to let him take the forms home and return them the following afternoon when Alex could then view the apartment.

Alex did not have a criminal record and he had never before been asked to fill out a criminal background check when renting an apartment. He asked Jill about this requirement. Jill said she was not required to fill out any forms before she was shown an apartment, and she was never asked to complete a criminal background check.

Alex contacted a fair housing advocacy organization with questions about his rights under the Fair Housing Act. The organization conducted a comparison in which a trained minority male tester arrived in work clothes and asked to view the vacant unit. The manager told the tester there were other applicants ahead of him. When the tester continued to express interest, the manager requested that he fill out the application and permission form for a criminal background check before showing the unit.

Later that same day, a white female tester inquired about the vacant unit. She arrived in business attire and the manager showed her the vacant apartment. After she viewed the unit, the manager asked her to complete an application if she was interested in renting. She asked if any other forms were required, and the manager said the application was the only form the used.

The actions of the manager raises three questions:

- 1) Why did the manager require the minority male tester to complete paperwork before showing the apartment when the white female tester was not required to fill out any forms until after the viewing?
- 2) Why did the manager require a criminal background check of the minority male tester but not the female tester? Why was Alex required to pass a criminal background check and not Jill?
- 3) Why didn't the manager tell the white female tester about other prior applicants?

Under the Fair Housing Act, it is illegal to conduct a screening that imposes different or additional application requirements for members of a protected class. The application process must be the same for all applicants. In this case, the manager was seeking to screen out minority males and/or make it more difficult for them to qualify for vacancies by requiring them to pass criminal background checks. Alex could file a complaint against this landlord with the Human Rights Commission on this basis. The Human Rights Commission would conduct an investigation of the facts in this case. If it found that the manager discriminated, both the manager and the property owner may be subject to civil penalties and payment of damages.

Application Policies and Background Checks

Landlords may want to develop written policies concerning the results of criminal background checks. While landlords may have written policies that exclude any applications with criminal records of any kind, additional points to consider are time limits and types of crimes. How would they view an applicant, qualified in every other way, who has a trespassing conviction three years ago? Or an applicant who was convicted of shoplifting 20 years ago? The purpose of the written policy is to define precisely what the applicant must do to pass the criminal background check, whether it be no convictions at all, no convictions in a set number of years, or no convictions for crimes against people or property.

In addition, evaluation of criminal background should involve convictions, not arrests. Because minority males are arrested more often than other individuals, excluding someone based on an arrest may have discriminatory impact.

Landlords should not make assumptions about applicants' qualifications based on physical appearance or membership in a protected class. If passing a criminal background check is part of the application process, it must be required of every applicant.