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Fair Housing Newsletter

Keeping you current on fair housing news and issues

LAW OFFICE OF
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TN Judge Dismisses Political Expression Fair Housing Case

A Federal Judge in Tennessee has dismissed a resident's fair housing case and clarified that the Fair Housing Act does not protect a resident from discrimination based on political expression.

The case involved a homeowner's claims against a homeowner association. The owner claimed the HOA denied his access to the clubhouse, pool and other amenities due to political signs in his yard. The owner believed this was discrimination in violation of the Fair Housing Act. The HOA admitted they had denied the owner's access to amenities due to the political signs, but argued it did not violate the Fair Housing Act and besides, the owner agreed to the rule when he signed the HOA covenants.

The judge agreed with the HOA and dismissed the Fair Housing Act claims. The court held that "The Fair Housing Act, broadly speaking, prohibits discrimination in the sale or rental of housing and in the provision of housing services or facilities 'because of race, color, religion, sex, familial status, or national origin.'" It does not protect individuals from discrimination due to their political views.

Note From the Editor: August is gone and we are looking forward to some cooler temperatures. Soon 2024 will be gone. If you still need fair housing training for maintenance employees, you are in luck. This month's Fair Housing Webinar is for maintenance. See page 5 for more information.

NY Co-Op to Pay $165K for Denial of Support Parrots

A New York co-op has agreed to pay a resident $165,000 in damages plus $585,000 for the shares of her apartment. Why? Because the resident was being evicted for having emotional support parrots.

The case began in 2015 when the residents' neighbor complained about noise created by the resident's parrots. The neighbor called the Department of Environment Protection 15 times asking them to investigate. However, the Department of Environment Protection did not issue any violations. Because of the neighbor's complaints, the resident asked the co-op board for permission to keep parrots as support animals to help her deal with a disability. The board responded by initiating eviction proceedings.

The resident left the unit and filed a complaint with HUD, alleging that the HOA denied her accommodation requet and that the eviction proceeding interfered with her fair housing rights. While HUD was investigating, the resident received an offer to purchase her unit for $467,500, but the co-op board rejected the application from the proposed purchaser.

HUD's investigation resulted in a finding that there was probable cause to believe that the co-op board violated the Fair Housing Act by denying the resident's request to keep her parrots as emotional support animals and retaliated against her by denying the proposed purchaser's application. The co-op board chose to proceed to federal court.

Under the settlement agreement, the co-op board must pay the resident $165,000 in damages and offer $585,000 to purchase the resident's shares in the cooperative. In all, these are some very expensive parrots.

DOJ Sues RealPage for Algorithmic Pricing Scheme

The U.S. Department of Justice, along with the Attorneys General of North Carolina, California, Colorado, Connecticut, Minnesota, Oregon, Tennessee, and Washington, have filed a civil antitrust lawsuit against RealPage Inc. for its alleged unlawful scheme to decrease competition among landlords in apartment pricing.

The lawsuit alleges RealPage contracts with "competing landlords who agree to share with RealPage nonpublic, competitively sensitive information about their apartment rental rates and other lease terms to train and run RealPage's algorithmic pricing software." This software then generates recommendations, including apartment rental pricing and other terms, for participating landlords based on their and their rivals' information. According to the lawsuit, the agreements between RealPage and landlords harm the competitive process in local rental markets for multi-family dwellings across the United States which results in higher prices for renters and less rental concessions.

If true, these actions may violate federal antitrust laws. Stay tuned as we watch this case develop.

HOUSING CROSSROADS
WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

STOP or GO?

What to do when a resident raises the stakes during an eviction.

Wednesday, September 25, 2024
10:00 a.m. - 11:30 a.m. central

As a landlord, you know you may evict a resident for non-payment of rent or for making threats to staff. But what do we do if a tenant ups the ante by filling a Fair Housing Complaint, a domestic violence claim, a counter-claim, or an appeal? What does the law say about how we should react? What are our best practices in these situations?

We will investigate and discuss the options available to a landlord in these scenarios. Whether it be a Fair Housing complaint, allegations of domestic violence or legal responsibilities of a landlord, it's important to be prepared to properly navigate situations that can be rife with liability. This is all the more important when eviction is imminent. Don't get caught unprepared!

$34.99
Register Now

Nathan Lybarger
Law Office of Hall & Associates

Speakers

Angelita Fisher
Law Office of Angelita E. Fisher

Ohio Landlord Pays $170K to Settle Sexual Harassment Lawsuit

An Ohio rental property owner and manager has agreed to settle a sexual harassment lawsuit filed by the U.S. Department of Justice. The cost? $170,000.

The lawsuit alleges that for at least 10 years, the landlord: requested sex acts from female tenants and applicants; subjected female tenants and applicants to unwelcome sexual touching; made unwelcome sexual comments and advances to female tenants and applicants; demanded that female tenants engage in sex acts with him in order not to lose housing and offered to reduce rent or excuse late or unpaid rent in exchange for sex acts. The lawsuit further alleges the landlord evicted or threatened to evict female tenants who objected to or refused his sexual advances.

Under the settlement agreement, the landlord has agreed to pay $165,000 to former female tenants and applicants harmed by his alleged harassment and a $5,000 civil penalty to the United States. The agreement also permanently bars the landlord from managing residential rental properties in the future. He will be required to hire a property manager for properties he continues to own.

Occupancy Standards Case Goes to the Jury

An Indiana judge has refused to dismiss a lawsuit alleging a multi-family housing development violated the Fair Housing Act by using a two-person per bedroom policy. Now the case must be decided by a jury or be settled.

Over the last few years, occupancy standards have been challenged under the theory that a two-person per bedroom policy, without taking into consideration the age of children or the square footage of a bedroom, cause a disparate impact on families with children. Thus, advocates argue, that such a policy violates the federal Fair Housing Act and similar state laws.

Landlords have long relied on HUD's Keating Memorandum, which states that a two-person per bedroom standards is presumed reasonable, but housing providers should take into consideration other factors such as the age of children and size of the bedrooms.

In the recent Indiana case, the landlord did not consider the other factors outlined in the Keating Memorandum. So, when a fair housing advocacy group started testing the property, they were told that there was no exception to the two-person occupancy policy. The group then filed a lawsuit alleging the property violated the Fair Housing Act because their policy caused a disparate impact on families with children.

After the lawsuit was filed, the landlord requested the case be dismissed. The judge refused. He stated that the landlord had not met his burden of showing that the occupancy standard is necessary to achieve substantial, legitimate, non-discriminatory interests. Thus, a jury will need to decide.

Lesson Learned: Be sure to make exceptions for children under the age of one year old and measure the bedrooms. Your standards should not be more restrictive than local building codes.

Who Pays for an Accommodation or Modification?

A common fair housing question is, "Who pays?" when a resident asks for an accommodation or modification. The answer is, "It depends." The first factor in determining who pays is to identify whether the request is for an accommodation or modification.

An accommodation is a change in a landlord's policy or practice. For example, an emotional support animal, an assigned parking space, or a request to pay rent late each month, are all accommodations. They are a change to the no pet policy, first-come parking policy or the late fee policy. If the request is an accommodation, the landlord pays unless the amount is unreasonable. This rule applies regardless of whether or not the property receives federal funding.

On the other hand, a modification is a structural change to a building or common area. For example, a ramp, grab bars or a taller toilet. If the request is a modification, the resident pays for the modification unless the property receives federal funds. Additionally, in some cases, the resident may be required to return the modification to its original condition when they move from the property.

Remember: In order to qualify for an accommodation or modification, a resident must be disabled and need the accommodation or modification because of his/her disability.

Fair Housing Webinar

Walking Into Trouble

Fair Housing for Maintenance

Wednesday, September 11, 2024
10:00 a.m. - 11:00 a.m. Central

Maintenance employees are on the front-line of the battle of avoiding fair housing complaints. They often see and interact with the residents more than anyone else in the Company. It is important maintenance employees know what to say and do before they walk into a problem.

In this webinar, we will discuss common issues maintenance employees encounter and some realistic steps they can take to avoid getting in trouble with HUD. Our topics will include:

- Encountering Nude & Partially Nude Residents
- Dating Residents
- Apartments with Only Minor Children
- Recognizing a Hoarder
- Managing Maintenance Requests

$24.99
Register Now