

AAGK

RMA Legal Update

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Scenes from An Apartment Community



Act I: *Elderly Residents*



Act II: *Disparate Impact*



Act III: *Disruptive /
Abusive Residents*



Act IV: *New
Service/Support Animal
Legislation*

Act I

Joe Tenant Applies To Live At Forever Young Townhomes

Joe's Application



Excellent Credit – 825 score



Clean Criminal Background
Check



Excellent Tenant History

Joe's Other Information

Joe's current home is Luxury Assisted Living

Joe's Sister calls and tells you

- Joe is incontinent
- Joe tends to wander
- Joe cannot walk more than distances of 25 feet – must have wheelchair assistance

Now What???

Housing Providers Prohibited From Imposing
Requirement that Tenant is Capable of
Independent Living

Laflamme v.
New
Horizons
Connecticut
2009



Independent living facility for severely physically disabled adults.



One- and two-bedroom apartments for severely physically disabled adults who, with limited assistance, “are able to live independently.”



Not a nursing home nor a medical facility.

Tenant Laflamme

Forty-two
years old

Cerebral Palsy

Seizures

Other
physical
disabilities

Uses
wheelchair for
mobility

Depression

After Move-In

Over the next few months, mental health worsened

Called for an ambulance seeking emergency treatment at least eight times,

Hospitalized at least twice.

Management expressed concern tenant's care not effectively managed

Discouraged tenant from moving back in

Fair Housing Violation!

“By making a housing determination based on whether the nature and characteristics of Laflamme’s disabilities ... precluded her from meeting the NHV standard of independent living, Defendants denied her equal housing opportunity on the basis of disability.”

Fair Housing Act

- FHA does NOT protect tenant:
 - Whose tenancy would constitute a **direct threat** to the health and safety of others
 - Whose tenancy would result in substantial physical damage to the property of others
- **Direct Threat**: Is there recent objective evidence of behavior that will put others at risk of harm?



So What About Joe?

Cannot Deny
Application On Basis
That Joe Is Incapable
Of Living
Independently

Can Deny Application
If Evidence Of
Threat To Health And
Safety Of Others

Can Deny Application
If Tenancy Would
Result In Substantial
Physical Damage To
Property

So What About Joe?

What was Joe like
in assisted living?

Did Joe's
reported medical
issues impact
health and safety?

Did Joe's medical
issues cause
physical damage?

Act II

It Was Not My Intention To Discriminate

What Is Disparate Impact?

Disparate impact liability occurs when a housing provider's policy or practice that seems neutral on its face actually results in discriminatory effects on a protected class.

Even if the housing provider did not intend to discriminate, it can still be liable if the effect of the policy or practice results in a disproportionately adverse effect on a protected class.

United
States v.
Facebook,
Inc.



Facebook collects
data on every user



Draws inferences
about users based
on the collected
data



Charges advertisers
for the ability to
target their
advertising based
on the collected
data and inferences
Facebook's
algorithm has made

United States v. Facebook, Inc.

- Facebook states it allows advertisers to target people based on their:
 - Zipcode
 - Age
 - Gender
 - Language



United States v. Facebook, Inc.

- HUD alleges Facebook is violating Fair Housing Laws:
 - Facebook is acting in a discriminatory fashion
 - Even if not intending to discriminate, the algorithm is having a disparate impact on lessees and purchasers



But, I'm
Not
Facebook

- Disparate Impact Is Not Limited To Targeted Facebook Ads
 - Policies on Prior Arrests and Convictions
 - Refusal To Accept Vouchers?? (Could be argued – impact on minorities)
 - Age Based Restrictions On The Use of Apartment Areas or Facilities?

Act III

Smooth Criminal

Resident Criminal Activity

- May Terminate Lease With Three Days Notice
If:
 - Tenant willfully or intentionally commits a violent act
 - Tenant's behavior is a "real and present danger" to health, safety, welfare of life or property
 - Tenant creates hazardous or unsanitary condition



Scenario 1

Mary Tenant is not happy that this is Day 3 with no a/c

Mary charges into the leasing office demanding the a/c be fixed – NOW!

Jake Agent is a brand new leasing agent who is bearing the brunt of Mary's fury

Mary is screaming at the top of her lungs and curses him out for ten minutes before she finally leaves

Scenario 2

Same facts as Scenario 1

While screaming Mary pounds on Jake's desk demanding to see the owner

Jake is reduced to tears

Scenario 3

Same facts as Scenario 1 & 2

After pounding on the desk, Mary stalks to where Jake is sitting and puts her hands in his face

Mary pats her purse and says: "If I have to come back, everyone here will get to say hello to my little friend"

How about Tenant vs. Tenant?

- Bob Oil and John Water are at it again
 - Oil Lives on the first floor; Water has the unit above Oil
 - Oil thinks Water is deliberately making noise to keep him up
 - Water allegedly stomping on the floors and playing music
 - Water accuses Oil of constantly smoking weed

Scenario 1

Water demands Oil be evicted for smoking illegal drugs!

Issues

Proof?

Does this
rise to a three
day eviction?

Resident Criminal Activity

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Scenario 2

Same Facts, but Water says Oil threatened to “make him hurt”
if Water reported the weed to management

Issues

Proof?

Was there an
actual threat?

Bottom Line

- Case by Case - Use with caution
- Three day eviction is reserved for most serious conduct
- “If the landlord’s action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney’s fees.”
- 14 day is still available

Don't
Forget
Giggers!



City housing authority owed a duty of care to its tenants to take reasonable steps to prevent tenants from suffering harm.



The relationship between a landlord and a tenant is one of those relationships deemed special, placing an obligation on landlords to use reasonable care to protect tenants against unreasonable risk of foreseeable harm.

Your Safety Comes First!

Always!

Act IV

Is this really a pet?

Misrepresentation
of a Service or
Support Animal



Effective July 1, 2019 this
is a crime in Tennessee



Class B Misdemeanor

The crime is committed if -



Tenant fraudulently represents as part of a request for a service animal that either:

Person Has Disability OR

Person Needs The Animal For The Disability



Tenant provides documentation to a landlord that falsely states an animal is a service or support animal

Misrepresentation is a Lease Violation!

By Statute
Misrepresentation
is “material
noncompliance”
and a lease default

Landlord may:

- Terminate lease
- Recover damages
- Recover attorney fees

Change Your Accommodation Forms?

- Disclose to Tenant:
 - Misrepresentation is a Misdemeanor
 - Misrepresentation May Lead to Termination of Lease/Rejection of Application
 - Be Careful – Do Not Want To Discourage Legitimate Requests



Thank You!

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