

FAIR HOUSING ISSUE – “Maximum Number of Tenants?”

QUESTION: “Can a landlord can refuse to rent a three bedroom home to a family with 5 children?”

ANSWER:

If the landlord was specifically saying his concern was the number of children... In that case the answer is clear - **no**, a landlord cannot refuse if the reason is because it is 5 “**children.**” - Violation of Fair Housing – discrimination based on “Familial Status.”

My answer of “**maybe**” was to the more general question of “Can a landlord refuse to rent a three bedroom home to 7 **people?**”

Generally the rule of thumb is 2 people to a bedroom, based on the Keating memo issued by HUD a while ago. This is not a hard and fast rule - just a guideline. Does the home have three bedrooms, but also other rooms that could be used as a bedroom (a den, a separate living room, etc.)? Is one of the bedrooms extra large and therefore could reasonably house three people? It could work the opposite way as well - is one bedroom so tiny that it is really only usable by one person? State and local codes can be helpful and other factors like septic or sewer capacity should be considered.

NOTE: The definition of a “bedroom” per the Keating memo is different from the definition of a “bedroom” from an appraiser

Some companies adopt a standard of 2 per bedroom, plus 1. A one-bedroom unit could have three occupants. A two-bedroom unit could have 5 occupants, etc.

Limits should be decided in advance of showing the property to tenants and should be based on the number of people, not children. One possible exception would be that you might have a one-bedroom that you decide in advance to rent to two people maximum based on the size of the unit and bedroom, but if your tenants have a baby, an allowance should probably be made for the baby. Kicking out a couple right after the birth of their first child may be upsetting enough to lead to a challenge by the disgruntled tenant.

Other things to watch with your landlords - any discriminatory language (like the landlord Kim mentioned who was concerned about 5 children specifically, not with 7 occupants), having designated areas of a multifamily building for families or limited access to the amenities for families. Those are all no-nos.

Hope this helps,

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