

Discrimination in the rental market

Information for landlords

Everybody should be given a 'Fair Go' when renting or trying to rent a property. The view that 'it's my property so I can choose who I like' only goes so far. You have the right to choose the most suitable tenant provided no unfair discrimination occurs.

Anti-discrimination laws

The law states that you, or your agent, must not discriminate against anyone, or harass them, because of their:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (gay men and lesbians)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against a person because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of their relatives, friends or associates.

As long as you are not discriminating on one of the above listed grounds you may rent to whoever you like. If you do not want smokers in your premises or tenants with pets, or if you reject an application because of a poor tenancy history or do not think the tenant can pay the rent there is no law to stop you from declining an application for that reason.

You should be aware that you may be liable for discriminatory acts by your agent. For example, if you tell the agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both you and the agent may be liable. It is no defence for the agent to say she or he was simply carrying out your instructions.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be refusing to rent to people with children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

These are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant when you know that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant, or
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

One fair selection process is to rank people in order of when they lodge their application and then assess each application in turn for their capacity to pay the rent and maintain the property.

Fair trading laws

Fair trading laws state that you must not engage in conduct that is, in the circumstances, misleading in connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

Promote your good practices

It's good practice to tell tenants why they were unsuccessful with a tenancy application. If you don't give a legitimate reason, people may assume discrimination occurred. Giving reasons may help people to better understand your decision-making process.

If you are an agent it's also a good idea to develop a letting policy for your office. It should explain that your agency will not discriminate. Display the policy to show your clients and prospective clients that you will provide a fair and equal service. The Real Estate Institute of NSW *Letting Policy* (produced in association with the Anti-Discrimination Board) is one example you may wish to use.

You should also make sure that everybody who works in your business is aware of the law and does not themselves discriminate in their dealings with tenants or prospective tenants. If they do, you may be legally liable

for their unlawful actions unless you can show you took all reasonable steps to prevent them doing so.

More information

NSW Anti-Discrimination Board
Tel: 9268 5555 or 1800 670 812
www.lawlink.nsw.gov.au/adb

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

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