



Drug Addicts: To Rent Or Not To Rent - That Is the Question

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You have a few vacancies, so it is time to see who is at the top of your waiting list. The first applicant is a man with some history of drug addiction. You are uneasy about accepting him as a tenant. You want to protect your site from drug users, but you vaguely remember that drug addicts have some protection under the law. What should you do?

Under the American with Disabilities Act and other statutes, it is illegal to refuse to rent to an applicant based upon the handicapped status of the applicant. In general, substance abusers are protected from discrimination by the statutes, so you cannot refuse to rent an apartment to someone simply because he has a history of using drugs.

However, the definition of handicap specifically excludes, "current, illegal use of or addiction to, a controlled substance." A landlord who rejects an applicant based upon current, illegal use of drugs is, therefore, in compliance with the law and not liable for discrimination. The question then becomes what constitutes current, illegal use of a controlled substance?

The statutes do not define what the term "current" means, but court cases from around the country do provide some parameters. They make it clear that an individual who is drug-free for one year is not a current user. On the other hand, an applicant does not have to be using drugs at the precise moment that he applies or is rejected to be considered a current user. Several courts have ruled that an individual who uses illegal drugs in the weeks or months prior to being rejected will be considered a current user, and for that reason, will not have any protection under the discrimination laws.

One case illustrating these issues was decided in 1999 by HUD's Boston Office of Fair Housing. An applicant reached the top of the wait list and completed

all the necessary forms, including a signed certification that he had not engaged in illegal drug use within the past twelve months. The usual credit and background checks were completed and a lease was drawn up. An appointment was then scheduled so the applicant could view a vacant unit.

The applicant did not show up for the appointment, or call, but he did come to the office the next day without an appointment. He behaved erratically, falling over in his chair and having to be awakened when the manager arrived to show him the apartment. He said he had been in the hospital the previous day.

Based upon his behavior, the landlord scheduled a mitigation meeting to insure that the applicant was drug-free. At that meeting the applicant did not provide any evidence that he had been in the hospital, and refused to sign a release allowing the landlord to ascertain his drug/alcohol free status. He also admitted at the meeting that he had lapsed three times within the last twelve months. After hearing this, the landlord rejected the applicant.

The applicant filed a discrimination complaint with the Office of Fair Housing, claiming to be protected as a recovering drug addict. HUD's decision pointed out that the application had been processed in the normal course, and only after erratic behavior had been exhibited did the landlord ask for verification from the hospital and an additional release. This request for information and the scheduling of the mitigation meeting were in keeping with the landlord's tenant selection procedures. The decision stated that the landlord rejected the applicant based upon "a reasonable belief that at the time of the application for rental the Complainant was engaged in the current illegal use of a controlled substance." Therefore, the landlord's rejection of the applicant was proper.

