

LANDLORD LIABILITY ISSUES UPDATE

The Raleigh Housing Authority appreciates the relationships we have built with local property owners and managers. With this in mind RHA is sharing information from a recent Safety Seminar that could have an adverse impact on current and future owners and property managers. Please take a moment to read the case law and the reason(s) cited where the owner is or can be held liable for injury to residents and visitors while on your property.

Maintaining Safe Premises - Mansfield v. Real Estate Plus, December 1, 2015

Daniel Mansfield was a tenant of a residential property. On 13 December 2009, the stair railing collapsed while plaintiff was on the stairs up to his residence; he fell and was seriously injured. A Craven County jury awarded him \$200,000.00.

The court notes:

Since plaintiff was defendants' tenant, defendants were under a duty to keep the common area of their premises in a safe condition ... (T)he duty to keep the common areas in a safe condition implies the duty to make reasonable inspection and correct an unsafe condition which a reasonable inspection might reveal

Landlord's Defense: Didn't know there was a problem.

Seminal ice case in North Carolina: Lenz v. Ridgewood Associates, 1981

Sidewalks outside apartments contain ice from storm over a month earlier, and new ice from storm previous evening

- Tenant wakes up at 6:15 and sees that storm is over, but sidewalks icy
- Calls Greensboro College at 8:30 and finds out school will be open
- Waits until 10:30 to leave, all sidewalks to parking lot still covered in ice, no sand or other attempts made to deal with slippery condition

Court rules that:

Tenant not negligent to walk out on ice: even in icy conditions, tenant may undertake a reasonably necessary journey or mission or engage in a reasonably necessary activity where there are no reasonable alternatives open, even in the face of risk of harm to himself.

Knowledge of Dangerous Activities or Conditions - Stephens v. Covington, Feb. 18, 2014

Landlord rents to Tenant, knowing Tenant owns Rottweiler

- Landlord and Tenant both contact Animal Control re fencing need, but only due to local
- ordinance concerning keeping dog on premises
- Dog kept in fenced area with 2 gates, both marked "No Trespassing" and "Beware of Dog."

8-year-old neighbor visits 9-year-old son of tenant. During visit, neighbor follows son when son enters the fenced area to refill dog's water dish. While the boys stand in the fenced area, dog bites neighbor's lower leg. After failing to get dog to release neighbor, son runs to get mother. Dog releases leg, but then bites again, catching neighbor's shoulder in his teeth. Mother eventually gets dog to let go.

New Hanover County jury awards \$500,000.00 damages.

Landlord liable?: Court poses 2 requirements: (1) that the landlord have knowledge that a tenant's dog poses a danger; and (2) that the landlord has control over the dangerous dog's presence on the property

Court finds no liability - no prior incidents of aggression and no prior complaints to landlord or Animal Control (sometimes referred to as every dog gets one bite)

Caveat: Court distinguishes another case where plaintiff presented evidence that Rottweilers are inherently aggressive, noting that claimant here did not present such testimony. Apparently court would have allowed this claim to go to the jury against the landlord had such testimony been presented.

Other dangerous situations on premises: Kiddie Pools, Trampolines

New HUD Guidance on Fair Housing and Use of Criminal Records - April 4, 2016

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect ("disparate impact"), even when the provider had no intent to discriminate.

Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.

1. Does the Criminal History Policy or Practice Have a Discriminatory Effect?

Nationally, disparate impact on racial and ethnic minorities is clear. "Additional evidence, such as applicant data, tenant files, census demographic data and localized criminal justice data, *may be relevant* in determining whether local statistics are consistent with national statistics and whether there is reasonable cause to believe that the challenged policy or practice causes a disparate impact." (Emphasis added)

Burden of proof on this point lies with the challenger to the policy, but the clear message is that in the absence of extraordinary proof local conditions vary from the national norm, move to step 2.

2. Is the Challenged Policy or Practice Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest?

Standard justification: protection of other residents and their property. Burden of proof on Authority is to show application of policy *actually assists* in protecting resident safety and/or property.

Guidance flatly states that this burden cannot be met when reliance is on mere arrest. This is consistent with HUD guidance on November 2, 2015 stating Authorities should not bar applicant on arrest record alone. That guidance went on to specifically note that conduct underlying the arrest can provide the basis for denying admission.

To rely on conviction, Authority must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.

Guidance suggests criminal record should be reviewed for nature and severity of conviction, as well as amount of time that has passed since criminal conduct occurred.

"The determination of whether any particular criminal history-based restriction on housing satisfies step two of the discriminatory effects standard must be made on a case-by-case basis." (Emphasis added)

3. Is there a Less Discriminatory Alternative to the Criminal Record?

Authority must consider whether "relevant mitigating information beyond that contained in an individual's criminal record" negates case for refusing applicant based on criminal record alone.

Examples of what such other information may include:

- the facts or circumstances surrounding the criminal conduct;
- the age of the individual at the time of the conduct;
- evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and
- evidence of rehabilitation efforts.

Note: the above analysis is inapplicable to convictions for illegal manufacture or distribution (not possession) of Controlled Substances. You may exclude applicants with such convictions despite any discriminatory effect.

Note further: whether or not your policy meets the guidance, it cannot be applied in a discriminatory fashion - folks of all racial and ethnic backgrounds must receive similar treatment on similar facts.

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