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To “Batch” or Not: That is the Question

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We frequently get questions from residential landlords about whether it is acceptable to “batch applications” from prospective residents. “Batching” refers to the process of taking in multiple applications for an available unit, screening each application against the landlord’s rental criteria, and then comparing the applications against each other in order to select the “most qualified” applicant for tenancy. That may sound like a perfectly reasonable business practice (and the practice itself is not presently illegal), but unfortunately, batching applications and selecting the “most qualified” applicant can sometimes raise potential fair housing concerns.

Why the attraction to “batching” applications?

Usually, the landlord’s reasoning for this practice is to select the applicant whose income is the greatest, believing that this person is most likely to pay the rent. However, if management’s true concern is to have the most financially stable residents, the better practice from a fair housing perspective would be to create more stringent rental criteria, such as increasing the income-to-rent ratio that is required in order to qualify.

What are some of the fair housing risks in “batching”?

In a fair housing case based on refusal to rent, the applicant only has to prove four facts to have a prima facie claim:

1. He or she is from a protected class,
2. He or she was denied housing,
3. He or she met the landlord’s rental criteria, and
4. A unit was available at the time the application was screened.

We recommend that a landlord adopt a policy of “first come, first qualified, first served” when processing applications. The first completed application that meets the landlord’s rental criteria should then be offered the unit. This ensures that the landlord will process and accept applications in the most neutral, objective way possible: chronological order.

By comparison, batching might invite subjectivity. For example, how many applications are accepted before the batch is processed? In what order are the applications processed within the batch? What if multiple applicants meet all the rental qualifications? How would one objectively choose between them? And most importantly, how would management prove that an applicant’s protected class status did not enter into the decision to deny that applicant over another qualified applicant who was not from a protected class? Inviting subjectivity invites liability.

What's the best way to avoid (and defend, if necessary) a discrimination claim arising during the tenant selection process?

1. Have all policies and procedures (including rental criteria) documented in writing to demonstrate the consistency with which the property is managed.
2. Make sure there is nothing in the tenant selection process that would cause an applicant to claim that the landlord treated him/her differently because of the applicant's protected class status, such as race, color, nationality, disability, or any of the other classifications. This includes ensuring that a "first come, first qualified, first selected" policy is implemented consistently.
3. Be able to demonstrate that the applicant was treated the same as all other applicants in the selection process, by having written, non-discriminatory rental criteria that are followed consistently with all applicants. Clear, written rental criteria make the application screening process a very transparent, objective exercise and provide the landlord's primary shield when defending a fair housing claim.
4. Compare the first submitted application against your written rental criteria. If the application meets the criteria, approve the application and offer the applicant the apartment.
5. If the applicant conditionally qualifies, offer them an opportunity to rent with conditions (such as a higher security deposit or a co-signer). Make sure your qualifications for conditional acceptance are also in writing.
6. If the first applicant doesn't meet the criteria, deny the application in accordance with the relevant laws and move on to the next application in order of receipt.

Bottom line

Ultimately, a landlord's goal should be to apply a well-thought-out screening process to all applicants that is objective and non-discriminatory, and that the rental criteria are applied equally to all applications. That might not happen when applications are batched because an applicant may be subjectively selected or rejected. Save yourself the cost of fair housing defense and select residents in the most neutral way possible: "First come, first qualified, first served."

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