Can a rent increase become a discrimination lawsuit?

If a raise in rental rates unevenly affects one set of residents, a discrimination lawsuit could result. We explore this issue here.

Excessive fees are at the heart of a complaint in Greenwich, Connecticut, by elderly residents who claim that their property owner is trying to drive them out of the complex by charging unfair and inequitable rental rates.

There are multiple factors that go into "fair and equitable" rate determinations, and some are more subjective than simple comparisons to similar properties nearby. Moreover, the effect of rate hikes—if they have a disproportionately severe impact on one class of residents—could be interpreted as discrimination.

In the Greenwich suit, plaintiffs argue that rental fee increases disproportionately harm the elderly. Moreover, they say the rates are unjustified, citing lengthy construction activity in the complex that has reduced the quality of life for residents. Plaintiffs also note that the property has had numerous owners over the past several years who have tried to change the residential makeup of the 135-unit townhome-style community. They say that it's clear the owners want a younger clientele.

The case is yet to be tried, and allegations remain unproven; nonetheless, the property owner must come up with legal defense fees and somehow protect its reputation—it bills itself as the city's "most prestigious townhome community."

Cases like this can name the property owner, the property manager, directors and officers, shareholders or investment partners, and others in the complaint. Each of these interested parties may have to come to the table with defense counsel and produce documents in their defense. Without proper insurance coverage, particularly tenant discrimination, there could be a large amount of uncovered costs.

Tenant discrimination accusations can be costly on their own, but if state or federal housing authorities get involved, the price could balloon, with investigative expenses and fines or other penalties for those found guilty. A tenant discrimination insurance policy can help with these costs as well as with standard legal defense fees. Coverage may be available with "first-dollar defense," meaning the insurer would cover defense costs without the insured having to meet a deductible.

Get the Specifics

Each insurer provides definitions in its policy contract—definitions that can make or break coverage—so be sure your contract covers your exposures. Frequently, a policy will state that wrongful discrimination includes mistreatment of a tenant (or applicant) in refusing a lease, during the leasing process or during the course of the lease, among other things. Courts usually interpret vague wording in favor of the insured, but who wants to have to go to court to settle these matters? It's better to be clear that your policy definitions include claims of excessive and discriminatory rental fees.

Some insurers will allow you to endorse your commercial insurance policy with tenant discrimination coverage, but you need to make sure it's as comprehensive as the stand-alone version. That would mean it would include coverage for public relations, regulatory actions, and personal injury resulting from your alleged discriminatory acts.

Other specifics include allowing the insured to choose its own counsel, coverage for acts that occurred prior to the initiation of the insurance policy, and offering an extended reporting period.

Also, keep in mind that prospective tenants and applicants can sue for discrimination if they think you are trying to keep certain types of people out of your complex, so be very careful when denying an application or showing a unit. Never give someone cause to believe you are trying to discourage them from applying for a lease. And, if it's time to raise rent, make sure increases don't disproportionately harm one set of residents or applicants. You may need to justify your fee decisions in court, so make sure your actions are defensible.

Comments? Stories to share? Questions? Here is the place to do it.